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Judgment Sheet

IN THE LAHORE HIGH COURT, MULTAN BENCH MULTAN

(JUDICIAL DEPARTMENT)

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W.P. No. 2453 of 2024

Province of Punjab, etc.

Versus

Punjab Labour Appellate Tribunal, etc.

JUDGMENT

Dates of hearing(s): **05.11.2024, 19.11.2024, 25.11.2024, 27.11.2024.**

Petitioners by: M/s Malik Masroor Haider Usman and Khalid Masood Ghani, Assistant Advocate Generals Punjab.

Respondents by: M/s Bilal Amin, Tahir Mehmood, Muhammad Ashfaq Thaheem, Muhammad Junaid Khan Mastoi, Abdul Rehman Khan Laskani, Sardar Sher Ali Khan, Malik Mushtaq Ojla, Muhammad Shahbaz Mughal, Syed Ali Raza, Rana Shahzad Khalid, Muhammad Hayat Khan, Javed Sahotra, Rana Ghulam Hussain, Tariq Mehmood Dogar, Mian Ansar Ahmad Hayat, Rafique Ahmad Bhatti, Advocates.

Mr. Muhammad Akram Tahir, SDO, Mr. Rasheed Baig, SDO, Mr. Riaz Hussain, SDO Irrigation.
Mr. Muhammad Ramzan Bhatti, Litigation Officer, CEO, DHA.
Mr. Nazeer Ahmad, SDO, Buildings.

ASIM HAFEEZ, J. Government of the Punjab / the Department(s) concerned are the petitioners, which *inter alia* assail

legality of concurrent decisions, by the Labour Court(s) and then affirmed by the Punjab Labour Appellate Tribunal (the 'Appellate Tribunal') – [in some cases divergent decisions are subject matter of challenge, where Labour Court(s) had dismissed the grievance petition(s) but said decisions were reversed by the Appellate Tribunal].

2. Essential facts concretized are that respondent(s) employees claim to qualify the benchmark of being defined as '*workmen*' under section 2(i) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**Standing Orders, 1968**"); and are allegedly employed in various provincial government department(s). Respondents hereby claim that they are performing their duties, actively, since being appointed on work charge basis and their services were extended, from time to time and still continuing. Their precise grievance is that in wake of incidence of prolonged performance of service(s) / duties, uninterruptedly, against the posts, possessing permanent character, they are entitled to be regularized as permanent workmen, which statutory right, though recognized under section 2(g) read with clause 1(b) of the Schedule to the Standing Orders, was denied. Respondents vent grievances by invoking jurisdiction of the Labour Court(s) under Section 33 of the Punjab Industrial Relations Act, 2010 ("**the Act, 2010**"), which provision of law provides remedy for seeking redressal of individual grievance(s). Respondents were successful in getting reliefs, some succeeded in getting redressal of their grievance(s) by the Labour Court(s) and some had accomplished objective(s) before the Appellate Tribunal. By and large, through the orders impugned, the services of the respondents were regularized with back benefits, accruing from the date of initial joining / appointment. Interestingly, in some cases directions for regularization were followed by instructions to the departments to prepare and issue service books by treating them as regular government employees – and in some cases additional directions were so comprehensive that status of the regularized permanent workmen became disguised as civil servants. In the shadow of aforesaid facts, these petitions are filed, heard and

decided – details of the petitions decided through this single order are provided in Schedule-A, attached herewith and treated as part of the decision. It is pertinent to mention that no factual issues are discussed in the context of individual grievance(s) and the nature of the relief(s) granted by the Appellate Tribunal and extent thereof is not the subject matter of adjudication other than the determination of legal and jurisdictional questions.

3. Learned law officer contend that irrespective of determination of the legality of collective claims of enjoying the status 'workmen' and 'worker' under relevant statute(s), respondents, claimed to be the employees of provincial government department(s), are not entitled to claim regularization under clause 1(b) of the Schedule to the Standing Orders 1968 because government department(s) are not covered under the expression(s), the 'commercial establishment' or 'industrial establishment' – defined under clauses (a) and (f) of section 2 of the Standing Orders 1968. Adds that even otherwise respondents are not entitled to invoke remedy under section 33 of the Act, 2010 because said enactment does not apply to the persons employed in the administration of the State, in terms of clause (b) of sub-section (3) of section 1 of the Act, 2010. Submits that *dicta* laid in the cases of *"Province of Punjab through Secretary, Population Welfare Department and 2 others vs. Farzana Basharat and 2 others"* **(2020 PLC 260)** and *"Province of Punjab through Secretary, Irrigation Department, Jhang vs. Sajjad Naseem and 3 others"* **(2022 PLC 44)**, were not followed, which alone constitutes a sufficient reason to allow petitions, set-aside the orders and dismiss grievance petitions, being not competent. Without prejudice to jurisdictional questions, they argue that Labour Court(s) and Appellate Tribunal had exceeded in exercise of the jurisdiction conferred by directing departments to prepare service books of employees regularized, without appreciating distinction between the status of 'permanent workmen' and 'civil servant(s)'. Adds that even the employees, whose services stood lapsed due to non-issuance of orders of extension of their service(s), were regularized, which manifest lack of understanding of law and disregard

for judicial pronouncements. Supplement that requisite conditions required to be performed before invoking remedy under section 33 of the Act, 2010 were not performed, which aspect was not appreciated. Further submits that employees working in the Education department were regularized without appreciating the limitation prescribed under clause (h) of sub-section (3) of section 1 of the Act, 2010. Lastly submit that services of the employees cannot be regularized from the date of initial joining, which tantamount to extend retrospective effect to the grant of regularization, a patent illegality.

4. Conversely, learned counsel representing respondents submit that employees seeking regularization of services were not employed or involved in the administration of the State, who are appointed on work charge basis and qualify as ‘workmen’ or ‘worker and workman’ as the case may be. Adds that regularization as a permanent workmen is a recognized right and statutorily guaranteed by virtue of clause 1(b) of the Schedule to the Standing Orders 1968, and any failure to grant such right is made enforceable under section 33 of the Act 2010. Learned counsel submit that work-charge employees working in the Public Works Department of the Government were recognized as permanent workmen, in lieu of the nature of the services performed and were held entitled to regularization of services under erstwhile Industrial Relations Ordinance, 1969 in the case of *“Executive Engineer, Central Civil Division Pak. P.W.D. Quetta vs. Abdul Aziz and others*” **(PLD 1996 Supreme Court 610)**. Also cites the case of “*Syed Matloob Hassan vs. Brooke Bond Pakistan Limited, Lahore”* **(1992 SCMR 227).** It is argued that right of the employee(s), who had performed services for continuous period of over 09 months, without break, are regularized by the Apex Court of this country in the case of “*Province of Punjab through Secretary Communication and Works Department and others vs. Ahmad Hussain”* **(2013 SCMR 1547)**, wherein grievances were raised by the employees working on work-charge basis in the department of Public Works Department Punjab, and grievances stood redressed. Further submits that employees are not employed in

the administration of the State and the ratio of decisions in the cases of *Sajjad Naseem and 3 others"* (supra) and '*Farzana Basharat and 2 others"* (supra) were in conflict with the dictum laid in the case of *Abdul Aziz and others*" (supra), hence, the former decisions are liable to be declared as *per incuriam*, which have had no binding effect.

5. Heard. Record perused with the assistance of learned counsel.

6. Decisions impugned are examined, which are superficial, manifest neglect of judicial assessment and inadequate reasoning. One of the most critical questions that whether the government departments fall within the definition of 'commercial' or 'industrial' establishment, in terms of the Standing Orders 1968, and whether falling within the ambit of aforesaid expressions is imperative at all; which questions remained untouched. No deliberation is found that whether government departments are either covered under the expressions 'establishment', 'industry' and 'employer', as defined under the Act, 2010, let alone any passing reference. There is no deliberation regarding the nature of work / services performed by the respondents and no adjudication that whether respondents are employed in the administration of the State. Working for the State and employed in the administration of the State have different dimensions, in the context of the controversy. There are many other issues which needed determination but left unattended. I opine that matter has to be remanded but after framing legal and jurisdictional issues, which primarily require adjudication during remand proceedings. After hearing learned counsel following legal-cum-jurisdictional issues need adjudication – though some issues entail a factual inquiry to arrive at conclusive conclusion, especially an exercise to ascertain functions performed by the department(s)-cum-employer(s) – which would provide an insight to determine the status of the department, be it an 'establishment' or an 'industry'. I confine the scope of instant adjudication to decide controversy regarding diverging precedents and determination if at all *doctrine of*

per-incuriam decisions is attracted. Nonetheless, issues likely to cause prejudice to the parties are left open for decision, upon carrying out requisite factual probe, except that issues are articulated. Following legal issues are identified and reproduced in sequel of significance.

> *a) Whether the decisions in the cases of Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others" (supra) were in conflict with the dictum laid in the case of Abdul Aziz and others" (supra).*
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> *b) Whether employees on work-charge basis could be construed as involved in the administration of the State – exclusion of such category of employees is provided in clause (b) of sub-section (3) of section 1 of the Act, 2010.*
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> *c) Whether seeking enforcement of statutory right(s) guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 makes it imperative that the employer, which is government department(s) in the cases at hand, must qualify as a commercial or industrial establishment under section 2(b) and 2 (f) of the Standing Orders 1968.*
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> *d) Whether services of the employees hired / appointed on work-charge basis are governed under the statutory rules of service in the context of their conduct and discipline.*
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> *e) Whether alleged right(s) granted / guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 could be enforced by invoking the remedy under section 33 of the Act, 2010.*
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> *f) Whether the Labour Court(s) and Appellate Tribunal, as the case may be, had exceeded their jurisdiction while issuing directions for preparation and issuance of service book of the employees upon treating them as regular government employees, once they are regularized as permanent workman.*
>
> *(g) What is the effect of the Policy decision issued through Notification No. SO(ERB)5-44/2019/WC-DW-Policy of 29th January 2021 issued by the Government of the Punjab Services & General Administration Department (Regulations/O&M Wing.*
>
> *(h) Whether the employees meet the benchmark requirements under the Standing Orders, 1968 and / or the Act, 2010.*

7. Issues identified are answered accordingly.

> *a) Whether the decisions in the cases of Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others" (supra) were in conflict with the dictum laid in the case of Abdul Aziz and others" (supra).*
>
> *b) Whether employees on work-charge basis could be construed as involved in the administration of the State – exclusion of such category of employees is provided in clause (b) of sub-section (3) of section 1 of the Act, 2010.*

8. Issues (a) and (b) are answered alongside on account of having proximity. I have examined the decisions in the cases of "*Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others"* and at the outset found reasoning therein contrary to the dictum laid in the case of *Abdul Aziz and others (supra)*. Relevant portion of the decision in case of *Abdul Aziz and others (supra)* is reproduced hereunder;

> *"The work of construction or maintenance of buildings, which is performed by the respondents, does not have nexus with the sovereign functions of the State, and therefore, they cannot be described as persons employed in the administration of the State. The above work can be carried out through contractors. The respondents have nothings to do with the running of the Government they may be said to be contributing towards facilitating the functioning of the Government. I am, therefore, of the view that the respondents are not employed in the administration of the State and, hence, the above clause (b) of subsection (3) of section 1 of the I.R.O, is not attracted to. It therefore, follow that the provisions of the I.R.O. could have been invoked by the respondents. Since the respondents' grievance was that their Services were terminated in spite of the fact that they were permanent employees. In view of above paragraph 1 (b) of the Schedule to the Standing Orders Ordinance in violation of Standing Order No. 12, they could have filed the applications under section 25-A of the I.R.O."*

9. It is incorrect to assume that every employee is employed in the administration of the State. The decision in the case of *Abdul Aziz and others (supra)* had aptly elaborated the expression "*in the administration of the state*" appearing in clause (b) of sub-section (3) of section 1 of erstwhile Industrial Relation Ordinance, 1969, which is *pari materia* to clause (b) of sub-section 3 of section 1 of the Act 2010. Respondent(s) employees are not civil servants. There is marked difference between persons working for the State and those employed in the administration of the State. Evidently, none of the respondent(s) employees are performing governmental governance role(s) or acting as policymakers. Essentially, employees are tasked with the performance of public services or public sector role(s), at the lowest ebb of the employment tier. It is the grievance of the petitioners that such determination was not undertaken. I agree that these issues are not discussed and need to be adjudicated in the context of ratio of decisions in cases of "*Province of Punjab through Secretary Communication and Works Department and*

others vs. Ahmad Hussain" **(2013 SCMR 1547)**, *"Secretary, Irrigation and Power Department, Government of Punjab, Lahore and others vs. Muhammad Akhtar"* **(2009 SCMR 320)** and *"Lahore Development Authority through D.G, Lahore and another Vs. Abdul Shafique and others"* **(PLD 2000 Supreme Court 207)**. It is expected that aforesaid decisions would be considered in the context of facts of each case. I confine to the determination of applicable / binding precedent, since it is argued that in wake of decisions of "*Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others"* Appellate Tribunal would treat employees as employed in the administration of the State, hence, decision be made. I hold that the ratio of decision in the case of *Abdul Aziz and others (supra),* was not considered or appreciated while handing down decisions in cases of "*Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others"* (*supra*), hence, latter judgments are declared *per-incuriam,* being contrary to the law enunciated by the Honourable Supreme Court of Pakistan. It is important to discuss another serious question, which is whether remedy under section 33 of the Act, 2010 could only be invoked if government department(s) necessarily comes within the definition of 'commercial' or 'industrial' establishment(s) under the Standing Orders, 1968. I refrain from commenting on this query to avoid causing of prejudice but only refers to the ratio of decision in the cases of *Ahmad Hussain* (supra), *Muhammad Akhtar and others* (supra), and *Abdul Shafique and others* (supra), which provide pertinent insight in the context of controversy at hand.

10. Now I take up next issue.

> *c) Whether seeking enforcement of statutory right(s) guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 makes it imperative that the employer, which is government department(s) in the cases at hand, must qualify as a commercial or industrial establishment under section 2(b) and 2 (f) of the Standing Orders 1968.*

11. It appears that Appellate Tribunal had not discussed the effect of first proviso to section 1 of Standing Orders 1968 – which issue need to

be deliberated in the light of decision in the case of *Divisional Superintendent, Quetta Postal Division and others v. Muhammad Ibrahim and others* (2022 SCMR 292) – paragraph 17 thereof. Decisions in the cases of *Ahmad Hussain* (supra), *Muhammad Akhtar and others* (supra), and *Abdul Shafique and others* (supra), and *Abdul Aziz and others (supra)* had relevance in the context of present issue. In all the referred cases grievances alleged were raised in the context of rights/statutory protection extended under the Standing Orders 1968 and were addressed by invoking remedy under section 22-A of the Industrial Relations Act 1969, which clause is swapped with section 33 of the Act, 2010 and section 33 of Industrial Relations Act 2012. There is another facet of the matter in issue, which was not considered in cases of "*Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others"* (*supra*). The definition of expressions 'commercial establishment' and 'industrial establishment' defined under sections 2(a) and 2(f) of the Standing Orders, 1968 are qualified by the words *"unless there is anything repugnant in the subject or context"*. Now whether statutory right claimed and guaranteed under clause 1(b) of the Schedule to the Standing Orders, 1968 against government departments is dependent upon department's qualifying under the expressions 'commercial establishment' and 'industrial establishment'. This interpretation if followed, would jeopardize the remedy provided for enforcing individual grievance under section 33 of the Act, 2010. Section 33 of the Act, 2010 is reproduced hereunder.

> ***33. Redress of individual grievances.–*** *(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises.*
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> *(2) Where a worker brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.*
> *(3) Where a worker brings his grievance to the notice of his employer through his shop steward or collective bargaining agent, the employer shall, within seven days of the grievance being brought to his notice, communicate his decision in writing to the shop steward or the collective bargaining agent.*

> *(4) If the employer fails to communicate a decision within the period specified in sub-section (2) or sub-section (3) or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to the collective bargaining agent or the Labour Court.*
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> *(5) The collective bargaining agent may take the matter to the Labour Court, and where the matter is taken to the Labour Court, it shall give a decision within ninety days from the date of the matter being brought before it as if such matter was an industrial dispute.*
>
> *(6) A worker may, within a period of sixty days from the date of the communication of the employers' decision or from the date of the expiry of the period mentioned in sub-section (2) or sub-section (3), take the matter to the Labour Court.*
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> *(7) In adjudicating and determining a grievance under this section, the Labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.*
> *(8) Subject to the decision of the Tribunal, if a decision under this section given by the Labour Court is not given effect to or complied with within seven days or within the period specified in the decision, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred thousand rupees or with both.*
>
> *(9) A person shall not be prosecuted under sub-section (8) except on a complaint in writing by the workman if the decision in his favour is not implemented within the period specified in that sub-section.*
> *(10) For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court."*

12. Section 33 of the Act, 2010 employs an expression 'employer', wherein no reference to expressions 'commercial establishment' or 'industrial establishment' is found. The expression employer has relevance and for that matter expressions 'establishment' or 'industry' under sections 2(ix) and (xvi) are relevant. Expression 'employer' is defined under Section 2(viii) of the Act, 2010, which is reproduced hereunder,

> ***(viii)**. "employer" in relation to an establishment, means any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment and includes-*
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> *(a) an heir, successor or assignee of such person or body;*
>
> *(b) any person responsible for the management, supervision and control of the establishment;*
>
> *(c) **in relation to an establishment run by or under the authority of any department of the Federal Government or the Government, the authority appointed in this behalf or, where no authority is so appointed, the head of the department**;*

> *(d) in relation to an establishment run by or on behalf of a local authority, the officer appointed in this behalf, or where no officer is so appointed, the chief executive officer of that authority;*
>
> [Emphasis supplied]

13. If nature of the service / assignment of the employees does not involve performance of duties involving employment in the administration of the State, then why cannot the workmen invoke remedy under section 33 of the Act, 2010, for enforcement of right under clause 1(b) of the Schedule to Standing Orders 1968. In the case of *"Federal Revenue Alliance Employees Union through President Vs. Federal Board of Revenue through Chairman"* **(2024 PLC 2018)** definition of establishment was discussed in the context of clause (b) of sub-section (3) of section 1 of the Industrial Relations Act, 2012 and status of FBR was declared as an establishment, if not industry. This reasoning find support from clause (c) of definition of 'employer'. Evidently clause (c) of section 2(ix) of the Act of 2012 is reflection of clause (c) of section 2(viii) of the Act, 2010. I leave this question for determination of the Appellate Tribunal to assess the status of the government department(s) for the purposes of considering its placement in the ambit of 'establishment' or 'industry' depending upon the scope of functions undertaken by the employer – government department(s). Guidance can also be solicited from the ratio in the case of *"Messrs Pak Telecom Mobile Limited vs. Muhammad Atif Bilal and 2 others"* **(2024 SCMR 719)**. [next issue].

> *d) Whether services of the employees hired / appointed on work-charge basis are governed under the statutory rules of service in the context of their conduct and discipline.*

14. Admittedly, the services of the employees are not governed by or under the statutory rules of service, conduct and discipline. Employees are not the civil servant. [next issue].

> *e) Whether alleged right(s) granted / guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 could be enforced by invoking the remedy under section 33 of the Act, 2010.*

15. Yes, such rights are enforceable in the context of the ratio of decision in the case of *"Muhammad Atif Bilal and 2 others"* (supra) – an individual grievance can be enforced upon invoking remedy under 33 of the Act of 2010 – [next issue].

> *f) Whether the Labour Court(s) and Appellate Tribunal, as the case may be, had exceeded their jurisdiction while issuing directions for preparation and issuance of service book of the employees upon treating them as regular government employees, once they are regularized as permanent workman.*

16. Labour Court(s) and Appellate Tribunal exceeded their jurisdiction while instructing the department for the preparation and issuance of service book to the employees, treating them as regular government employees, upon being regularized, without appreciating the distinction between a permanent workman and civil servant. Assumption of jurisdiction to pass such directions is erroneous and exceeds the scope of jurisdiction conferred. And if at all any employee, upon regularization, is claiming the status of a civil servant in the context of the assignment assigned, same had to approach the Service Tribunal and establish its status as a civil servant. No such jurisdiction vests in the Labour Court(s) and Appellate Tribunal. [next issue].

> *(g) What is the effect of the Policy decision issued through Notification No.SO(ERB)5-44/2019/WC-DW-Policy of 29th January 2021 issued by the Government of the Punjab Services & General Administration Department (Regulations/O&M Wing.*

17. Appellate Tribunal will consider the effect of the policy introduced for the work-charged employees, daily wagers and contingent paid staff – which policy was framed in the light of the instructions of Hon'ble Supreme Court of Pakistan in terms of Order dated 11.12.2018 in CP No.3340-3344/2018. [next issue]

> *(h) Whether the employees meet the benchmark requirements under the Standing Orders, 1968 and / or the Act, 2010.*

18. This question will be examined by the Appellate Tribunal upon assessing the nature of the duties performed by the employees in the context of meeting the conditions required for 'workmen' under the Standing Orders, 1968 and 'worker or workmen' under the Act, 2010.

19. Since no factual issues are touched but only legal issue raised are adjudicated. Therefore, issue of compliances of pre-requisite conditions before invoking the remedy under section 33 of the Act, 2010, question of limitation of the grievance notice, question of continuity of service of an employee, without any break in service or lapse of service, in absence of issuance of order of extension and issue otherwise raised by the partis to the *lis*, would be considered by the Appellate Tribunal while deciding the remanded matters, afresh – list of cases are detailed in Schedule-A.

20. In view of the above, all these petitions, listed in Schedule-A, are allowed and the decisions of the Appellate Tribunal are set aside, and matters are remanded for re-determination, afresh. Appeals, wherein impugned orders were passed, shall be deemed pending before the Appellate Tribunal, which shall *inter alia* decide highlighted issues, to the extent relevant for the purpose of deciding the Appeal(s). It is expected that Appellate Tribunal will decide each and every petition in the context of the facts involved therein, independently and preferably within a period of three months from the date of this order. It is apprised that Government has initiated steps for ensuring that Appellate Tribunal becomes functional at the earliest.

At the fag-end of the proceedings, learned counsel for respondent(s) employees claimed that employer(s) have withheld the salaries despite performance of services, and started forced terminations by withholding issuance of orders of extensions on the pretext that employees have initiated legal proceedings. This apprehension appears to be misconceived and otherwise overstated. For sake of clarity, it is observed that the department(s) shall continue to make payment of the salaries of the respondent(s) employees, who were in active service at the time of submission of grievance petition(s) – because largely the grievances pleaded are seeking regularization of services. In any case, if any employee has any grievance(s) during the pendency of the appeals, pending before Appellate Tribunal upon remand, same shall approach the Appellate Tribunal through filing of appropriate application for

redressal of grievances, which application shall be considered and decided accordingly.

(ASIM HAFEEZ)
JUDGE

*M. Nadeem/**

APPROVED FOR REPORTING

JUDGE