

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE UMAR ATA BANDIAL

CIVIL APPEALS NO. 1171 TO 1192 OF 2013.

(On appeal from the judgment dated 26.8.2013 of the KPK Subordinate Service Tribunal, Peshawar passed in Service Appeals No. 2/2009, 1, 4, 5, 7, 8, 6, 9, 10, 11, 13, 15, 16 of 2010, 2 of 2009, 1, 17, 18, 19, 20, 21, 22, 27 of 2010).

Registrar, Peshawar High Court	...in C.A.1171/2013
Registrar, Peshawar High Court	...in C.A.1172/2013
Muhammad Arif-II and others	...in C.A.1173/2013
Syed Zamurd Shah and others	...in C.A.1174/2013
Mrs. Sofia Waqar Khattak	...in C.A.1175/2013
Muhammad Zafar and others	...in C.A.1176/2013
Shoaib Khan and others	...in C.A.1177/2013
Muhammad Rauf Khan and others	...in C.A.1178/2013
Aurangzeb Khattak and others	...in C.A.1179/2013
Muhammad Aamir Nazir and others	...in C.A.1180/2013
Ihsan Ullah Mahsud and others	...in C.A.1181/2013
Ashfaq Taj and others	...in C.A.1182/2013
Jehanzeb Shinwari and others	...in C.A.1183/2013
Qamar Sohail Lodhi	...in C.A.1184/2013
Azhar Khan	...in C.A.1185/2013
Muhammad Asif-II and others	...in C.A.1186/2013
Syed Zamurd Shah and others	...in C.A.1187/2013
Mrs. Sofia Waqar Khattak and others	...in C.A.1188/2013
Muhammad Rauf Khan and others	...in C.A.1189/2013
Aurangzeb Khattak and others	...in C.A.1190/2013
Shoaib Khan and others	...in C.A.1191/2013
Muhammad Aamir Nazir and others	...in C.A.1192/2013

...Appellant(s)

VERSUS

Shafiq Ahmad Tanoli and others	...in C.A.1171/2013
Sardar Muhammad Irshad and others	...in C.A.1172/2013
Muhammad Amin Kundi and others	...in C.A.1173/2013
Rajab Ali Khan and others	...in C.A.1174/2013
Muhammad Hussain and others	...in C.A.1175/2013
Liaquat Ali Khan Marwat and other	...in C.A.1176/2013
Nasrullah Khan Gundapur and others	...in C.A.1177/2013
Madad Khan and others	...in C.A.1178/2013
Salahuddin and others	...in C.A.1179/2013
Rafiullah Khan and others	...in C.A.1180/2013
Jamal-ud-Din and others	...in C.A.1181/2013

Muhammad Iqbal Khan and others	...in C.A.1182/2013
Muhammad Zubair and others	...in C.A.1183/2013
Shafiq Ahmed Tanoli and others	...in C.A.1184/2013
Sardar Muhammad Irshad and others	...in C.A.1185/2013
Muzzamil Shah Khattak and others	...in C.A.1186/2013
Ikhtiar Khan and others	...in C.A.1187/2013
Ahmed Sultan Tareen and others	...in C.A.1188/2013
Naveed Ahmed Khan and others	...in C.A.1189/2013
Gohar Rehman and others	...in C.A.1190/2013
Sajjad Ahmad and others	...in C.A.1191/2013
Mehmood-ul-Hassan and others	...in C.A.1192/2013

...Respondent(s)

For the appellant(s):	Qazi Muhammad Anwar, Sr. ASC Syed Rifaqat Hussain Shah, AOR <i>(in C.As.1171 to 1176, 1181 to 1188/2013)</i> Mr. Farooq H. Naek, Sr. ASC Syed Rifaqat Hussain Shah, AOR <i>(in C.As.1178 & 1189/2013)</i> Mr. Muhammad Munir Paracha, ASC Syed Rifaqat Hussain Shah, AOR <i>(in C.As.1174 & 1186/2013)</i> Mr. Mushtaq Ali Tahir Kheli, ASC Ch. Akhtar Ali, AOR <i>(in C.As.1179, 1180, 1190 & 1192/2013)</i> Mr. Tariq Aziz, ASC/AOR <i>(in C.A.1191/2014)</i>
For the respondent(s):	Mr. Muhammad Akram Sheikh, Sr. ASC Syed Safdar Hussain, AOR <i>(in C.As.1173, 1174, 1177, 1179, 1180, 1182, 1183, 1186, 1187, 1189 to 1192/2013)</i> Mr. Anwar Kamal, Sr. ASC Mr. M. S. Khattak, AOR <i>(in C.As.1176 & 1188/2013)</i> Mir Adam Khan, AOR <i>(in C.A.1181/2013)</i>
For Peshawar High Court:	Imran Ullah, Legal Draftsperson, P.H.C. Muhammad Saeed, Assistant Director, KPK Public Service Commission

Date of hearing: 24.02.2015 (Judgment Reserved)

... J U D G M E N T

EJAZ AFZAL KHAN, J.- These appeals with leave of the Court have arisen out of the judgment dated 26.8.2013 of the KPK Subordinate Judiciary Service Tribunal Peshawar, whereby it partially

allowed the appeals filed by the respondents. The points raised and noted at the time of grant of leave read as under:-

"2. It is, inter alia, contended by the learned counsel for the petitioners that the learned Tribunal has failed to appreciate the Order dated 13.8.2009 passed by the Hon'ble Chief Justice of Peshawar High Court was not appealable, hence the learned Tribunal had no jurisdiction to entertain the appeals in question. It is further contended that the prescribed procedure was not complied with nor questions of law were formulated by the learned Tribunal. It is added that the learned Tribunal has failed to take into consideration its own order dated 18.12.2012, as a consequence whereof, the impugned judgment is invalid and liable to be set aside. The learned counsel further urged that the learned Tribunal has misapplied and misinterpreted Rule 10 of KPK Judicial Service Rules, 2001. Furthermore, by way of the impugned judgment, the learned Tribunal has presumed authority and jurisdiction of the Administrative Committee, which is not vested therein by law.

3. The contentions raised by the learned counsel require consideration, therefore, these petitions are accepted and leave to appeal is granted, inter alia, to consider the aforesaid contentions."

2. Learned ASC appearing on behalf of the appellants contended that the appointing authority, according to section 5 of the Civil Servants Act, 1973 is the Governor or a person authorized by the Governor in this behalf; that the Governor, conferred this power on the Chief Justice vide Notification No. SOR-IV(E&AD)/3-11/2001 dated 28.8.2001 and that the Chief Justice being the appointing authority shall cause a seniority list of the members of such service, cadre or post, to be prepared, under section 8 of the Act. He next contended that though according to Rule 4 and 10 of the KPK Judicial Service Rules, 2001, the appointing authority and the authority determining seniority is the High Court but this being in conflict with the parent statute cannot override the latter. In case, the learned ASC maintained, the

Rules are allowed to override the parent statute, no departmental authority would be left for appeal, or representation.

3. Learned ASC appearing on behalf of the respondents contended that the appointing authority to a post, according to rule 4 of the Rules, is the High Court and not the Chief Justice; that such authority being executive and administrative is exercised by the Administration Committee in view of Rule 1 Part A of Chapter 10 of the High Court Rules and Orders Volume V, therefore, the impugned judgment projecting such interpretation cannot be caviled at.

4. We have gone through the record carefully and considered the submissions of the learned ASCs for the parties.

5. Before we appreciate the controversy canvassed before us, it would be imperative to refer to the relevant provisions of the Civil Servants Act and the Rules made thereunder. The relevant provision of the Act read as under:-

***"5. Appointment:** Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.*

***8. Seniority:- (1)** For proper administration of a service, cadre or {post}, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or {post} to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or {post} as the case may be.*

***(2)** Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or [cadre] whether serving the same department or office or not, as may be prescribed.*

***(3)** Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.*

***(4)** Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;*

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to higher post, retain their inter-se seniority as in the lower post.

(5) The seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January."

6. The Rules relevant in this behalf read as under:-

"2. Definitions: In these rules, unless there is anything repugnant in the subject or context:

(a) "Administration Committee of the High Court" means Committee constituted under High Court Rules and Orders, volume-V, Chapter 10-A.

(b) "Appointment on contract basis" means appointment made for a specified period in accordance with the policy of Govt: applicable to appointment on contract basis.

(c) "Chief Justice" means the Chief Justice of Peshawar High Court Peshawar.

(d) "Commission" means the North West Frontier Province Public Service Commission.

(e) "Departmental promotion committee" means the Committee constituted under High Court Rules and Orders Volume-V, chapter 10-A.

(f) "Government" means the Government of North West Frontier Province.

(g) "High Court" means Peshawar High Court Peshawar.

(h) "Initial appointment" means appointment made otherwise than by promotion or transfer from another service, department or post;

(i) "Provincial Judicial Selection Board" means a Board comprising the Administration committee or such number of Judges of the High Court as may be nominated by the Administration Committee;

(j) "Recognized University" means the University established by or under a law in Pakistan or any other University which may be declared by Government to be a recognized University for the purpose of these rules;

(k) "Selection Authority" means the Commission or, as the case may be, the Provincial Judicial Section Board; and

(l) "Service" means the North West Frontier Province Judicial Service.

4. Appointing Authority:-Appointment to a post shall be made by the High Court.

10. Seniority: The seniority inter-se of the members of the service in the various pay scales thereof shall be determined by the High Court, subject to the following conditions:

(a) In the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5; provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection.

(b) In the case of members appointed by promotion, seniority in a post, service or cadre to which a Civil Servant promoted shall take effect from the date of regular appointment to that post; provided that Civil Servants who are selected for promotion to a

higher post in one batch shall, on their promotion to higher post, retain their inter-se seniority as in the lower post.

Explanation-I *If a Jr. officer in a lower grade is promoted temporarily to a higher grade in the public interest, even though continuing later permanently in the higher grade, it would not adversely affect the seniority in the interest of his/her senior officer in the fixation of his/her seniority in the higher grade.*

Explanation-II *If a Jr. officer in a lower grade is promoted to a higher grade by superseding a Sr. officer and subsequently that officer is also promoted, the officer promoted first shall rank senior to the officer promoted subsequently.*

13. General Rules: *In all matters not expressly provided for in these rules, members of the Service shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to their employees, with such modifications and changes as the High Court may prescribe."*

7. According to section 5 of the Civil Servants Act and Rule 4 of the KPK (Appointment, Promotion and Transfer) Rules, 1989, the appointing authority to a civil post in connection with the affairs of the Province is the Governor or a person authorized by him. In 2001, the Governor by amending Rule 4 of the KPK (Appointment and Promotion) Rules, 1989 vide Notification No. SOR-IV(E&D)/3-11/2001 authorised the Chief Justice, Peshawar High Court, to appoint Judicial Officers Sub-ordinate to the High Court with immediate effect. But this notification being a stopgap arrangement remained in force only till the enforcement of the KPK Judicial Service Rules, 2001. The Rules, so enacted and enforced deal with qualification, eligibility, method of recruitment, appointment, seniority and matters ancillary thereto. According to Rule 4 and 10 of the said Rules, the appointing authority for a civil post and the authority determining the *inter se* seniority of the members of the service shall be the High Court and not the Chief Justice. The expressions 'High Court' and Chief Justice' being distinct from each other are not interchangeable from any angle of vision. The appointing authority and the authority determining seniority for the

purposes of sections 5 & 8 of the Act is therefore the High Court and not the Chief Justice.

8. What does the expression "High Court" mean in the scheme of the relevant rule, enactments and Constitutions? Rule 2(g) of the Rules, 2001, defines the expression 'High Court' as Peshawar High Court Peshawar. However, according to the East India (High Court of Judicature) Act, 1861, the Government of India Act, 1915, the Government of India Act, 1935, the Constitution of Islamic Republic of Pakistan 1956, the Constitution of 1962 and the Constitution of 1973, the expression "High Court" means High Court consisting of Chief Justice and Judges. If we go by this definition then the appointing authority shall not be the Chief Justice but the High Court consisting of Chief Justice and other Judges.

9. What has been regulating the executive and administrative work of the High Court ever since its establishment? Such work of the High Court, if we see in the historical perspective, has been regulated by the Acts which have been enforced from time to time and Rules and Orders made and issued thereunder. The first Act enforced in this behalf was the Punjab Courts Act, 1884. The High Court under the said Act was called the Chief Court. The relevant section of the Act reads as under :-

"8 (1) Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide, in such manner as it thinks fit for the exercise by one or more of its Judges of any of its powers.

ii).....

(iii)....."

The relevant rule framed thereunder provides as follows:-

"I. The powers of the Courts, as a Court of control, shall be exercisable by all the Judges, and shall be allotted in such manner as the Judges in monthly meeting may from time to time determine.

II. (i) A meeting of the Judges shall be held monthly on such day as the Chief Judge may from time to time fix in that behalf, for the disposal of references relating to the Judicial administration or matters affecting the working of the Court, and all such business, not of a judicial character, as a Judge may refer to the meeting.

(ii) The meeting shall ordinarily be held on the first Friday (not being a holiday) of every month.

III. The Registrar shall convene the monthly meetings and regulate the business to be considered thereat, in such manner as the Chief Judge may from time to time direct."

10. In 1914 Punjab Courts Act (III) of 1914 was promulgated. It also provided for exercise of any of the powers of the said Court by one or more of its Judges. The relevant section in this behalf merits a reference which reads as under:-

"SECTION 8 OF PUNJAB COURT ACT, 1914.

8 (1). Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide, in such manner as it thinks fit for the exercise by one or more of its Judges of any of its powers.

(2) The Chief Court may make rules, declaring what number of Judges, not being less than three, shall constitute a Full Bench of the Court, and may by these rules prescribe mode of determining which Judges shall sit as a Full Bench, when a Full Bench sitting becomes necessary.

(3) Subject to the provisions of sub-section (2), the Senior Judge may determine which Judge in each case shall sit alone, and which Judges of the Court shall constitute any Bench"

11. Rules framed pursuant to the said provision of the Act read as follows:-

"Part A---RULES FOR THE DISPOSAL OF EXECUTIVE AND ADMINISTRATIVE BUSINESS

1. Administrative Business.--- *The Administrative and executive work of the High Court shall be controlled by a Committee of Judges to be known as the Administration Committee.*

Provided that the work of the Benches at Karachi and Peshawar shall be conducted in such manner as the Chief Justice may direct.

Provided further that those matters which are the executive concern of the Chief Justice, namely, the constitution of Benches and the

appointment and control of the High Court Establishment, shall be dealt with in accordance with such instructions as may from time to time be issued by the Chief Justice.]

2. Constitution and appointment of Administration Committee.----*The Administration Committee shall consist of seven Judges. The Chief Justice and the Senior Puisne Judge shall be ex-officio members and the Chief Justice shall annually nominate the other five members of the Committee.]*

3. Quorum of Administration Committee.--- *At all meetings of the Administration Committee, three Judges shall form a quorum.*

4. (a) *Each member of the Administration Committee shall act as an Administration Judge and the powers and duties of each Administration Judge shall be defined by the Chief Justice from time to time.*

(b) *The following matters shall invariably be referred by an Administration Judge to the Administration Committee:-*

- (i) *All cases which are to go before a meeting of all the Judges.*
- (ii) *All cases involving the amendment of the Rules and Orders of the Court other than purely routine amendments.*
- (iii) *The issue of circular letters and instructions to the Subordinate Courts in other than purely routine matters.*
- (iv) *All circulars issued by District and Sessions Judges and District Magistrates for the guidance of Courts subordinate to them.*
- (v) *All proposals for the confirmation or promotion of District and Sessions Judges and Subordinate Judges.*
- (vi) *The grant of permission to Subordinate Judges to cross efficiency bars.*
- (vii) *All pension cases of District and Sessions Judges and Subordinate Judges.*
- (viii) *All cases in which disciplinary action is to be taken against District and Sessions Judges and Subordinate Judges, and all cases in which there is a question of the recovery from an officer of any loss suffered by Government.*
- (ix) *The selection of officers for deputation, and magisterial commercial or special training.*
- (x) *Recommendation for the direct appointment of Government servants as Extra Assistant Commissioners.*
- (xi) *The fitness of officers for appointment as District and Sessions Judges.*
- (xii) *The monthly returns of work done by District and Sessions Judges.*
- (xiii) *All cases in which lawyers seek relaxation of the High Court Rules applicable to them, other than those in*

- which the Judges or the Administration Committee have laid down a policy to be followed.*
- (xiv) *All proposals for the execution of Civil Major works in the Judicial Department.*
 - (xv) *All cases in which the opinion of all the Judges is sought by Government.*
 - [(xvi) *Recording of annual confidential report on the work and conduct of a Civil Judge or Magistrate where:-*
 - (a) *it is intended to comment unfavourably on his conduct and work; or*
 - (b) *another reporting authority has recorded adverse remarks.*
 - (xvii) *All cases of conferment of civil and criminal powers on Subordinate Judges and Magistrates except:-*
 - (a) *Powers under the Provincial Small Cause Courts Act.*
 - (b) *Powers under the Guardians and Wards Act.*
 - (c) *Permission to exercise powers under the Provincial Insolvency Act already conferred by Punjab Government Notification No. 780, dated the 15th July 1914.*
 - (d) *First class powers on stipendiary magistrates after the exercise of second class powers for six months.*
 - (xviii) *All cases not specifically provided for which, in the opinion of the Administration Judge, involve questions of principle of policy.*
 - (c) *All administrative work for which there is no explicit provision in the Rules and Orders of the Court or in the rules made by the Administration Committee, shall be disposed of under the orders of the Administration Judge who may refer to the Committee any matter on which he could pass orders.*
 - (d) *The Administration Judge shall pass orders on the postings and transfers of judicial officers serving under the High Court, and after orders have issued they shall be circulated to all members of the Administration Committee."*

12. In 1918 the Punjab Courts Act was re-enacted while that of 1914 was repealed. Section 3 of this Act is relevant which reads as under:-

- "3. (1) Enactment of provisions relating to Courts in the Punjab-** (a) *the provision contained in Part-II of this Act are hereby enacted, and shall be deemed to have had effect on and from the first day of August, 1914.*
- (b) *The Punjab Courts Act, 1914, and Punjab Act IV of 1914, or so much of them as may be valid are repealed on and from the first day of August, 1914.*
- (2) *Validation of acts done—All things done under the Punjab Courts Act, 1914, as amended by Punjab*

Act, IV of 1914, shall be deemed to be in every way as valid as if the Punjab Courts Act, 1914, as amended by Punjab Act IV of 1914, had been of full force and effect on and from the first day of August, 1914:

Provided firstly, that any appeal which may have been decided by the Chief Court in the exercise of jurisdiction purporting to be exercised under Section 39(1)(b) of the Punjab Courts Act, 1914, shall be deemed to have been validly decided, and shall not be called in question by reason of anything contained in this Act;

And, secondly that any appeal which before the commencement of this Act has been presented to the Chief Court under Section 39(1)(b) of the Punjab Courts Act, 1914, and which should not have been so presented if the said sub-section had run as set out in Section 39 of Part II of this Act shall if it has not been decided be transferred by the said Court for disposal to the District Court having jurisdiction;

And thirdly, that any appeal which would have laid to the Chief Court under section 39(1)(b) of the Punjab Courts Act, 1914 but which lies to the District Court under the provisions of this Act and when if presented to the Chief Court at the commencement of this Act would be within time, shall be deemed to be presented within time if presented to the District Court within sixty days from the commencement of this Act."

Another relevant provision is section 8 of the Act which reads as under:-

"SECTION 8 OF PUNJAB COURT ACT, 1918.

8 (1). Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide, in such manner as it thinks fit for the exercise by one or more of its Judges of any of its powers.

(2) The Chief Court may make rules, declaring what number of Judges, not being less than three, shall constitute a Full Bench of the Court, and may by these rules prescribe mode of determining which Judges shall sit as a Full Bench, when a Full Bench sitting becomes necessary.

(3) Subject to the provisions of sub-section (2), the Senior Judge may determine which Judge in each case shall sit alone, and which Judges of the Court shall constitute any Bench"

13. In 1955, the High Court of West Pakistan (Establishment) Order GGO XIX of 1955 was promulgated. High Court, Lahore, the Chief Court of Sind, the Judicial Commissioners Court of NWFP and Balochistan and any other Court functioning as High Court in relation

to the territories ceased to exist and all said powers were conferred on the West Pakistan High Court. The relevant provision reads as under:-

"Article 3. Establishment of the High Court of West Pakistan. (1) As from the commencement of this Order there shall be established a High Court of Judicature for the Province of West Pakistan, to be called the High Court of West Pakistan (hereinafter referred to as the High Court), and the Lahore High Court, Lahore, the Chief Court of Sind, the Judicial Commissioner's Court in the North-West Frontier Province and Balochistan, and any other Court functioning as High Court in relation to the territories or are as now included in the Province of West Pakistan shall cases to exist.

(2) The High Court shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories included in the Province of West Pakistan as the Lahore High Court Lahore, had immediately before the commencement of this Order in respect of the territories in relation to which it exercised appellate jurisdiction.

(3) The High Court and the Judges and Divisional Courts thereof shall sit at Lahore, but the High Court shall have Benches at Karachi and Peshawar and Circuit; Courts at other places within the Province of West Pakistan, consisting of such of the Judges as may from time to time be nominated by the Chief Justice."

14. In 1956 through Correction Slip No. 120/II.D.4 dated 2nd January, 1956, the following rule was inserted:-

"CHAPTER 10

Miscellaneous

PART A—RULES FOR THE DISPOSAL OF EXECUTIVE AND ADMINISTRATIVE BUSINESS

[1. The administrative and executive work of the High Court shall be controlled by a Committee of Judges to be known as the Administration Committee:

Provided that those matters which are the exclusive concern of the Chief Justice, namely, the constitution of Benches and the appointment and control of the High Court Establishment shall be dealt with in accordance with such instruction as may from time to time be issued by the Chief Justice.

2. Constitution and appointment of administration Committee.—The Administration Committee shall consist of seven Judges. The Chief Justice and the Senior Puisne Judge shall be ex-officio members and the Chief Justice shall annually nominate the other five members of the Committee].

3. *Quorum of Administration Committee.—At all meetings of the Administration Committee, three Judges shall form a quorum.*

4. (a) *Each member of the Administration Committee shall act an Administration Judge and the powers and duties of each Administration Judge to the Administration Committee:—*

(b) *The following matters shall invariably be referred by an Administration Judge to the Administration committee:—*

i) *All cases which are to go before a meeting of the Judge.*

ii) *All cases involving the amendment of the Rules and Orders of the Court other than purely routine amendments.*

iii) *The issue of circular letters and instructions to the Subordinate Courts in other than purely routine matters.*

iv) *All circulars issued by District and Sessions Judge and District Magistrates for the guidance of courts subordinate to them.*

v) *All proposals for the confirmation or promotion of District and Sessions Judge and [Civil Judges].*

vi) *The case of move-over and grant of selection grade of Judicial Officers].*

vii) *All pension cases of District and Sessions Judges and [Civil Judges].*

viii) *All cases in which disciplinary action is to be taken against District and Sessions Judges and Subordinate Judges, and all cases in which there is a question of the recovery from an officer of any loss suffered by government.*

ix) *The selection of officers for deputation, and magisterial commercial or special training.*

.....”

15. Another rule was inserted through Correction Slip No.

141/IV.Z.8, dated 30th May, 1958 which reads as under :-

“16. (i) *[Notwithstanding anything contained in the Chapter, the administrative and executive work of High Court shall be controlled by three Committees of Judges to be known as the Administration Committees functioning at Lahore, Karachi and Peshawar.*

ii) *These Committees shall be Advisory Committees and final decision in all administrative matters shall rest with the Chief Justice, except matters which are the statutory responsibility of the High Court as a whole.*

iii) *The Administration Committee at Karachi shall consist of four Judges. The Senior Judge shall be ex officio member and the other three members shall be nominated annually by the Senior Judge from the remaining Judges of that Bench.*

iv) *At all meetings of the Administration Committee, three Judges shall form a quorum.*

v) *Each member of the Administration Committee shall act an Administration Judge and the powers and duties of each Administration judge shall be defined by the Senior Judge of the Bench from time to time.*

vi) *The Administration Committee at Peshawar shall consist of the Senior Judge and Judge/Judges of Peshawar Bench.*
 vii) *Each Judge shall act as an Administration Judge and the powers and duties of each Administration Judge shall be defined by the Senior Judge of the Bench from time to time."*

16. The above quoted rule, by affirming that administrative and executive work of the High Court shall be controlled by the Administration Committee, draws a line of distinction between administrative and statutory matters and the nature of decision taken them. In the former case, the decision of the Committee being advisory in nature shall be subject to final decision of the Chief Justice. In the latter case, it being mandatory shall be binding on the Chief Justice. Therefore, it can be said without any fear of contradiction that in statutory matters decision of the Chief Justice cannot override the decision of the Administration Committee.

17. In 1962 West Pakistan Civil Courts Ordinance 1962 was promulgated. All the previous enactments were repealed by the Ordinance. But despite repeal of the enactments mentioned in the schedule, everything done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceeding commenced, officer appointed or person authorized, jurisdiction or power conferred, rule made and order issued under any of the provisions of the said enactments continued in force if not inconsistent with the provisions of the Ordinance. The relevant provision reads as under:-

"28. Repeal and savings.

(1).....

(2).....

(3).....

(4).....

(5) Notwithstanding the repeal of the enactment mentioned in the Schedule, everything done, action taken, obligation, liability, penalty or punishment

incurred, inquiry or proceeding commenced, Officer appointed or person authorized, jurisdiction or power conferred, rule made and order issued under any of the provisions of the said enactments shall, if not inconsistent with the provisions of this Ordinance, continue in force and, so far as may be deemed to have been respectively done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Ordinance."

18. This set up continued up to 1970 when the High Court (Establishment) Order 1970 was promulgated. By virtue of Article 3 of the Order, three new High Courts were established namely; (a) A High Court for the North-West Frontier Province to be called the Peshawar High Court with the principal seat at Peshawar; (b) a High Court for the Province of the Punjab and the Islamabad Capital Territory to be called the Lahore High Court with its principal seat at Lahore; and (c) a High Court for the Province of Balochistan and Sind to be called the Sind and Balochistan High Court with its principal seat at Karachi. The relevant Article reads as under:-

*"3. Establishment of High Courts for new Provinces.
(1) As from the 1st day of July, 1970, hereinafter referred to as the appointed day, there shall be established the following new High Courts, namely:-*

(a) A High Court for the North-West Frontier Province to be called the Peshawar High Court within the principal seat at Peshawar (b) a High Court for the Province of the Punjab and the Islamabad Capital Territory to be called the Lahore High Court with its principal seat at Lahore; and (c) a High Court for the Province of Balochistan and Sind to be called the Sind and Balochistan High Court within its principal seat at Karachi,

(2) Each new High Court shall be a Court of Record and shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories for which it is established as the High Court of West Pakistan, immediately before the appointed day, had in respect of the territories in relation to which it exercised appellate jurisdiction.

(3) Each new High Court and Judges and Divisional Courts thereof shall sit at its principal seat but may

hold Circuit Courts at places within its territorial jurisdiction other than its principal seat consisting of such of the Judges of the High Court as the Chief Justice may from time to time nominate."

19. The law in force immediately before the appointed day, relating to the powers of the Chief Justice and of Single Judges and Divisional Courts of the High Court of West Pakistan and with respect to all matters ancillary to the exercise of those powers, was made applicable with necessary modifications in relation to each of the new High Courts. The relevant Article providing for application of such law reads as under:-

"7. Powers of Chief Justice and other Judges.- The law in force immediately before the appointed day relating to the powers of the Chief Justice and of Single Judges and Divisional Courts of the High Court of West Pakistan, and with respect to all matters ancillary to the exercise of those powers, shall with the necessary modifications, apply in relation to each of the new High Courts."

20. Disciplinary actions against the District & Sessions Judges and Sub-ordinate Judges ever since 1884 have been taken by the Provincial Government as the Provincial Government was the appointing authority. It continued as such under the Govt. of India Act, 1935, Constitution of 1956, the West Pakistan Government Servants (Discipline and Efficiency) Rules, 1959, the West Pakistan Government Servants (Efficiency and Discipline) Rules, 1960 and then under KPK Government Servants (Efficiency and Discipline) Rules, 1973. Administration Committee, under Rule 4(b)(viii) of the High Court Rules and Orders made under section 8 of Punjab Courts Act, 1914 and Rule 4(b)(viii) of High Court Rules and Orders inserted through Correction Slip No.141/IV.Z.8, dated 30th May, 1958 could take action in terms of recommendations against District and Sessions Judges and Sub-

ordinate Judges but approval for such action at initial and final stage rested with the appointing authority.

21. On separation of the Judiciary from the Executive pursuant to the mandate of Article 175 of the Constitution, the authority under the Efficiency & Discipline Rules was conferred on the Chief Justice vide Notification No. SORII(S&GAD)5/(29)/86 dated 16th of January 1992. The said notification along with the table reads as under:-

“POWER OF CHIEF JUSTICE AS AUTHORITY UNDER NWFP GOVERNMENT SERVANTS (E&D) RULES, 1973.

NOTIFICATION
PESHAWAR, DATED 16TH JANUARY, 1992.

No.SORII(S&GAD)5(29)/86:- In exercise of the powers conferred by clauses (b) and (c) of rule 2 of the North-West Frontier Province (Efficiently and Discipline) Rules, 1973, and in supersession of this department's Notification No. SOSIII(S&GAD)1-80/73, dated the 28th January, 1975, the Governor of the North- West Frontier Province is pleased to direct that the officers specified in column 3 and 4 of the table below shall respectively be the “Authority” and “Authorized Officer” for the purpose of the said rules in respect of civil servants specified against each in column 2 of the said table.-

S.No.	Basic Pay Scale of Govt. Servant	Authority	Authorized Officer
1	2	3	4
1.	Officers of former Provincial Civil Secretariat Service and ex-Provincial Civil Service (Executive Branch) in Basic Pay Scale 17.	Chief Minister	Chief Secretary
2.	Officers of former Provincial Civil Service (Judicial Branch) in Basic Pay Scale 17 and above.	Chief Justice	As Authorized by the authority.
3.	Deputy Superintendent of Police in basic Pay Scale 17.	Chief Secretary	Inspector General of Police.
4.	Officers in BPS-17 in the Education Department.	Chief Secretary	Director of Education concerned.
5.	Other Officers in Basic Pay Scale-17 (other than Members of All Pakistan Unified Grades).	Chief Secretary	Administrative Secretary.
6.	Offices in BPS-18 in the Education Department.	Chief Minister	Administrative Secretary.
7.	Other Officers in BPS-18 and above (other than Members of All Pakistan	Chief Minister	Chief Secretary.

	<i>Unified Grade).</i>		
8.	<i>Sectt: Officers in BPS-16.</i>	<i>Chief Secretary</i>	<i>Secretary S&GAD</i>
9.	<i>Government servants in BPS-16 on the Establishment of Peshawar High Court, Peshawar.</i>	<i>Chief Justice</i>	<i>As authorized by the authority.</i>
10.	<i>Government servants in BPS-16 serving on the Establishment of Board of Revenue and the offices subordinate to it.</i>	<i>Senior Member of Board of Revenue.</i>	<i>Secretary BOR.</i>
11.	<i>Government servants in BPS-16 serving in the office of Divisional Commissioners and Officers subordinate to them.</i>	<i>Commissioner of the Division concerned.</i>	<i>As authorized by the authority.</i>
12.	<i>Government servants in BPS-16 serving in the Directorate of Local Fund Audit.</i>	<i>Secretary Finance</i>	<i>Director, Local Fund Audit.</i>
13.	<i>Government servants in BPS-5 to 16 serving in the Public Service Commission.</i>	<i>Chairman of the Commission.</i>	<i>Secretary of the Commission.</i>
14.	<i>Other Government servants in BPS-16.</i>	<i>Head of Attached Department.</i>	<i>As authorized by the authority.</i>
15.	<i>Government servants in BPS-5 to 15 serving in the Secretariat.</i>	<i>Administrative Secretary concerned.</i>	<i>Dy. Secy. (Admn) of the Department concerned.</i>
16.	<i>Government servants in BPS-1 to 4 serving in the Secretariat.</i>	<i>Dy. Secy. (Admn) of the Department concerned.</i>	<i>Section Officer (Admn) of the Department concerned.</i>
17.	<i>Government servants in BPS-1 to 14 serving in Public Service Commission.</i>	<i>Secretary of the Commission.</i>	<i>As authorized by the authority.</i>
18.	<i>Other Government Servants in BPS-1 to 15.</i>	<i>Appointing authority.</i>	<i>As authorized by the authority.</i>
19.	<i>Government Servants in BPS-1 to 4 serving in the Chief Minister's Secretariat.</i>	<i>Deputy Secretary-II of C. M's Sectt:</i>	<i>Section Officer (Coord:) Chief Minister's Sectt:</i>

According to this notification, the Chief Justice could exercise all the powers conferred on the Governor of the Province without the approval of the latter at initial or final stage.

22. In a meeting held on 18.12.1976 the Chief Justice and Judges of the Peshawar High Court resolved that administrative and executive work shall be controlled by an Administration Committee of the Judges; that the Administration Committee shall consist of four

Judges; that in all matters of the Administration Committee at least two will form a quorum; that if any member of the Administration Committee is not available, the work assigned to him will be disposed of by the Senior Puisne Judge and in case the Senior Puisne Judge is not available, by the Chief Justice and that each member of the Administration Committee shall act as an Administration Judge and the powers and duties of each Administration Judge shall be as follows :-

"1. CHIEF JUSTICE.

Rosters and cause-lists, Constitution of Benches and the appointment and control of High Court Establishment, except reimbursement of medical charges and G.P. Fund Advance cases.

Appointment, transfers, promotions, deputations etc. of the members of subordinate Judiciary. Conferment of powers on Civil Judges and Magistrates.

2. SENIOR PUISNE JUDGE

Rules of Procedure in civil and Criminal Courts. Statistics for the purpose of annual notes on the administration of civil and Criminal Justice.

All matters relating to lower Court's establishment. Budget, Accounts and appointment of Oath Commissioners.

3. SECOND JUDGE

Library and Law Reports. Matters relating to Legal Practitioners. Record room and Loss of Record.

High Court Building, Garden and Compound and other minor works. Petition-Writers, Commissioner and Letter of Request. Stationery and forms of the High Court and Civil Courts. Expenses of witnesses.

4. THIRD JUDGE

Reimbursement of medical charges, and G.P. Fund Advance cases of High Court Establishment. Notice under section 80 C.P.C. Insolvency work. Guardian and Wards Work. Official Receiver. Copying Agency. Transfer of Prisoners.

23. According to the decisions taken in the Administration Committee the Rosters and Cause Lists, constitution of Benches and appointment and control of the High Court Establishment (except

reimbursement of Medical Charges and G. P. Fund) advance cases, appointments, transfers, promotions and deputations etc of the members of subordinate Judiciary and conferment of powers of Civil Judges and Magistrates lay in the domain of the Chief Justice. Rules of procedure in Civil and Criminal Courts, statistics for the purpose of annual notes on the Administration of Civil and Criminal Justice and all matters relating to lower Court's establishment, budget, accounts and appointments of Oath Commissioners lay in the domain of Senior Puisne Judge. Library and Law Reports, matters relating to Legal Practitioners, Record Room, loss of record, High Court building, garden, compound and other minor works including petition writers, Commissioner and Letter of Request, stationery and forms of the High Court and Civil Courts including expenses of witnesses lay in the domain of the 2nd Judge. Reimbursement of medical charges and G. P. Fund, advance cases of High Court establishment, notice under section 80 CPC, insolvency work, guardian and wards work, official receiver, copying agency and transfer of prisoners lay in the domain of the 3rd Judge.

24. Now the question arises whether appointment of members of District Judiciary and determination of their seniority is an administrative or statutory responsibility in terms of Rule 16(ii) of the High Court Rules and Orders quoted above? The answer is statutory because it is regulated by section 5 & 8 of the KPK Civil Servants Act and Rule 5 and 10 of the KPK Judicial Service Rules, 2001. When statutory it is to be exercised by the Administration Committee, as explained above. The Chief Justice cannot do anything on his own in the scheme of the Rules of 2001 and High Court Rules and Orders.

Therefore, any decision taken by the Administration Committee shall be binding on the Chief Justice.

25. The Rules of 2001 envisaging the High Court as appointing authority and authority determining seniority have not introduced something new or unheard of. They have indeed affirmed what has been provided by the High Court Rules and Orders and practiced ever since the establishment of the High Court. Therefore, Rule 4 and 10 of the Rules cannot be held to be in conflict with the parent statute. As a matter of fact, the Governor by approving the Rules framed under section 26 of the Civil Servants Act abdicated his authority and conferred it on the High Court. Therefore, the argument that the rules are in conflict with the parent statute is misconceived on the face of it. The argument that in case the rules are allowed to override the parent statute no departmental authority would be left for appeal or representation is also misconceived; firstly because the Rules don't override the parent statute by any means and secondly because a situation highlighted by the learned ASC for the appellant is fully catered for by the 2nd proviso to Rule 3 of the KPK Civil Service Appeal Rules, 1986 which clearly provides that *"where the order is made or penalty is imposed by the High Court or the Chief Justice as the case may be, there shall be no appeal but the member of the service may prefer a review petition before the authority passing the order or imposing the penalty"*.

26. When considered in this background, we don't think the view taken by the KPK Sub-ordinate Judiciary Service Tribunal is open to any exception. We, therefore, dismiss these appeals.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on_____

JUDGE

Not Approved For Reporting
K.Anees/*