

**IN THE SUPREME COURT OF PAKISTAN**  
**(ORIGINAL JURISDICTION)**

**PRESENT:**

MR. JUSTICE TASSADUQ HUSSAIN JILLANI  
MR. JUSTICE ASIF SAEED KHAN KHOSA  
MR. JUSTICE AMIR HANI MUSLIM

**CRL. ORIGINAL PETITION NO.89/2011, CMA.309-K/2012, CMA.310-K/2012, CrI.M.As. 42-K/2012, 80-K/2012, 87-K/2012, 13-K/2013, CMA.2453/13, CrI. MA.29-K/2013, CMA.131-K/2013, CrI.M.As.185-K/2012, 225/2013, 226/2013, 227/2013, CMAs.244-K TO 247-K/2013, 257-K & 258-K/2013, CrI.M.A, 263/2013, CrI.MA. 282 IN CRL. ORIGINAL PETITION NO.89/2011.**

**CONSTITUTION PETITION NO.71/2011, CMAs. 5547/2013, 2560/2013, 2561-2565/2013, 2112-2113/2013, 2706-2707/2013, IN CONST. PETITION NO.71/2011.**

**CONSTITUTION PETITIONS NO.21/2013, 23/2003 & 24/2013.**

**CIVIL PETITION NO.6-K/2011 & CMA. NO.278-K/2011, CIVIL APPEALS NO.98-K/2010, 100-K/2010, 12-K/2012 A/W CRL. M.As. 51-K TO 53-K/2012, CMA. 2014/2013, CIVIL APPEAL NO.131-K/2010 A/W 241-K/2012. & CIVIL APPEAL NOS. 183-K TO 185-K/2011.**

**CRL.M.A. 252/2013 IN CRL.M.A.98/2012 IN CRL.M.A. 339/2012.  
H.R.C. NO. 12995-S/2011 AND H.R.C NO. 2103-G/2011**

*(On appeal against the judgments in  
CA.183-K/11 = dt. 17.02.2011, SST, Kcy. in SA.39/2008,  
CA.12-K/12 = dt. 14.04.2011, SHC, Key in Const.P.D-932/09,  
CA.98/2010 = dt. 23.02.2010, SST, Kcy. in SA.No.1/2009,  
CA.100-K/10 = dt. 22.03.2010, SST, Kcy. in SA No.65/09,  
CA.131-K/10 = dt. 31.03.2010, SST, Kcy. in SA No.94/09 and  
CP.6-K/2011 = dt. 29.10.2010, SST, Kcy. in SA No.66/09)*

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|---------------------|---|
| Crl. O.P. 89/2011   | : Contempt proceedings against Chief Secretary, Sindh   |
| CMA 309-K/2012      | : Application by the Prosecutors of Sindh for taking notice against deputation in Civil Service, Sindh        |
| CMA 310-K/2012      | : Application by Mehdi Hassan Solangi former, TMP against Secretary, Local Government for illegal deputation. |
| Crl.M.A. 42-K/2012  | : Maqsood Ahmed Vs. Government of Sindh and others  |
| Crl. M.A. 80-K/2012 | : Application for striking out name of Agha Maqsood Abbas, DG Lyari Development Authority.                    |
| Crl. M.A. 87-K/2012 | : Application for repatriation of Abdul Wahab Sheikh, Director IB.  |

Crl. M.A. 3-K/2013 & CMA 2453/2013	: Application by Syed Mehmood Akhtar Naqvi
Crl. M.A. 29-K/2013	: Application by Mst. Rehmat Abbasi.
CMA 131-K/2013	: Application by Syed Mehboob Ali Shah
CMA.185-K/2013	: Application by Altaf Bijrani and others
Crl.M.A. 225/2013	: Application challenging the "Standing Order No.269/2012 regarding seniority.
Crl.M.A. 226/2013	: Application against one Mirza Aamir Baig, Supdt. (Deputee)
Crl.M.A.227/2013	: Application by Shah Nawaz, Dy. Supdt. Prison.
CMA.244-K/2013	: Application by Dr. Azeem-ur-Rehman Meo, Addl. Secy.
CMA.245-K/2013	: Application by Sarwar Khan, Inspector.
CMA.246-K/2013	: Application by Imran Atta Sommro and Abida Lodhi, Addl. Secy. Home.
CMA.247-K/2013	: Application by Bahar-ud-Din, Inspector.
CMA.257-K/2013	: Application by Welfare Organization Officers for repatriation of Certain Officers.
CMA.258-K/2013	: Application against excess nominations in PCS cadre.
Crl.M.A.263/2013	: Application by Abdul Majeed Siddqui, DIG(Prisons).
Crl.M.A.282/2013	: Application by Aghar Masood, Controller of Building, KBCA.
Constitution Petition No. 71/2011	: Farooq Azam Memon etc Vs. Province of Sindh through Chief Secretary and others
CMA.5547/2012	: Application for impleadment by Dr. Muhammad Ali.
CMAs.2560-2565, 2112 2113, 2706 & 2707/2013	: Applications a/w information regarding illegalities committed in appointments in Sindh Civil Services in various departments.
Const. Petition No.21/2013	: Ghulam Akbar & others Vs. Province of Sindh and others

Const. Petition No.23/2013	: Altaf Bijrani & others <b>Vs.</b> Province of Sindh and others
Const. Petition No.24/2013	: Syed Mehmood Akhtar Naqvi <b>Vs.</b> Govt. of Sindh and others
Civil Petition 6-K/2011	: Inayatullah Marwat <b>Vs.</b> Government of Sindh through Chief Secretary etc.
Civil Appeal 98-K/2010	: Government of Sindh through Chief Secretary and others <b>Vs.</b> Rafique Ahmed Abbbasi
Civil Appeal 100-K/2010	: Government of Sindh through Chief Secretary and others <b>Vs.</b> Mumtaz Ahmed Soomro
Civil Appeal 131-K/2010	: Government of Sindh through Chief Secretary and others <b>Vs.</b> Aslam Pervez Bhatti
CMA.241-K/2012 in CA.131-K/2010	: Application for Impleadment of Moharram Ali Chandio & others
Civil Appeal 183-K/2011	: Zubair Pervez Ahmed <b>Vs.</b> Government of Sindh and others
Civil Appeal 184-K/2011	: Azim ur Rehman Khan MEO <b>Vs.</b> Province of Sindh through Chief Secretary and others
Civil Appeal 185-K/2011	: Asif Jehangir <b>Vs.</b> Province of Sindh through Chief Secretary etc
CA 12-K/2012	: Dr. Nasim ul Ghani Sahito and others <b>Vs.</b> Province of Sindh through Chief Secretary
CMA 2014/2013 in CA.12-K/2012	: Application for impleadment of Muhammad Rizwan Soomro.
Crl.M.A.51-K to 53-K of 2012 in CA 12-K/2012	: Applications for impleadment a/w concise statements of Sheraz Asghar, Shahid Hussain & Zamir Ahmed.
HRC 12995-S/2011	: Application by Imdad Ali, ASI and others

**Attendance.**

Mr. Abdul Fateh Malik, AG(Sindh)  
Mr. M. Sarwar Khan, Addl. AG (Sindh)  
Mr. Adnan Karim, Addl. AG (Sindh)  
Mr. Irfan A. Memon, Adv.  
Mr. Naseer Jamali, Secy. (Services), Sindh.  
Mr. Sohail Qureshi, Addl. Secy. (Services), Sindh.  
Syed Asif Haider Shah, Secy. (Services), Sindh  
Mr. Mudasir Iqbal, Sp. Secy. (Home), Sindh.  
*Mr. Ali Sher Jakhrani, AIG Legal*  
(in all cases)

Ch. Afrasiab Khan, Sr. ASC  
(For petitioner in Const.P.71/11, 21/13, for appellant in CA.12-K/12)

Mr. M. S. Khattak, AOR  
(For petitioner in Const.P.21/13 also for Respd. No.10&12 in Const.P.71/11, for respd. Nos.10 & 11 in CA.12-K/12)

Ch. Akhtar Ali, AOR  
(For petitioner in Const.P.71/2011, for appellant in CA.12-K/12)

Dr. Farough Naseem, ASC  
(For Respd. No.3 in Const.P.71/11, for interveners in HRC.12995-S/11)

Mr. Mehmood A. Sheikh, AOR  
(For Respd. No.3 & 6 in Const.P.71/11)

Mr. Abrar Hassan, ASC  
(For Respd. No.5 in Const.P.71/11, for respd. Nos.4&6 in CA.12-K/12)

Mr. Anwar Mansoor Khan, Sr. ASC  
(for Sheraz Asghar in CA.12-K/12, for applicant in Crl.M.A.52-K/12)

Miangul Hassan Aurangzeb, ASC  
(For Respd. No.6 in Const.P.71/11)

Mr. Abbad-ul-Hasnain, ASC.  
(For Respd. No.8 in Const.P.71/11, for respd. No.9 in CA.12-K/12)

Mr. Shabbir Ahmed Awan, ASC  
(For petitioner in CP.6-K/11, also for Respd. No.9 in Const.P.71/11, for Respd. No.3 in 183 to 185-K/11, for applicant in CMA.80-K/12, Crl.M.A.263/13)

Mr. Hashmat Ali Habib, ASC.  
(For Respd. No.10 & 12 in Const.P.71/11, for respd. Nos.10&11 in CA.12-K/12)

Mr. M. Aqil Awan, Sr. ASC.  
(For Respd. No.11&14 in Const.P.71/11, also for Appellant in CA.183-K to 185-K/11, Respd. in 100-K/10, for Lal Khan in CA.12-K/12)

Mr. Muharram G. Baloch, ASC  
(For applicants in CMA.241-K/12, 185-K/13 & 248-K/13)

Raja Muhammad Asghar, ASC  
(for respd. No.3 in CA.12-K/12)

Mr. Khalid Javed, ASC  
(for respd. No.12, and for Shahid Hussain & Zamir Ahmed in CA.12-K/12, for applicant in Crl.MA.51-K/12, for Dr. Sarwat in CMA.309-K/12)

Mr. Yawar Farooqui, ASC  
(for applicant in CMA.80-K/12)

Raja Abdul Ghafoor, AOR/ASC  
(for applicant in CMA.87-K/12)

Syed Mehmood Akhtar Naqvi (In person)  
(Const.P.24/2013)

Dr. Azeem-ur-Rehman Meo (In person)  
(Petition No.10 in Const.P.23/2013, appellant in CA.184-K/11,  
applicant in 244-K/13)

Syed Mehboob Ali Shah (In person)  
(applicant in CMA.131-K/13)

Sarwar Khan, Inspector (in person)  
(applicant in CMA.245-K/13)

Bahar-ud-Din Babar, Inspector (in person)  
(applicant in CMA.247-K/13)

Mr. Khaleeq Ahmed, ASC

Mr. Rasool Bux Samejo, Inspector

Mr. Pervez Ahmed Sehar (In person)

*Syed Attaullah Shah, Addl. Dy. Commissioner.*

*Mr. Ghulam Shabbir Jiskani, Hyderabad.*

*Date of hearing : 16<sup>th</sup> to 19<sup>th</sup>, 29<sup>th</sup> & 30<sup>th</sup> April, 2013  
7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> May, 2013*

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## **JUDGMENT**

AMIR HANI MUSLIM, J.- Through these proceedings, the appellants/petitioners/applicants and intervenors have challenged the *vires* of the following legislative instruments:-

1. The Sindh Civil Servants (Regularization of Absorption) Ordinance, 2011.
2. The Sindh Civil Servants (Regularization of Absorption) Act, 2011.
3. The Sindh Civil Servants (Amendment) Ordinance, 2012.
4. The Sindh Civil Servants (Second Amendment) Ordinance, 2012.

5. The Sindh Civil Servants (Amendment) Act, 2013.

6. The Sindh Civil Servants (Second Amendment) Act, 2013.

2. In order to appreciate the issues raised in these proceedings, it is necessary to depict the material facts giving rise to the promulgation of these legislative instruments. The Governor of Sindh on 22.01.2002 amended the Sindh Civil Servants Act, 1973, (hereinafter referred to as the “Act of 1973”) by Sindh Civil Servants (Amendment) Ordinance, 2002. It provided that after section 9, following new section 9-A shall be inserted:-

*“9-A Notwithstanding anything contained in this Act or any other law for the time being in force or any judgment of any court, a civil servant who provenly exhibits the act of gallantry while performing his duties or very exceptional performance beyond the call of duty, may be granted out of turn promotion or award or reward in such manner as may be prescribed.”*

The Governor of Sindh on 26.02.2008 amended Act of 1973 through the Ordinance III of 2008, omitting Section 9-A. This Ordinance III of 2008 was not placed before the Provincial Assembly within the period of three months, as such the Ordinance III of 2008 lapsed by operation of law and the original section 9-A which was protected by the 17<sup>th</sup> Amendment made in the Constitution under Article 270-AA, stood revived.

3. Before 22.1.2002, there was no provision in the Sindh Civil Servants Act relating to out of turn promotions. It was only section 8-A in the Punjab Civil Servants Act (VIII of 1974) which empowered the Punjab government to grant out of turn promotions. The cases of out of turn promotions in the Sindh Police emerged in the Constitution Petitions No.1595 of 2002 along with Constitution Petitions No.434, 954, 987, 1081,

1095, 1153, 1536, 2341 and 2342 of 2008 before the Sindh High Court when a learned Division Bench of the Sindh High Court, vide its judgment dated 31.3.2009, allowed the Government of Sindh to revive Rule 8-B of the Sindh Civil Servants (Appointment, Transfer and Promotion) Rules, 1974 (hereinafter referred to as the “Rules of 1974”), with the direction that the cases of out of turn promotions be examined by a committee to be constituted under Rule 8-B and any person aggrieved by the decision of the committee, may approach the appropriate forum for redressal of his grievance.

4. This judgment of the Sindh High Court, was challenged by the aggrieved police officers before this Court, however, the petitions were withdrawn by them on the ground that they will seek review of the said judgment from the Sindh High Court. The Petitioners filed review applications which were disposed of on 21.4.2011 by the Sindh High Court in the terms contained in the judgment dated 31.3.2009. The Sindh Government in compliance with the directions in the aforesaid judgment revived Rule 8-B of the Rules of 1974, but the committee did not scrutinize the cases of out of turn promotions. In order to appreciate the controversy between the parties, the Sindh High Court in the said judgment held as follows by:-

*3. At the outset, learned Addl. A.G. Sindh has extended a proposal for the just, fair and equitable redress of the grievances of all the petitioners in these petitions. According to him, these petitions can be disposed of in the terms that the Government of Sindh may be directed to immediately revive the earlier Rule 8-B in the Rules of 1974 introduced by notification dated 10.02.2005 and thereafter to examine individually all the cases of the police officers, who have been awarded promotions after introduction of*

*Section 9-A in the Act of 1973, without following the guidelines and the procedure laid down in the said rule, which facilitated some of the respondents to get out of turn promotions due to their influence and contacts and in the same manner also to examine the case of the other petitioners, who were denied such right on the premises that after 11.05.2005, Rule 8-B was no more in force, therefore, promotion in terms of Section 9-A was not warranted.*

4. *Mr. Khalid Jawed Khan supporting the proposal of the learned Addl. A.G., contends that in case such proposal gets approval of this Court, the petitioners will not be pressing the relief of declaration that Section 9-A of the Act of 1973 is ultra vires to the provisions of the Constitution of Islamic Republic of Pakistan, 1973, though otherwise, releasing its weak legal position, even the Government of Sindh had issued Ordinance III of 2008, to omit Section 9-A (ibid). He further clarifies that since this ordinance was not placed before the Provincial Assembly for approval, thus it stood expired after 90 days from the date of its issue.*

5. *The other counsel present in Court representing petitioners and respondents, are in agreement with the proposal of the learned Addl. A.G. as well as the submission of Mr. Khalid Jawed Khan, except Mr. Arshad Tanoli, advocate, who submits that following the principle of locus poenitentiae, his clients, who have already earned the promotion, are protected, therefore, there is no need of reopening of their cases after lapse of considerable time.*

6. *After careful consideration of his submission, we are of the opinion that a person/litigant, who has availed benefit for promotion under Section 9-A without application of the criteria laid down under Rule 8-B by way of underhand means or by any mode other than merit, cannot get protection of such benefit on the principle of locus poenitentiae, unless he could show that the benefit availed by him was in accordance with law; in good faith and without any ulterior motive or malafide. In this regard, we seek guidance from a recent judgment of the Hon'ble Supreme Court of Pakistan in the case of FARHAT ABBAS VS. I.G. AND OTHERS 92009 S.C.M.R. 245), which also relates to the out of turn promotion in the Police Department, and lays down as under :-*

“7. *The order was recalled by the authority assigning valid reasons to differentiate and to follow the parameters of reward on*



*account of bravery and gallantry as well as appreciation for performance of duty diligently but with due regard to the extent of such appreciation to commensurate with the degree of merit involved. Undoubtedly performance of duty with due diligence and efficiently deserves due appreciation but it cannot be over appreciated out of proportion so as to make out case a grievance to the other employees in service of the department. It a case of glaring favouritism is made out resulting in a mala fide action as in the instant matter, it has to be rectified in accordance with law to avoid any injustice. Such a valid order cannot be set aside merely on conjectures or surmises as such practice would encourage a person to obtain any order using underhand means or otherwise and then claim immunity for such acts which would, therefore, result in rewarding the person using such means by allowing him to continue to enjoy fruits of such ill-gotten gains and thus, perpetuate injustice.”*

*To add force to this view and disapprove the contention of Mr. Tanoli about the applicability of principle of locus poenitentiae to the case of petitioners falling under the second category of petitions, cases of NAZIR AHMED PANHWAR VS. GOVERNMENT OF SINDH THROUGH CHIEF SECRETARY, SINDH AND OTHERS (2005 S.C.M.R 1814) and ABDUL HAQUE INDHAR AND OTHERS VS. PROVINCE OF SINDH THROUGH SECRETARY FOREST, FISHERIES AND LIVESTOCK DEPARTMENT, KARACHI AND 3 OTHERS (2000 S.C.M.R. 907) may also be referred here with advantage.*

7. *After careful consideration of the proposal extended by Mr. Abdul Fateh Malik, learned Addl. A.G. which is consented by other counsel, except Mr. Arshad Tanoli, we find it just, equitable, fair and practical to redress the grievance of all the petitioners, who are agitating against the out of turn promotions awarded to some other officers in the Police Department, without meeting the requirement and following the procedure prescribed under Rule 8-B of the Rules of 1974.*

8. *This being the position, we are inclined to accept such proposal and dispose of these petitions in the terms that the Government of Sindh shall take immediate steps for the revival of Rules 8-B, which is even otherwise requirement of law in view of*

*the clear language of Section 9-A (ibid) r/w Section 2(g) of the Act of 1973, in the same lines as already available in the notification dated 10.02.2005. It is painful to observe here that the scheme of working of Section 9-A of the Act of 1973 set out under Rule 8-B (ibid) was disturbed and upset by the then Chief Minister, Government of Sindh at his whims by its illegal cancellation within three months of its introduction, which is evident from his order dated 24.04.2005.*

9. *We expect that such exercise will be completed by the Government of Sindh within 60 days from the date of this order, whereafter the cases of all the police officials, who are petitioners/respondents in these petitions and have been promoted or deprived promotion after the insertion of Section 9-A, will be re-examined by the committee duly constituted under Rule 8-B, strictly in the light of such rule on merits. Till such exercise is completed by the committee, as an interim arrangement the promotions already granted to some of the Police Officials, will not be disturbed.”*

5. The Government of Sindh vide its Notification dated 07.01.2010, repatriated certain deputationists to their parent departments, who were working in the Sindh Government. These deputationists impugned the notification of repatriation in C.Ps.No.D-57 etc before the Sindh High Court at Karachi. On the other hand, the civil servants of the Sindh Government also preferred C.Ps.No.678 of 2009 etc, *inter alia*, on the ground that the deputationists appointed by the Sindh Government, lacked the requisite qualifications and experience for the posts against which they were working, resulting in infringement of their valuable rights guaranteed under the law. The learned Sindh High Court, by its judgment dated 06.05.2010, dismissed the writ petitions of the deputationists and allowed the writ petitions of the civil servants of the Sindh Government holding therein that deputationists have no vested right to stay in the Sindh

Government besides their induction in different departments in the said Government infringes the right of promotion of civil servants of the Sindh Government.

6. Another Constitutional Petition No.1491 of 2010 was filed by Syed Imtiaz Ali Shah and others against the Sindh Government before a Division Bench of the Sindh High Court at Hyderabad, challenging the appointment of Abdul Hameed Abro, EDO, (Finance, Planning & IT), Tando Muhammad Khan, who was an officer of the Income Tax Group and was transferred and posted as E.D.O (Finance, Planning and I.T) on deputation in the Sindh Government. It was pleaded in the writ petition that the appointment of Abdul Hameed Abro, was in violation of judgments of the learned Sindh High Court as well as of this Court. During the hearing of the writ petition, Secretary Services, Government of Sindh appeared in Court and placed a list of 152 non-cadre officers, who were working in the Sindh Government on cadre posts or field assignments either on deputation or through transfer basis. The Secretary, Services conceded that the deputationists were not qualified to hold the posts against which they were working. By judgment dated 14.12.2010, the learned Division Bench accepted the writ petition and directed the Sindh Government to repatriate all the deputationists to their parent departments and transfer the officers to their own cadres, within 15 days of the communication of the judgment. It was further directed in the judgment that the Sindh Government shall refrain from issuing posting orders of any non-cadre officer to a cadre post by transfer under section 10 of the Civil Servants Act nor shall it depute by transfer any officer from occupational group of the Federal Government or

from autonomous body in the Sindh Government except in exigency unless the deputationist meets the criteria of matching qualifications, eligibility and experience to the proposed post.

7. The aforesaid judgment of the Division Bench of the Sindh High Court was challenged before this Court in Civil Petitions No.802-K of 2010 and 4-K of 2011 by some of the deputationists namely Javed Ahmed and others. On 10.1.2011, this Court refused leave to the petitioners, affirming the findings of the learned Sindh High Court in C.P.No.1491-D of 2010. It is pertinent to mention here that the Sindh Government did not challenge the judgment of the Sindh High Court.

8. In the year 2009, Dr. Nasimul Ghani Sahito and others filed Constitution Petition No.D-932 of 2009 before the Sindh High Court challenging the absorption of 12 officers in the Sindh Government. On 2.4.2011, the writ petition was allowed and all the officers except two were ordered to be repatriated to their parent departments. The respondents/absorbees challenged the said judgment of the Division Bench before this Court whereas one of the petitioners Dr. Nasimul Ghani Sahito also challenged the absorption of one of the absorbees namely S.M. Kaleem Makki. This Court granted leave in all these petitions and the appeals were numbered as 404-K, 405 to 413-K and C.A No.12 of 2012.

9. During the pendency of the aforesaid appeals before this Court, the Governor Sindh on 4.5.2011, promulgated the impugned Sindh Civil Servants (Regularization of Absorption) Ordinance, 2011, through which the employees of Federal Government, Corporation, Council, statutory body or

any authority absorbed in the Sindh Government as civil servants on or before commencement of the said Ordinance, were validated granting them backdated seniority from the date of their absorptions. On 15.6.2011, as a corollary to this Ordinance, the Sindh Provincial Assembly promulgated the impugned Sindh Civil Servants (Regularization of Absorption) Act, 2011, through which it granted validation to all the employees absorbed at times, granting them backdated seniority from the date of their absorption.

10. On 16.6.2011, Farooq Azam Memon and others filed Constitution Petition No.71 of 2011, in this Court challenging the vires of the Sindh Civil Servants (Regularization of Absorption) Ordinance, 2011, and Sindh Civil Servants (Regularization of Absorption) Sindh Act, 2011. Some of the appellants, who have challenged the judgment of the Division Bench in Constitution Petition No.D-932 of 2009 sought withdrawal of their appeals with the option of revival, after decision of Constitution Petition No.71 of 2011 and Civil Appeal No.12 of 2012, in which the vires of afore-referred instruments were challenged. This Court disposed of the appeals of the appellants allowing them such option. This Court fixed the Constitution Petition No.71 of 2011, by its order dated 2.5.2012. All these matters are listed for hearing before this Bench.

11. On 14.03.2012, while hearing Suo Moto Case No.08 of 2011 at Karachi, the Bench of this Court noticed that Mr. Agha Abid Hussain an employee of Pakistan Telecommunication Corporation was transferred on deputation and posted as Regional Director Sindh Building Control Authority, Sukkur in defiance of this Court's judgment passed in Civil Petition No.802-K of 2010 and 4-K of 2011. The Additional Advocate

General appearing in the matter was directed to file statement justifying his deputation. The Bench further directed the Chief Secretary and the Secretary Services, Sindh Government to appear in Court with the list of all those officers, who were working on deputation in different departments in the Sindh Government. The matter was adjourned to 15.03.2012.

12. On 15.03.2012, in the aforesaid Suo Moto case No.08 of 2011, a report in regard to deputationists working with the Government of Sindh was placed. The Advocate General conceded that some officers were not repatriated to their parent departments and he undertook that such orders will be complied with by the next date of hearing.

13. On 16.03.2012, the Advocate General placed before the Bench of this Court at Karachi, the list of 109 officers who were posted on deputation in the Sindh Government. The Advocate General also made a statement which was incorporated in the Order that the Chief Minister of Sindh did not accord approval to the summary of any of these officers. It was noticed by the Bench that the Sindh Government has willfully withheld the names of many officers, who were working on deputation and an incomplete list was placed before the Sindh High Court hearing C.P.No.D-1491 of 2010. After the judgment in the aforesaid Petition and in the intervening period, instead of complying with the directives contained in the judgment, the Government of Sindh has further inducted/deputed employees from different departments/organizations in defiance of the Courts orders. The Notification of 15<sup>th</sup> March 2012 was placed before the Bench of this Court reflected that the officers who were ordered to be repatriated to their parent departments and or working in the non-cadre posts were absorbed

against cadre posts without lawful justification. As a result, the office was directed by the Bench to place a separate note before the Honourable Chief Justice of Pakistan with the relevant record for appropriate orders in the matter. This being the important order is reproduced for convenience:-

*“Today the learned Advocate General has filed a Notification dated 15-3-2012 in regard to repatriation of 81 officers/officials, who after the Judgment of this Court dated 10-1-2011 passed in Civil Petitions No.802-K of 2010 and No.4-K of 2011 titled as Javed Ahmed and others VS. Government of Sindh, had been posted out of cadre, from Government of Sindh to their parent departments.*

2. *In these proceedings, on 14-3-2012 we queried the learned Additional AG, Mr. Miran Muhammad Shah, as to how Mr. Agha Abid Hussain, Additional Director, SBCA, Sukkur, who was present in Court and was previously employed in the Pakistan Telecommunication Corporation was posted on deputation as Regional Director, SBCA, Sukkur in clear violation of the aforementioned Judgment of this Court whereby Judgment of the learned Sindh High Court (Circuit Bench Hyderabad) passed in CP No.D-1491 of 2010 on 14-12-2010 on the issue, was affirmed. The learned Additional AG sought time and matter was adjourned for 15-3-2012, when the Chief Secretary and the Secretary Service (SGA&CD), Government of Sindh alongwith learned Advocate General have appeared and a formal report of deputationists working in Government of Sindh was placed before us. However, the matter was adjourned to 16-3-2012 with direction to submit a comprehensive report/list of all those officers who are working in Government of Sindh on deputation/inducted from other departments/organizations after the Judgment of this Court referred to herein-above.*
3. *The report submitted by the Advocate General today depicts that all Government of Sindh in defiance of the aforementioned Judgment of this Court has inducted and or posted on deputation as many 109 officers/employees for which no explanation of any nature has been given by the Secretary (Services). The learned Advocate General, Sindh, however, has made a statement that the Chief Minister, Sindh, did not accord approval to any summary in this regard.*
4. *Earlier, the Secretary (Services) had furnished a list of such officers/employees, before the Sindh High Court in*

*CP No.D-1491 of 2010, which was reproduced by the learned High Court in its Judgment dated 14-12-2010. Out of the said list many officers were not relieved/repatriated by the Government of Sindh in defiance of the directives of the High Court and this Court, inter alia, on the ground that some of them were absorbed under Sindh Civil Servants (Regulation of Absorption) Act, 2011. In all there were ten police officers who are claimed to have been absorbed in the Sindh Government after the Judgment. It was further stated in the report that three Police Offices were absorbed under the directives of the Sindh High Court passed in CP No.D-500 of 2010 and No.D-420 of 2009.*

5. *We do not want to further dilate upon the acts of the Sindh Government on this issue. In fact the Law Officers appearing different proceedings filed by the Officers before the Sindh High Court have conceded to the absorption, in contradiction to the plea taken by the Sindh Government before the High Court during hearing in CP No.D-1491 of 2010. There were many other officers who on account of their influence in the Government were not mentioned in the first list provided by the Secretary (Services). In the intervening period, instead of complying with the aforementioned Judgment of this Court, the Government of Sindh has further inducted/deputed officers from other departments/organizations, which act ex-facie is contemptuous and derogatory. We still believe that a number of officers/employees whose names do not appear in the list provided by the Secretary (SGA&CD) have been inducted in the same manner from different departments and or organizations bypassing the service rules and procedures as the Secretary (Services) might not have been provided correct information from all the departments, particularly, Home, Police, Law, Local Government, etc. Even the list submitted was otherwise incomplete.*
6. *If such actions of the Government of Sindh are allowed to be perpetuated it would destroy the institutions and paralyze the system. This would do away with the fundamental right of promotion of incumbents who have been working in the Sindh Government for years together. The scheme of Service Law provides such protection. Additionally after the Judgment of this Court the Sindh Government was directed to repatriate the deputationists but instead they have inducted deputationists and in some cases absorbed them permanently in order to frustrate the Judgment of this Court.*



7. Under these circumstances, we feel that actions on the part of Sindh Government warrant interference by initiating contempt proceedings against those who are guilty of willful defiance of the directions of this Court as mentioned hereinabove. The Notification dated 15-3-2012 placed before us today by which Sindh Government has ordered repatriation of 81 out of cadre officers/officials will not, prima facie, absolved them from facing the contempt proceedings as the Judgment of this Court and Judgment of the Sindh High Court, referred to above, have not been complied with in letter and spirit.
8. *Consequently, office is directed to place this order before the Honourable Chief Justice in a separate file, alongwith the orders passed by us on 14-3-2012, 15-3-2012, copies of the Judgments of this Court in CP No.802-K of 2010 and 4-K of 2011 and of Sindh High Court (Hyderabad Circuit Bench) passed in CP No.D-1491 of 2010, reports submitted by the Secretary (Services) SGA&CD through Advocate General, Sindh on 16-3-2012 beside other notification dated 15-3-2012 for passing appropriate orders in the matter.*

*For lack of time, main case is adjourned to next sessions.”*

14. The Hononurable Chief Justice of Pakistan after perusal of the aforesaid order of the Bench passed in S.M.C.No.8 of 2011 approved initiation of contempt proceedings against the Chief Secretary, Home Secretary and I.G.P Sindh, inclusive of two officers namely Shahid Hussain Mahesar and Shiraz Asghar Sheikh.

15. Pursuant to the aforesaid orders of the Honourable Chief Justice of Pakistan, the office converted the note in Criminal Original and numbered it as Criminal Original No.89/2011. On 2.5.2012, the matter was fixed before a Bench of this Court at Karachi Registry. The Secretary Services put in appearance and informed the Court that as many as 205 officers are working on deputation in the Sindh Government, out of whom the Sindh

Government intends to retain 12 officers and rest would be repatriated to their parent departments. The Bench inquired from the Secretary Services to justify their transfer on deputation after the judgment of this Court and as to whether the officers, who were transferred on deputation fulfilled the required criteria laid down in the judgments. He could not offer any plausible explanation. The Secretary Services, has placed before the Court three lists of the officers which included the names of the officers, who continued on deputation after the directives of this Court, and other two lists reflected the names of the officers subsequently transferred on deputation in the Sindh Government. This Court directed that all the officers mentioned in the lists shall stand relieved to join their parent departments except those who were absorbed by the Sindh Government under the Act XVII of 2011, vires of which enactment were challenged in Constitution Petition No.71 of 2011 and Civil Petition No.926 of 2011, before this Court, in which leave to appeal was granted. The officers who claimed to have been absorbed were directed to join the aforesaid proceedings through the said order, however, 8 officers were allowed to be retained by the Sindh Government till the completion of the different projects on which they were working. The Accountant General and Finance Department, Government of Sindh, were directed to stop the salaries and perks of all the officers named in the aforesaid three lists, with the exception of those, who were ordered to be retained and or absorbed by the Sindh Government under the afore-referred enactment. A show cause notice was issued to the Chief Secretary in terms of section 17(3) of the Contempt of Court Ordinance 2003, to appear and explain as to why contempt proceedings should not be initiated against him for willful defiance of the Court's order.

16. On 03.05.2012, the Chief Secretary appeared and tendered an unconditional apology, which was accepted by this Court. A statement was made on his behalf that the officers named in the lists had been relieved in compliance with the orders of this Court passed on 02.05.2012. The Chief Secretary was directed to ensure that the committee constituted under Rule 8-B complete the scrutiny of the out of turn promotions granted to various officers in the Government of Sindh and submit a compliance report.

17. On 04.05.2012, some of the deputationists who were ordered to be repatriated made applications to this Court, inter alia, on the ground that they were also absorbed by the Sindh Government.

18. On 24.05.2012, the Secretary Services appeared in Court and submitted a list of 235 officers working on deputation and were repatriated to their parent departments. Again on 30.08.2012, this Court was informed that some of the deputationists ordered to be repatriated have obtained restraining orders from the Sindh High Court against the Notifications issued by the Sindh Government, pursuant to the directives of this Court. The R & Ps of such cases were called from the Sindh High Court and ultimately, the deputationists who obtained interim orders withdrew their petitions from the High Court and relinquished their charge.

19. On 04.09.2012, the Government of Sindh promulgated Sindh Civil Servants (Amendment) Ordinance, 2012, by which powers were conferred on the Chief Minister to order deputation, absorption, re-employment, appointment on contract and out of turn promotions in the Sindh Government. This Ordinance was followed by another Ordinance

called Sindh Civil Servants (Second Amendment) Ordinance, 2012, whereby exclusive powers were conferred on the Chief Minister Sindh, to grant out of turn promotions in the Sindh Police. These Ordinances were challenged before this Court by the civil servants through different petitions/applications agitating their grievance to be joined as party to the proceedings.

20. On 06.09.2012, this Court while hearing Criminal Original Petition No.89 of 2011 and other connected cases, passed the following order:-

*“In view of the two Ordinances issued by the Governor Sindh in the last two/three days, learned Advocate General, Sindh and other learned ASCs for the parties appearing in these matters request for time to study these Ordinances and their effect on the pending litigation. Adjourned. Personal appearance of the Chief Secretary, Inspector General Police Sindh, Home Secretary and Secretary Services is dispensed with till further orders*

C.M.A.No.324-K of 2012

*Learned ASC for the applicants/interveners in C.M.A.No.324-K of 2012, in view of the Amending Ordinances issued by the Governor Sindh yesterday, providing room for regularization of all out of turn promotions under section 9-A of the Sindh Civil Servants Act 1973 before commencement of this Ordinance, seeks permission to withdraw this application for the time being to pursue their case before the Provincial Government. Such request is acceded to and this C.M.A is dismissed as withdrawn.”*

21. Again on 26.02.2013, a Bench of this Court at Karachi while hearing the Criminal Original Petition No.89 of 2011 and other connected matters passed the following order:-

*“Today, when this petition and other connected petitions have been taken up for hearing Mr. Abdul Fateh Malik, learned Advocate General, Sindh has placed on record a copy of “The*

*Sindh Act No.I of 2013 promulgated by the Provincial Assembly of Sindh, Gazetted on 21<sup>st</sup> February 2013.*

2. *Keeping in view the grievances of the petitioners qua the import of such legislation made by Sindh Government, we deem it fit, rather necessary to examine the vires of this amending enactment (Sindh Act No.01 of 2013), inter alia, on the touchstone of Articles 3, 4, 8, 9 and 25 of the Constitution. In order to enable learned Advocate General to make his submissions in this regard, hearing of these cases is now adjourned for the next session of this Court at Karachi Registry, M/s Abdul Hafeez Pirzada and Munir A. Malik, Sr. ASC's are nominated as Amicus Curaie to assist the Court to the extent of the above posed question of law."*

22. During the hearing of the Criminal Original Petition No.89 of 2011, the Court was informed that the Provincial Assembly has promulgated another Act XXIV of 2013 by which further employees from different departments/ organizations were absorbed and regularized in the Sindh Government. The said enactment was also placed on record. Finally, on 09.04.2013, the Secretary Services was directed to submit before this Court, the following information:-

(i) *The names of the deputationists, who were absorbed by the Government after order of this Court relieving them to join their parent departments with their dates of absorption.*

(ii) *The names and the details of the officers with their dates of absorption, who were absorbed by the Government from non-cadre to cadre postings mentioning dates of their absorption and the office they were holding prior to their absorption.*

(iii) *The names of all the officers, who were absorbed by the Government from 2008 till 16<sup>th</sup> March 2013 with the details of their previous office and the dates with the details of the office in which they were absorbed.*

(iv) *the names of officers, who were granted out of turn promotions from 31.3.2009 after the judgment of full Bench of the Sindh High Court in C.P.No.D-1595 till 16<sup>th</sup> March 2013.*

(v) *The names of the officers who were transferred and posted from 15<sup>th</sup> February 2013 till 16<sup>th</sup> March 2013 to different office mentioning their previous postings with the dates of their transfer.*

(vi) *The details of the officers, who are working in OPS mentioning their actual grades and also mentioning the grades to which they are posted against.*

(vii) *The names of the persons who were appointed by the Government from 1st January 2013 till 16<sup>th</sup> March 2013 and the mode and manner in which the appointments were made.*

23. On 13.04.2013, the Secretary Services filed his report containing details sought by the Bench. The Court incorporated the details in its order, relevant portion of which is reproduced here-under:-

*“The Secretary Services states that in all there were 567 officers, who were placed on deputation by the Sindh Government. Out of these officers, many of them were relieved at times and on 2.5.2012 there remained 235 officers, who were on the deputation. Out of the aforesaid 235 officers, 43 were retained on deputation after they were ordered to be relieved by this Court on 2.5.2012 and subsequently were absorbed pursuant to the Ordinance issued on 4<sup>th</sup> September 2012 and the enactment dated 16<sup>th</sup> March 2013. He further submits that this Ordinance and the Act, which were passed on the dates mentioned hereinabove, absorbed the officers other than Mr. Ayub Sanjrani, Abdul Hameed Alvani, Saifullah Billo and Abdul Wahab Shaikh. According to him, these four officers, who are included in the absorption list were absorbed subsequent to the enactment and are not covered by the aforesaid instruments. He submits that this was done by the former Chief Minister. He next contended that in all 66 officers who were absorbed by the Provincial Government, which includes 43 officers and their names have been shown in Annexure “IV” of C.M.A.No.264-K of 2013 (Part-1). According to him, this list also includes the names of the officers who were absorbed from non-cadre posts to cadre posts. According to him as far as the list containing the names of officers from January 2008 till 16<sup>th</sup> March 2013 is concerned, according to him, there are in all 179 officers, who were absorbed*

*from January 2008 to March 2013, this number includes 66 officers, who have been mentioned in Annexure “V”. He further submits a list of 179 officers, shown as Annexure “VI” to the aforesaid CMA, does not only includes the names of officers, but also subordinate staff, which was absorbed after closure of the Departments. These non-gazetted officers were placed in the surplus pool of the S&GAD and were absorbed in different Departments.”*

24. On 16.04.2013, these proceedings were fixed in Court at Islamabad. We informed the parties that we will be examining the vires of all the instruments referred to in Para-1 of this judgment inclusive of the 2<sup>nd</sup> Amendment Act 2013 passed on 16.03.2013. The Advocate General/Additional Advocate General, Sindh, present in Court were put to notice. The impugned legislative instruments were already placed on record by the government through the Advocate General besides the private parties. Before calling upon counsel representing private parties, we first called upon Mr. Sarwar Khan, the learned Additional Advocate General Sindh, to submit his contentions in support of the impugned enactments. He contended that Articles 101 to 128 empowers Provincial Assembly to promulgate law.

25. He next contended that the impugned instruments were promulgated for the benefit of the general public keeping in view the public interest of the civil servants. He further contended that the instruments were required to be promulgated to remove the anomaly which occurred due to various judgments of this Court and of the Sindh High Court. He further contended that the absorption of the employees under the impugned instruments was ordered with the object to condone illegalities and irregularities to bring home unrest amongst the civil servants. He submitted that the legislative competence of the Assemblies cannot be examined by

this Court nor mala fide can be attributed to the legislature. In support of his contentions, he has relied upon the cases of Messrs Elahi Cotton Mills Ltd. Vs. Federation of Pakistan (PLD 1997 SC 582), Haji Ghulam Rasul vs. Government of the Punjab (2003 SCMR 1815), Fauji Foundation vs. Shamimur Rehman (PLD 1983 SC 457).

26. Mr. Sarwar Khan next contended that the first impugned Ordinance/Act promulgated in 2011 validates absorptions of the different employees from 1994 to 15.6.2011 and cannot be construed either discriminative in terms of Article 25 and/ or violative of the Article 8(2) of the Constitution. When confronted as to explain reasons for promulgating six instruments from 15.06.2011 to 21.03.2013, on the common issues already decided by the Sindh High Court and this Court, he could not offer any explanation except submitting that the Provincial Assembly/Governor was competent under the Constitution to promulgate the impugned instruments.

27. Ch. Afrasiab Khan, learned counsel for the petitioners in C.P.No.71 of 2011, C.A.No.12 of 2012 and C.P.No.21/2003 has contended that the impugned Act/Ordinance of 2011 ex-facie are ultra-vires of the fundamental rights guaranteed under Articles, 2-A, 4, 8, 14, 25, 175, 240, and 242 of the Constitution. He submitted that the issue of illegal absorptions which started since 1994 was first challenged by the aggrieved employees in Constitution Petition No.960 of 1996 and by order dated 28.03.1997, the Sindh High Court disposed of the petition in the light of the summary floated by the department to the Chief Minister on 22.03.1995, the relevant portion of the summary is reproduced herein-below:-



“4. In fact absorption of above named officers is not covered by the rules, even Section 24 of the Sindh Civil Servants Act would not be of any avail in the case of absorption of these officers who were not civil servants. The Law Department has also confirmed this point of view (F/‘B’). The High Court of Sindh in Constitution Petition No.D-385 of 1991 (Mr. Liaquat Ali Baloch v/s Government of Sindh and others) has observed that no doubt Section 24 of Sindh Civil Servants Act gives a blank cheque to the Government to deal with a civil servant in such a manner as may appear to it to be just and equitable, there must be some rational for it and discretion so conferred upon the Government may only be used judicially and not arbitrarily. Moreover, the appointments made without observing formalities and proper procedure have been held violative of Fundamental Human Rights by the Supreme Court of Pakistan.

5. Though the appointment/absorption of above officers is not covered under the rules as pointed out by the petitioner, their right has accrued to hold the posts. Therefore we cannot at this stage, terminate their service or withdraw the subject notifications. However, it is advisable to refrain from such appointments in future.

6. The position is submitted to the Chief Minister, Sindh for his kind perusal and further orders.”

28. The learned High Court in its concluding Para, reproduced hereunder, has observed as under:-

“In these circumstances, we would direct that within a month’s time in case no decision has been taken on the petitioner’s referred appeal, such would be taken and communicated to the petitioner. Alternatively, if decision has been taken but has not been communicated, due communication to the petitioner would follow within the same period. That being done and the matter pertaining to the terms and conditions of the service of the petitioner, which apparently seem to have been adversely affected, the petitioner would be free to go to the Sindh Service Tribunal in accordance with the relevant provisions.

Meanwhile, as indicated in para 5 of the aforesaid Summary, no absorptions, clearly accepted to be illegal, would be made.”

29. The learned High Court disposed of the aforesaid Petition restraining the Government that no further absorption would be made in terms, as indicated in Para-5 of the Summary reproduced hereinabove. The learned counsel submitted that since 1994 the affectees have not challenged the absorptions of the employees made by the Sindh Government. According to him, the act of absorption of the Sindh Government was challenged by the affectees and inspite of the restraining orders, the Sindh Government kept on absorbing their blue-eyed in defiance of the Civil Servants Act and the

Recruitment Rules. He contended that the provisions of section 24 of the Act of 1973 cannot be resorted to, to cure the inherent defects surfacing absorption. While advancing his arguments, he has contended that a Division Bench of Sindh High Court in C.P.No.D- 932 of 2009 while interpreting section 24 of the Civil Servants Act has held that the powers of the competent authority were very limited and unless the conditions/precedents provided under section 24 are fulfilled the absorption made, would be illegal. He contended that the provisions of section 24 of the Act of 1973 required two pre-conditions to allow the Competent Authority to exercise powers of absorption. In the first place, the powers have to be exercised by the Government through a committee and not by the Chief Minister as an individual. Secondly, person in whose favour such residuary powers are exercised must be a civil servant as defined under the Sindh Civil Servants Act or rules framed there-under. Additionally, such powers have to be exercised in a manner as it appears to be just and equitable. According to him, the act of absorption in the absence of the aforesaid conditions, as contemplated under section 24 of the Act of 1973, would be construed to be colourable exercise of power.

30. He next contended that the impugned Ordinance 2011 which was subsequently converted into the impugned Act XVII of 2011 by the Sindh Assembly violates the scheme of service law guaranteed by the Constitution in terms of Article 240 and 242 of the Constitution. According to him, any law passed by an Assembly and /or Parliament can be examined by this Court, in case if such law is violative of the fundamental rights. He has contended that in the case in hand, neither the impugned Ordinance nor

the impugned Act provides the definition of the term “*absorption*” nor the basis on which the employees, who were not even Civil Servants, were ordered to be absorbed. The impugned legislation has validated absorption of all the employees, without providing protection to it. The learned counsel submitted that the absorption of the employees by the Sindh Government was in conflict with the Act of 1973 and the rules framed there-under.

31. The learned counsel Chaudhry Afrasayab has further contended that the concept of absorption is foreign to the Act of 1973 and the rules framed thereunder. It is only in exceptional cases, where the departments are closed and /or the civil servants in the said department becomes surplus, a surplus pool is created from where these surplus employees can be transferred and posted to other departments subject to their matching qualifications, eligibility and experience, as provided under Rule 9-A of the Rules of 1974.

32. According to the learned counsel, the impugned Ordinance/Act which validates the absorptions is against the basic structure of the Civil Service laws. He submits that Article 240(b) of the Constitution provides the mechanism for appointment to the Service of Province and the posts in connection with the affairs of a Province, whereas Article 242(1B) provides the appointment of the Chairman of Public Service Commission constituted in relation to the affairs of a Province to be appointed by the Governor on advice of the Chief Minister. The Article 242 (2) provides constitution of Public Service Commission entrusted with the powers prescribed by the rules. According to him, pursuant to the mandate of the Constitution, Public Service Commission has been constituted, which is entrusted with the

powers to recommend recruitment of the civil servants under the prescribed rules. These recruitment rules are Bible of the civil service structure and no other method parallel to the recruitment rules can be adopted to extend favours to some of the employees by allowing them to be absorbed in the provincial service without recourse to the competitive process through Public Service Commission. He submits that the competence of the legislature, to legislate law is not un-restricted. The learned counsel has referred to the Act of 1973 which defines the selection authority in terms of section 2(3)(i). Section 5 of the said Act prescribes the manner in which the appointments are to be made and section 6 speaks of initial appointment. He submits that the Sindh Government has bypassed the required procedure and without amending the Act of 1973 and /or rules framed there-under has promulgated the impugned Act 2011, which has impaired the fundamental rights of the civil servants.

33. According to the learned counsel the illegal absorptions of the employees could not be given blanket cover by the impugned validation instruments, particularly when such absorbees did not have the matching qualifications, eligibility and competence to be absorbed against the posts, which otherwise could only be secured under the recruitment rules through the competitive process.

34. His next contention was that these impugned legislative instruments were promulgated to defeat and nullify the judgments of this Court and the Sindh High Court on the issue of absorption. He submitted that those who have been absorbed, many of them were deputationists, non-civil servants and were ordered to be repatriated to their parent departments

by the Courts. He submitted that the impugned legislative instruments contain non-obstante clause which by itself is violative of the scheme of trichotomy of power provided by the Constitution. In support of his arguments, he has relied upon the cases of Dr. Mobashir Hassan vs. Federation of Pakistan (PLD 2010 SC 265(372)), The Province of Punjab vs. National Industrial Co-operative Credit Corporation (2000 SCMR 567 (597)), Raj Narain vs. Smt. Indira Nehru Gandhi (AIR 1975 SC 2299(2346)), Capt. ® Abdul Qayyum vs. Muhammad Iqbal Engineer (PLD 1992 SC 184) and Muhammad Nadeem Arif vs. Inspector General of Police, Punjab Lahore (PLC 2010 CS 924).

35. Dr. Farogh Naseem, learned counsel for Ali Haider, the Respondent No.3 in Constitution Petition No.71 of 2012 in reply to the arguments of Ch. Afrasiab Khan has contended that the judgment in the case of Dr. Mobashir Hassan does not apply to the controversy raised in these proceedings. He contended that the Act XVII of 2011 was promulgated on 15.03.2011 with the sole object to remove the defect in the judgment passed on 02.04.2011 in Writ Petition No.932 of 2009. He further contended that in the Constitution Petition No.71 of 2011, vires of the Act XVII of 2011 were challenged, has become infructuous, as on 21.03.2013, the Act XXIV of 2013 was promulgated which has not been challenged by the petitioner.

36. On query from the Court that if the petitioners have not challenged the subsequent legislation promulgated during the pendency of the proceedings on the same subject, whether this Court in exercise of its suo motu jurisdiction can examine subsequent legislation. Dr. Farogh Naseem fairly conceded that this Court has the power to examine the vires of such

legislation. He contended that the Constitution Petition No.71 of 2012 was not maintainable under Article 184(3) of the Constitution, which has a limited scope. According to him the petitioners have raised individual grievances in the petition which falls outside the parameters of Article 184(3) of the Constitution.

37. While elaborating his arguments on the issue of effect of the judgments of the Courts on the impugned legislative instruments, the learned counsel has taken us through the different portions of the judgment in the case of Dr. Mobashir Hassan reported in (PLD 2010 SC 265) to persuade us that the judgment in the said case would extend and apply to the criminal cases and not to a statute governing the rights of civil servants. He next contended that once the legislature has validated the absorption of the employees by promulgating the impugned Act, the Respondents, in law, are entitled to its benefit. He however, submitted that section 3(2) of the impugned Act XVII of 2011 which grants backdated seniority to the absorbees under the impugned Act is liable to be struck down. According to him, seniority of an absorbee in the department, to which he is absorbed, has to be kept at the bottom. The previous seniority of such an absorbee cannot be counted in service as it would be discriminatory and against the rights of the employees entered in the encadrement prior in time to the absorbee.

38. He was required by us to formulate his contentions in a manner that all the legislative instruments challenged and/ or examined in these proceedings are covered and all the learned counsel appearing for the parties could advance their arguments on such formulation. He has submitted the following formulations:-

1. Whether the Acts (Act XVII of 2011 and Act XXIV of 2013) legislatively annul the judgment dated 14.4.2011 of the Sindh High Court passed in C.P.No.932 of 2011?
2. Whether any of these statutes is violative of any provisions of the Constitution?
3. Whether any of these statutes can be annulled for being in conflict with the service law and rules operating prior to the said statute?
4. Whether a statute can be struck down on the ground of mala fide of facts? If so.
5. Whether these statutes actually suffer from mala fides of facts?
6. Scope of principle of stare decisis and its application before the Supreme Court?
7. Whether the deputation, absorption, regularization, out of turn promotions, re-employment, contractual/ adhoc employment which are the subject matter of these proceedings can be validated through the impugned statutes?
8. Whether the petitioners having in essence raised their personal grievances through these proceedings can be entertained by this Court under Article 184(3) of the Constitution?
9. Whether the issue of vires of the impugned legislation affect the fundamental rights of the petitioners/civil servants?

39. The learned counsel has advanced his arguments on the issue of absorption only. According to him, the provisions of Article 240(b) do not restrict the provinces from multiple legislation. He contended that Article 142 of the Provincial Legislature grants residuary powers to the Provincial Assemblies whereas Article 242 (1B) and (2) speak of constitution of Public

Service Commission, appointment of its Chairman and the functions which the Commission will undertake, as prescribed by the law. According to him, pursuant to this scheme, Sindh Public Service Commission Act, 1989, was promulgated and its Section 7(i) relates to the conduct of test and examination for initial appointments whereas Section 7(ii) provides qualifications and method of recruitment.

40. He further contended that section 5 of the Act of 1973, speaks of appointments prescribed by Section 2(g) of the Act which refers to the Rules called the Sindh Civil Servants (Appointment, promotion and Transfer) Rules, 1974. He submitted that the impugned Act XVII of 2011 as well as impugned Act XXIV of 2013 are parallel statutes to the Act of 1973, having non-obstante clauses, effect of which has been interpreted by this Court in the case of Province of Sindh through Chief Secretary vs. Prosecutor General Sindh (2012 SCMR 307). He contended that introduction of such a non-obstante clause will nullify the effect of Act of 1973, and it can safely be construed that such legislation, in no way, is violative of the fundamental rights guaranteed by the Constitution.

41. Mr. M.M. Aqil Awan learned counsel for the private Respondents namely Dr. Muhammad Ali, Dr. Aftab Mallah, Ghani Jokhio, Ahmed Hussain Solangi, (Respondents in C.P.No.71/2011) has filed his written arguments in terms of order of this Court dated 30.04.2013, which was numbered as C.M.A.No.2697 of 2013. Additionally, he has requested the Court to allow him to make oral submissions, which request was acceded to. He contended that the Respondents, whom he represents, were absorbed by the Sindh Government in exercise of powers under section 24 of the Act



of 1973. According to him, Constitution Petition No.71 of 2011 filed by the petitioners, by which the vires of impugned Ordinance III of 2011 dated 04.05.2011 and the impugned Act XVII of 2011 have been challenged, is not maintainable. According to him, through the aforesaid petition seniority, eligibility and promotion of the Respondents have been challenged by the petitioners, which falls within the domain of the Sindh Service Tribunal. According to him, direct petition to this Court would not lie for the redressal of individual grievance of a party. He submitted that the petitioners have challenged the promotion, seniority and eligibility of the Respondents, which fall within the terms and conditions of service, therefore, the petition is not maintainable under Article 184(3) and the petitioners should approach the appropriate forum for redressal of their grievances.

42. His next contention was that there are 30 petitioners in Constitution Petition No.71 of 2011, who belong to the Provincial Secretariat Service. The question raised in the petition by employees of one cadre would not attract the necessary ingredient, which is the condition precedent to invoke the jurisdiction of Article 184(3) of the Constitution, as the employees of one cadre cannot enlarge the meaning of public interest by directly approaching this Court. In support of his contentions, he has relied upon the cases of Syed Zulfiqar Mehadi vs. P.I.A (1998 SCMR 793 (799)). According to him, in order to exercise jurisdiction under Article 184 (3) of the Constitution by this Court, the issues raised in the petition must pertain to infringement of fundamental rights. According to him, the seniority and the promotion are not vested rights of the petitioners to approach this Court in a constitution petition.

43. He next contended that malafide cannot be attributed to the legislature nor nullifying a judgment of the Court can be made a ground to strike down the impugned legislative instruments. He submitted that by impugned instruments the absorption of different employees in the Sindh Government has been validated. The petitioners through these proceedings cannot challenge the 'absorption' of such employees nor the benefit extended to them can be withdrawn. In support of the contention, he has relied upon the cases of Mazhar Ali vs. Federation of Pakistan (1992 SCMR 435) (440), Province of Punjab vs. Ibrar Younis (2003 PLC (CS) 1357 (1361)), Hussain Badshah vs. Akhter Zaman (2007 CLC 157 (163)), Chairman Minimum Wages Board vs. Fayyaz Hussain (1999 SCMR 104) (106)) and Ghulam Rasool Vs. Secretary, Government of Pakistan Ministry of Defence and others (2011 SCMR 994 (998)).

44. Mr. Abrar Hassan, ASC, has filed his written arguments by way of C.M.A.No.2698/2013 on behalf of Respondent No.5 in C.P.No.71 of 2011 and he has submitted that he adopts the arguments of Dr. Farough Naseem, learned ASC, appearing for the Respondents.

45. Mr. M. M. Aqil Awan, learned counsel representing the Respondents in Civil Appeal No.183-K of 2011 has challenged the vires of the impugned legislation. He has filed his written synopsis by way of C.M.A.No.2715/2013 and C.M.A.No.2732/2013. He has requested for oral arguments as well, which request was acceded to. He submitted that he will make his submissions on the issues of deputation, absorption and out of turn promotions. According to him, the Sindh Civil Servants Act does not permit

any non-civil servant to be transferred and posted on deputation to any government department in Sindh. According to him, the word '*deputation*' has neither been defined in the Act of 1973 nor in the rules framed thereunder. He contended that the word '*deputation*' has been borrowed from the Esta Code, which has two parts. The first part deals with the instruments and the other deals with the office memoranda, issued by the Establishment Division from time to time. According to him, entry under Esta Code Edition 2009 Chapter-II at page 425 deals with transfer, posting/deputation. According to him it is only a government servant, who could be transferred on deputation. Such transfer is subject to the process of selection to a post in a department of service, which is altogether different from the one to which he permanently belongs, and the third ingredient for the deputation is that such an officer is entitled to lien as long he holds the new post in an officiating capacity or temporary capacity, but such lien stands terminated either on confirmation in the new post or on reversion to his substantive post. He contended that the definition of "*deputation*" as provided by the Esta Code was adopted by this Court in the case of Islamic Republic of Pakistan vs. Israr-ul-Haq (PLD 1982 SC 531 (542)). He submitted that this definition was further defined in the case of Muhammad Arshad Sultan vs. Prime Minister of Pakistan (PLD 1996 SC 771 (777-B)), which reads "*Deputationist is defined to be a government servant, who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs. He continues to be a deputationist unless confirmed in the new post or reverted to his substantive post*", following the case of Israr-ul-Haq. In the case of Muhammad Ramzan vs. Government of Pakistan (1999 PLC (CS)

1149 (1153-A)) the aforesaid definition in the case of Muhammad Arshad Sultan was followed. The learned counsel while referring to the aforesaid judgments of this Court has contended that this Court has held that no non-civil servant can be transferred and appointed by way of deputation, in any government department to any cadre and or non-cadre post.

46. He next contended that the Act of 1973 does not define the word ‘deputationist’. He however, submits that section 2 (1) (b) of the Act of 1973 reads:-

*“2 (1) (b) “civil servant” means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include--*

*(i) a person who is on deputation to the Province from the Federation or any other Province or authority; or*

According to the learned counsel, the term ‘Authority’ used in clause (a) hereinabove is used as a tool by the Sindh Government to cover up the illegal transfer on deputation of non-civil servants in Sindh Government. According to him the aforesaid sub-section deals with the person, who is on deputation to the Province from the Federation or any other Province or Authority. He submits that the term ‘person’ used in sub clause (b) (i) of section 2 (1) means a civil servant and does not include an employee of an authority. He has relied upon the judgment in the case of Lal Khan vs. Employees Old Age Benefits Institution (2010 PLC (CS) 1377 (1382)). He submits that in the said judgment, the identical issue was raised and the Advocate General Sindh Mr. Abdul Fatah Malik has made the statement in aforesaid case that there is no mechanism provided under the Rules to regulate the services of the deputationists who are non-civil servants. The

learned Division Bench after hearing the Advocate General Sindh has held that a non-civil servant cannot be transferred and posted to the Sind Government by way of deputation.

47. He further submitted that to cater the above deficiency, on 4.9.2012 Ordinance No.VI of 2012, impugned in these proceedings, called as Sindh Civil Servants (Amendment) Ordinance, 2012 was promulgated. In the said Ordinance, section 2 (bb) was inserted which defines the word ‘*deputation*’ means the posting of a person in accordance with sub-section 1 of section 10-A. The Ordinance further introduces section 10-A and its clause (1) reads:-

*“10-A. (1) Notwithstanding anything contained in this Act, or any other law enforced, or any judgment of any Court, Government (C.M) shall have and shall be deemed to always have had the powers to appoint any person on deputation basis, who is civil servant, as defined in this Act, or the Federal Civil Servant Act, 1973, in the service of Government or Federal Government or autonomous, Semi-autonomous Body Corporation or any organization setup, established, owned, controlled or managed by Government or as the case may, the Federal Government against any post in any cadre, in the Civil Service of the Province or in connection with the affairs of the Province”.*

The aforesaid Ordinance lapsed after 90 days and was never placed before the Provincial Assembly. He next contended that in the case of Safdar Ali Sahito vs. Province of Sindh (2011 PLC (CS) 972 (976-e-d)), a learned Division Bench of the Sindh High Court while interpreting ‘deputation’ has held as under:-

*“by posting outsiders on the basis of Deputation in various Departments of provincial Government, the changing*

*cadres and inducting/absorbing them in various departments of provincial governments, created unrest and sense of deprivation amongst employees already working there. Authorities were directed to repatriated them. Government in case of exigencies could appoint any person on OPS basis, as a stopgap arrangement or current charge or acting charge or additional charge basis but cannot continue the OPS or Additional Charge for unlimited period of time.”*

48. According to the learned counsel, the impugned Ordinance contained the conditions that powers of the competent authority were subject to the proviso a, b and c of section 4 of the Act of 1973. Proviso ‘a’ speaks of minimum qualifications as may be laid down for a person to be appointed to the post. The learned counsel submits that till date the Sindh Government has not framed rules which could define the proposed minimum qualifications of a deputationist mentioned in the Ordinance. He submitted that if any statute is conditional, it cannot be made operative unless the conditions laid down are fulfilled. According to him, Ordinance VI of 2012 for the aforesaid reason is violative of the Act of 1973 and the rules framed there-under, and does not authorize the competent authority and /or the Chief Minister to order transfer of a non-civil servant in the Sindh Government on deputation.

49. He next contended that the word ‘*absorption*’ used in the said Ordinance is also a misnomer. Neither the Sindh Civil Servants Act nor the rules framed there-under has given any definition to the term ‘*absorption*’. Under Ordinance VI of 2012, an amendment was brought in the section 2 sub-section (i) (a) wherein the term ‘*Absorption*’ was defined which means appointment of a person by way of absorption in accordance with sub-

section 2 of section 10-A. He next contended that the Sindh Civil Servants Act provides three modes of appointment, which are given in the Rules of 1974. These are:-

1. Recruitment by initial appointment.
2. Appointment by promotion.
3. Appointment by transfer

These appointments are regulated by the Act of 1973. In the case of Iqbal Ahmed vs. Province of Sindh (1996 PLC (CS) 955), a learned Division Bench has defined the word ‘*Absorption*’, which reads as under:-

*“Absorption was nothing but appointment by transfer and same could only be made under Rule 9(1) of Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974.*

50. He next contended that the issue of absorption was dealt with in a judgment of the learned Division Bench in the case of Deedar Hussain Jakhrani vs. Federation of Pakistan (2011 PLC (CS) 203 R). This Court in the case of Dr. Anwar Ali Sahito vs. Federation of Pakistan (PLD 2002 SC 101 rel. (158-P) has held that “*reinstatement and absorption for intents and purposes are synonymous expression*”. This view was, however, revisited by this Court in the case of M.D Sui Southern Gas Company Ltd. Karachi vs. Ghulam Abbas (2003 PLC (CS) 796 (833-N)). It was contended that absorption would simply mean appointment by way of transfer. He submitted that appointment by way of transfer have two categories. He submitted that under Rule 9-A of the Rules of 1974, an employee who is rendered surplus on account of abolition of his post or on permanently taking over the administration of the autonomous body by the Government, can be absorbed on transfer to any other department provided that such

person possesses such qualifications laid down under the rules of appointment besides the other three conditions referred to therein. He contended that even an employee of an autonomous body can be absorbed under Rule 9-A of the Rules of 1974, if his post is abolished or the autonomous body in which he was serving is taken over by the Sindh Government. In absence of these two pre-conditions, Rule 9-A could not be invoked to absorb an employee of an autonomous body in the Sindh Government. He next contended that absorption in such like matters is to be regulated by regular appointment and in support of his contention has relied on an unreported judgment of this Court in the case of Agha Altaf Nabi vs. Govt. of Sindh in C.P.L.A No.147-K/1999 decided on 22.07.99.

51. He next contended that seniority of a civil servant is granted on his regular appointment in all the three modes of appointment under the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1973. In support of his contention, he has relied on the case of Nazir Ahmed Panwar vs. Government of Sindh (2005 SCMR 1814). He next contended that Rule 9(1) further provided appointment by transfer only to those persons holding appointment on regular basis in the same grade in which post to be filled exists. According to the learned counsel the impugned Ordinance provides exception by introducing the term “*Absorption*”. Under Rule 9-A of the Rules of 1974, appointment of a person on transfer basis could be made subject to the condition that the civil servant must be holding appointment on regular basis in the same basic scale. Learned counsel submits that this Rule 9-A is to be read with Rule 7(2) and (3) of the Rules 1974, which relates to civil servants. According to him, sub-Rule (3) of Rule 7 provides



that unless Provincial Selection Board recommends, appointment by promotion or transfer to a post in Basic Scale 18 cannot be made on regular basis. He in support of his arguments has relied upon the case of Government of Punjab vs Mrs. Kishwer Alam (PLD 1997 SC 578 A & B). While concluding his arguments on the issue of absorption, he submitted that Rule 17 of the Schedule 6 read with Article 5 and 6 of the Rules of Business, 1986, procedure is provided for floating the summary. According to him, the Rules do not permit any official of the Sindh Government to float a Summary of a non-civil servant.

52. Mr. M.M Aqil Awan, learned Sr.ASC, has filed his written synopsis on the issue of '*out of turn promotions*' and has also made his oral submissions. According to him, the Act of 1973, does not provide any mechanism under the impugned instruments for granting out of turn promotions. He submitted that promotions are of two kinds: one by the government under Section 9 of the Act of 1973 and the other is out of turn promotion which is granted under Section 9-A of the Act of 1973. He submitted that in the year 2002, Section 9-A was introduced by amending the Act of 1973 and was given protection by XVII Amendment under the Constitution. The said amended section 9-A remained on the statute book till it was omitted by an Ordinance on 27.02.2008. According to him, the said Ordinance was not placed before the Provincial Assembly, therefore, in terms of Article 264 of the Constitution, on lapse of the Ordinance, Section 9-A stood revived. He submitted that the effect of the lapse/repeal of the Ordinance has been decided by this Court in the case of Pir Sabir Shah vs. Shah Muhammad Khan (PLD 1995 SC 66 (205-ggg)) and Federation of Pakistan vs. M. Nawaz Khokhar (PLD 2000 SC 26 (45-g)).

53. According to him, section 9-A of the Act of 1973 provided that “*out of turn promotions*” would be granted in such manner as may be prescribed. The word ‘*prescribed*’ has been defined under section 2 of the Act of 1973. In this background, the Provincial Government framed and added Rule 8-B in the Rules of 1974. The rules were framed in exercise of powers conferred under section 26 of the Act of 1973. The said Rule 8-B amended through Notification dated 10.02.2005 was omitted by a second Notification dated 11.05.2005. Thereafter, the Sindh High Court on 31.03.2009, in its judgment passed in C.P.No.1595/2005 directed the Sindh Government to revive Rule 8-B of the Rules of 1974 and examine the case of each police officer, who was granted out of turn promotion. This judgment of the High Court was never implemented by the Sindh Government and on 04.09.2012 impugned Ordinance No.VI of 2012 was promulgated by which section 9-A sub-section (3) was again amended which reads:-

*“9-A. Notwithstanding anything contained in this Act or any other Law for the time being in force or any judgment of any court, a civil servant who provenly exhibits the act of gallantry while performing his duties or very exceptional performance, beyond the call of duty, may be granted out of turn promotion or award or reward by Government (CM)”.*

54. According to Mr. M.M. Aqil Awan by this impugned Ordinance, the legislature has omitted the term ‘*prescribed*’ in section 9-A as a result whereof Rule 8-B of the Rules of 1974 stood omitted. According to him, now it is the Chief Minister alone who has the powers to grant out of turn promotions as requirement of the committee under Rule 8-B was done away. He next contended that the term ‘*out of turn promotion*’ was not

defined under the impugned Ordinance nor does it provide any legal cover or validity to the past promotions granted on out of turn basis and remained the subject-matter of litigation in cases mentioned hereinabove. The impugned Ordinance VI of 2012 did not debar the Government of Sindh from complying with the judgment of the Sindh High Court passed in earlier litigation on 31.03.2009. The Government realizing the aforesaid mistakes immediately issued another impugned Ordinance No.VII of 2012 on 05.09.2012 wherein sub-section 2 of section 9-A was introduced, which reads:-

*“All the out of turn promotions made under Section 9-A before the commencement of this Ordinance, shall be deemed to have been made under this section on regular basis.”*

The impugned Ordinance VII of 2012, did not have a non-obstante clause as section 9-A was amended by Sindh Ordinance VI of 2012 and previously it was amended by Sindh Ordinance IV of 2002 dated 22.1.2002. The impugned Ordinance VII of 2012 did not mention the date from which, out of turn promotions made to different police officers or civil servants would be treated on regular basis under its deeming clause. However, both these impugned Ordinances lapsed in terms of Article 128 of the Constitution. After the lapse of the impugned Ordinances, Act No.1 of 2013 was promulgated under which after Section 23, new sub-section 23-A was inserted by way of amendment with three sub-clauses, which reads:-

*23-A. Regularization of out of turn promotions. (1) Notwithstanding anything contained in any law, or order or judgment of any Court, all out of turn promotions made immediately before the commencement of the Sindh Civil Servants (Amendment) Act, 2013, under section 9-A by Government or competent authority or otherwise by the*

*police department shall stand regularized from the dates of such promotions.*

*\*(2) All promotions regularized under sub-section (1) above and all notifications, proceedings, instructions or orders issued in pursuance of such promotions are hereby affirmed and shall be deemed always to have been validly made.*

*(3) A person aggrieved by any promotion regularized under sub-section (1) may file an appeal in the Sindh Service Tribunal, within thirty days of the commencement of the Sindh Civil Servants (Amendment) Act, 2013”.*

Act 1 of 2013 only regularized out of turn promotion in the police department. Realizing this mistake, another Act XXIV of 2013 was promulgated on 15.03.2013, wherein after section 23(A), by way of amendment, another section 23(B) consisting of three sub-sections was inserted, which reads:-

*“23-B (1) Notwithstanding anything contained in this Act or rules made there-under, or in any decree, order or judgment of a Court, an employee absorbed, or as the case may be, promoted under section 9-A as a civil servant against a post in connection with the affairs of the Province and holding such post immediately before the date of commencement of the Sindh Civil Servants (Second Amendment) Act, 2013, shall be deemed to have been validly absorbed, or as the case may be, promoted to that post on regular basis with effect from the date of his absorption, as the case may be, promotion.”*

*(2) A person aggrieved by any absorption, or as the case may be, promotion regularized under sub-section 91) may file any appeal in the Sindh Service Tribunal, within thirty days of the commencement of the Sindh Civil Servants (Second Amendment) Act, 2013”.*

55. Mr. M.M. Aqil Awan submitted that the difference between the two impugned Acts is that the former speaks of only out of turn promotions

in the police department whereas the later impugned Act validates not only absorption of the employees but also out of turn promotions under section 9-A of the Act of 1973 from the date of their absorption or promotion.

56. Mr. Yawar Farooqi, learned ASC, representing Agha Masood Abbas, has filed his written synopsis by way of C.M.A.No.2695 of 2013, and has also made oral submissions. He contended that by the impugned Act XVII of 2011, 1085 employees were absorbed and is not person specific. According to him, the impugned Act was promulgated to validate the absorptions of the employees made from time to time since 1994. He further submitted that impugned Ordinance VI of 2012 has amended section 10-A of the Act of 1973, which empowers the Chief Minister to absorb permanently any employee in the Sindh Government. He contended that absorption is a legal concept and all provinces in the country appoint the employees by absorption. He submitted that the impugned Act of 2013 regularized the absorptions made in the Sindh Government, which was within the competence of Assembly.

57. He next submitted that the concept of deputation is a legal one. According to him, the Sindh Government while ordering transfer by deputation is only required to establish that exigency existed. In this regard, he has relied upon the case of Fauji Foundation & another vs. Shamimur Rehman (PLD 1983 SC 457) and Mehr Zulfiqar Ali Babu vs. Government of the Punjab (PLD 1997 SC 11). He submitted that in the case of Elahi Cotton Mills, this Court has held that the Parliament can nullify the effect of a judgment of the Court in exercise of its legislative powers. He submitted that

his client was validly absorbed and conceded that there may be cases where few of the employees were wrongly absorbed, but that would not empower this Court to strike down the impugned legislative instruments.

58. He further contended that Article 240 of the Constitution is not directly hit by the impugned instruments and has referred to Articles 14 and 16 of the Indian Constitution under which the rights of the Civil servants were independently guaranteed whereas according to him under our Constitution, civil servants have not been provided such protection. He submitted that the issues arising out of the impugned legislation be remanded to a Committee to examine the cases of out of turn promotion under Rule 8-B or to the Provincial Assembly to review the law.

59. Mr. Anwar Mansoor Khan representing Respondent Sheraz Asghar Sheikh has contended that the appointment of his client was validated under the impugned Act XVII of 2011 and Act XXIV of 2013. According to him the impugned legislative instruments are valid piece of legislation and fall within the competence of the legislature. He submitted that the impugned instruments were promulgated to remove the deficiencies and illegalities committed by the Sindh Government. According to him, this Court in the case of Fauji Foundation vs Shamimur Rehman (PLD 1983 SC 457) has held that mala fide cannot be attributed to the legislature. He submitted that in order to strike down the legislative instruments, it is necessary that the Court has to be satisfied that it impinges upon fundamental rights of the citizens under Articles 8 and /or under Article 240 of the Constitution. According to him, the issue raised in these proceedings

is confined to individual grievance which could be redressed by approaching the appropriate forum.

60. He next contended that the definition of deputation provided under the Act of 1973 includes the person employed in an Authority, who can be transferred and posted in the Sindh Government. He has relied upon the case of C.Munni Appa Nido vs. State of Karnataka (1976 (4) SCC 543 (797)), which deals with the absorption while the case of (2002 (9) SCC 485) deals with the deputation. Mr. Anwar Mansoor Khan has already filed his written arguments by way of C.M.A.No.2696 of 2013, which he adopts. He, however, in his oral arguments contends that the principles of statutory and Constitutional interpretation have been propounded by this Court in the case of Chief Justice of Pakistan Iftikhar Muhammad Chaudhry vs. President of Pakistan through Secretary and others (PLD 2010 SC 61). He further contended that the Constitution must be read as an organic instrument and is to be interpreted in the light of changes in society. In support of his contention he has relied upon the cases of Munir Hussain Bhatti Advocate and others vs. Federation of Pakistan and another (PLD 2011 SC 407), Qazi Hussain Ahmed, Ameer Jamaat-e-Islami Pakistan and others vs. General Pervez Musharraf Chief Executive and others (PLD 2002 SC 853), Mst. Attiyya Bibi Khan and others vs. Federation of Pakistan and others (2001 SCMR 1161) and Dr. M.Asam Khaki vs. Syed Muhammad Hashim and 2 others (PLD 2000 SC 225).

61. He next contended that Constitution is a living document to be interpreted in the widest manner and judicial approach has to be dynamic, progressive and liberal. In support of his contention, he has relied upon the

cases of Pakistan Tobacco Company Ltd. & others Vs Government of N.W.F.P through Secretary Law and others (PLD 2002 SC 460), Messrs Elahi Cotton Mills Ltd. & others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (1997 PTD 1555), Al-Jehad Trust Vs. Federation of Pakistan and others (PLD 1996 SC 324), Pir Sabir Shah Vs. Shad Muhammad Khan Member Provincial Assembly NWFP and another (PLD 1995 SC 66), Pakistan Industrial Development Corporation vs. Pakistan (1992 SCMR 891). As regards the Articles relating to fundamental rights he submitted that they be construed liberally to provide maximum possible relief and has relied upon the cases of Pakistan Tobacco Company Ltd. and another vs. Federation of Pakistan and others (1999 SCMR 382), Mohtarma Benazir Bhutto and another Vs. President of Pakistan and others (PLD 1998 SC 388), Wukala Mahaz Barai Tahafaz Dastoor and another Vs. Federation of Pakistan and others (PLD 1998 SC 1263), Mushtaq Ahmed Mohal and others vs. The Honourable Lahore High Court Lahore and others (1997 SCMR 1043) and Mian Muhammad Nawaz Sharif Vs. President of Pakistan and others (PLD 1993 SC 473).

62. The next contention of Mr. Anwar Mansoor Khan is that in case of conflict between two provisions, the Courts have to harmonize conflicting provisions and declare which one is to be preferred if conflict cannot be resolved. Provision conferring lesser rights must yield in favour of provision conferring higher rights and in support of his such contentions he has relied upon the cases reported as Accountant General Sindh and others Vs. Ahmed Ali U. Qureshi and others (PLD 2008 SC 522), Wukala Mahaz Barai Tahafaz Dastoor and another vs. Federation of Pakistan and others (PLD



1998 SC 1263), Shahid Nabi Malik and another vs. Chief Election Commissioner, Islamabad and 7 others (PLD 1997 SC 32), Mahmood Khan Achakzai and others vs. Federation of Pakistan and others (PLD 1997 SC 426), Al-Jehad Trust and others vs. Federation of Pakistan and others (PLD 1996 SC 324) and Pir Sabir Shah vs. Shad Muhammad Khan Member Provincial Assembly NWFP and another (PLD 1995 SC 66), however, in the cases of Wukala Mahaz Barai Tahafaz Dastoor and another vs. Federation of Pakistan and others (PLD 1998 SC 1263) and Al-Jehad Trust and others vs. Federation of Pakistan and others (PLD 1996 SC 324), it is held that conflict between two provisions/constructions corresponding closely to and giving effect to dominant intent will be preferred to ensure harmonious working.

63. He next contended that Courts can make use of the legislative history for the purpose of construction, interpreting provisions in light of circumstances that produced them. In support of his contention he has relied upon the cases of Messrs Gadoon Textile Mills and 814 others vs. WAPDA and others (1997 SCMR 641) and Miss Benazir Bhutto Vs. Federation of Pakistan and another (PLD 1988 SC 416).

64. Mr. Anwar Mansoor Khan submitted that powers of legislature have been propounded by this Court in various judgments and has relied upon the following judgments:-

- i. Fauji Foundation vs. Shamimur Rehman (PLD 1983 SC 457).
- ii. Independent Newspaper Corporation Vs. Chairman Fourth Wage Board (1993 SCMR 1533).

- iii. Executive District Officer (Revenue) Vs. Ijaz Hussain (2012 PLC (C.S) 917).
- iv. Lila Dhar Vs. State of Rajasthan & others (AIR 1981 SC 1777).
- v. Dr. Mobashir Hassan and others Vs. Federation of Pakistan (PLD 2010 SC 265).
- vi. Elahi Cotton Mills Ltd. & others Vs. Federation of Pakistan and others (PLD 1997 SC 582).
- vii. Mahmood Khan Achakzai & others Vs. Federation of Pakistan and others (PLD 1997 SC 426).
- viii. The Punjab Province Vs. Malik Khizar Hayat Khan Tiwana (PLD 1956 FC 200).
- ix. Haider Automobile Ltd. Vs. Pakistan (PLD 1969 SC 623).
- x. Mehr Zulfiqar Ali Babu and others Vs. Government of Punjab and others (PLD 1997 SC 11).
- xi. The State Vs. Zia-ur-Rehman and others (PLD 1973 SC 49).
- xii. Mamukanjan Cotton Factory Vs. The Punjab Province and others (PLD 1975 SC 50).

65. Mr. Mehmood Ahmed Sheikh, learned AOR, representing the respondent No.6 has adopted the arguments of Dr. Farogh Naseem. Mr. Abul Hassan learned ASC, representing respondent No.8 has adopted the arguments of Mr. M.M. Aqil Awan.

66. Mehmood Akhter Naqvi, Applicant in person in C.M.As.No.278-K of 2013, 86-K of 2013, 255-K of 2013 and 275-K of 2013, has submitted that the impugned instruments have been introduced to give favours to the blue-eyed of the politicians. He submitted that this Court

in the case of Muhammad Nadeem Arif vs. Inspector General of Police, Punjab, Lahore (2010 PLC (CS) 924 Relevant (934)), has held that out of turn promotion is violative of Article 9 of the Constitution and has also declared it as un-Islamic. According to him, after the judgment of this Court, holding out of turn promotions violative of Article 9 and 2-A of the Constitution, the Provincial Assembly cannot legislate a law empowering Chief Minister to grant out of turn promotions. He submitted that the Chief Minister Sindh, on the strength of the impugned legislation, has absorbed employees (non-civil servants). According to him, the manner in which the blue-eyed employees were extended favours through these impugned instruments is unprecedented which has direct bearing on the valuable rights of the civil servants of the Sindh Government which run in hundreds of thousands. According to him, the impugned instruments should be declared void and ultra vires of the Constitution.

67. Inspector Sarwar Khan has filed C.M.A.No.245 of 2013 and Inspector Baharuddin Babar has filed C.M.A.No.247 of 2013, in which they state that seven DSPs were appointed directly by the Chief Minister without following the procedure provided in the recruitment rules in the recent past. According to them, one Waseem Khawaja, who has been appointed DSP, was ordered to be repatriated to Excise Department by this Court and after his repatriation, under the garb of the impugned legislation, Waseem Khawaja was directly appointed as DSP. He further submitted that the two persons namely Rizwan Soomro and Riaz Soomro, brothers of the then Law Minister of Sindh, were initially brought on deputation in Sindh Police and appointed and absorbed as D.S.Ps in police, whereafter they were given

backdated seniority of the previous departments and were also granted out of turn promotions under the impugned legislation. Like-wise many other persons/employees who were closely related and /or friends of the Members of Sindh Provincial Assembly were extended favours by transferring them on deputation and absorbing them in the Sindh Government with accelerated promotions with backdated seniority in colourable exercise of powers conferred under the impugned legislation.

68. During the hearing of the matter, Constitution Petition No.21 of 2013 was filed by Choudhry Afrasayab in which vires of all the impugned legislations were challenged. We had issued notice to the Advocate General for today. Ch. Afrasiab Khan, learned ASC, while adopting the arguments of Mr. M.M. Aqil Awan has submitted that in the case of Elahi Cotton Mills, this Court has declined to strike down the legislative instrument observing at pages 655- 679 that the issue involved has direct bearing on the economy of the country and, therefore, the legislative instruments were not being interfered with. He submitted that the case in hand stands on different footing and the principle laid down in the said case would not be extended to cover the present proceedings. He submitted that all the instruments challenged in these proceedings are liable to be struck down being violative of Articles 4, 8, 9, 25, 240 and 242 of the Constitution.

69. On the other hand, Mr. Sarwar Khan, learned Additional Advocate General submits that the Advocate General Sindh has already filed written synopsis by way of C.M.A.No.280/2013 and has adopted his earlier arguments made in addition to the written synopsis.

70. Additionally there are number of applications sent by the different civil servants/police officers, challenging the actions of the Executive/Government claiming that they were directly affected by impugned instruments. Maqsood Ahmed D.S.P in his CMA No.42-K of 2012 states that he is in the police service since 1973 and was promoted as Sub Inspector on 01.04.1980 and Inspector on 25.03.1990 and DSP in March 1998. He in his application claims that his juniors were promoted to the Rank of SSP on account of out of turn promotions. He claims that under Rule 8-B out of turn promotion can only be given one time in the entire service, but many police officers were granted four times out of turn promotions in violation of the Rule 8-B. Even otherwise, accelerated promotion negates Articles 4, 9, 18 and 25 of the Constitution which guarantee equal protection to every citizen. He further claims that many employees who came on deputation, in deviation of the law were absorbed in Police Department and granted out of turn promotions with backdated seniority. According to him this act of the Government has affected the working of the police. He has further stated in his application that out of turn promotions in public Department generates frustration amongst the ranks of the police. Along with his application, he has annexed different orders of the Sindh Government by which the out of turn promotions were granted to different police officers/civil servants. We have had the occasion to see the copy of one of the Summary, which he has filed along with the application. It mentions a request from one Dost Ali Baloch for grant of Selection Grade promotion from BS-18 to BS-19 in Sindh Police. In order to show the working of the Sindh Government, we were provided copy of summary of Dosti Ali Baloach which is placed/pasted here-under:-

~~ANNEX-D~~ Annexer G-1  
GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT

59 59 50

## SUMMARY FOR THE CHIEF MINISTER

**SUBJECT:- REQUEST OF MR. DOST ALI BALOCH FOR GRANT OF SELECTION GRADE PROMOTION FROM BS-18 TO BS-19 IN SINDH POLICE**

The Chief Minister's Secretariat has forwarded an application of Mr. Dost Ali Baloch, Superintendent of Police (BS-18), Sindh Police, regarding his request for grant of selection grade promotion to BS-19, on account of his meritorious services / gallantry acts relating to recovery of kidnappers like Asim Samdani and Barrister Shakir Latif, containing the following minutes of the Chief Minister (Annex-I):

"Put up Summary within seven days"

2. It is stated that Mr. Dost Ali Baloch has addressed his application to the Chief Minister Sindh. The comments from Provincial Police Officer, Sindh, are necessary in this case, since the basic issue to be determined is verification of outstanding gallantry, beyond the call of duty. PPO Sindh, has been requested to furnish his comments and specific recommendations for further processing of the case (Annex-II). On receipt of such comments / recommendations, the case shall be submitted to the Chief Minister with appropriate recommendations in due course of time.

3. Submitted for information of the Chief Minister, Sindh.

(MUHAMMAD HASHIM LEGHARI)  
SECRETARY (SERVICES)

CHIEF SECRETARY

CHIEF MINISTER

15/3/03  
16.3.04  
Performance known personally  
BS(19) allowed, under section 9A  
of the Sindh Civil Servants Act 1973  
1.1.12

71. The applicant has also mentioned 15 police officers, who were absorbed in police service from different autonomous bodies/organizations and Departments challenging their absorption/appointments, *inter alia*, on the ground that they were absorbed in the Sindh Government for political considerations and are now holding key positions in Sindh Police after

getting out of turn promotions and backdated seniority. Amongst the officers, he mentioned the name of Dost Ali Baloch, who was from the Intelligence Bureau and came on deputation in 1994, permanently absorbed in Sindh Police in 1998 and was given backdated seniority and presently he is in Grade-20. The Sindh Government in its comments has stated that in 1994, Dost Ali Baloach was transferred on deputation in Sindh Police. In the year 1995 he was promoted as Deputy Director (BS-18). He was absorbed in Sindh Police as SP on 14.10.1998. He was allowed backdated seniority w.e.f. 26.09.1995. In the year 2011, he was unprecedently promoted to BS-20 by the Sindh Government after his encadrement in Police Service of Pakistan in the Federal Government. He was appointed as Consultant or Director (Finance) and posted in the rank of DIGP. The Sindh Government has wilfully concealed in their comments, the out of turn promotion of Dost Ali Baloach from BS-18 to BS-19. What really has disturbed us is that in order to promote an officer from B.S-19 to B.S-20, the law requires the officer to serve in the department for a certain term but in his case, this restriction has been done away. Additionally after B.S-19, Dost Ali Baloach could only have been promoted to B.S-20 by a Board constituted by the Federal Government and the Sindh Government had no business to promote him. We, however, refrain from commenting upon the working of Sindh Government. There may be many more cases of such like favours.

72. The applicant Maqsood Ahmed has further placed before us the material pertaining to service record of Mohammad Malik, Director in the FIA, who was deputed in Sindh Government in 2007 and promoted as SSP. According to him, Mohammad Malik was absorbed in Sindh Government in

BS-19 and was given backdated seniority w.e.f 11.09.2006 and thereafter was promoted to BS-20 along with Dost Ali Baloch on 28.09.2011. In his case, the Sindh Government in its para-wise comments has stated that this officer was transferred on deputation in 2007. He was absorbed as SSP (BS-19) on 31.10.2007. He was assigned seniority w.e.f 11.09.2006 and was promoted as Director General (BS-20). At present he is working as DIGP w.e.f 01.10.2011. His case is identical to the one which we have already taken note of in the earlier para. The Government of Sindh in their comments has not stated a single word as to whether both of these officers after their absorption in Sindh Police were sent for police training as provided under recruitment rules. We believe that without such training in Police Academy, a police officer cannot put on uniform.

73. The applicant D.S.P Maqsood further mentioned in his application that Mohammad Riaz Soomro, who came on deputation from ANF and in February 2008 was absorbed and appointed in BS-17 as DSP. Thereafter he was assigned backdated seniority in the rank of D.S.P w.e.f 24.08.1989 and was promoted as S.P and is serving in O.P.S as SSP Mirpurkhas. The Sindh Government in their comments has stated that the officer was permanently absorbed on 26.02.2008 and his seniority was fixed under the orders dated 20.05.2008 of the Sindh High Court passed in C.P.No.D-456/2008 w.e.f 24.08.1989. On 23.07.2008 Riaz Soomro, on the recommendations of Departmental Selection Board was promoted as SP in BS-18. On 23.11.2010 he was promoted to BS-19 against future vacancy. The comments of Sindh Government reflect how favours were extended to him. The comments do not show that the Sindh High Court decided his case



on merits nor it mention that the out of turn promotion was granted to him on recommendations of the Committee notified under Rule 8-B.

74. Mohammad Rizwan Soomro, the other brother of former Law Minister Sindh, was on deputation, absorbed with backdated seniority and then granted out of turn promotion. The High Court did not pass orders on merits nor his case of promotion was recommended by the Committee under Rule 8-B.

75. The applicant mentions the case of Mohammad Ali Baloch, brother of Dost Ali Baloch, who was an Assistant Director Computer in the I.T. Department. His services were regularized in regular police and he was appointed as DSP by way of transfer with all backdated service benefits since 2003. In 2007 he was promoted to the rank of S.P (BS-18) against future vacancy and is presently serving as S.P Tando Mohammad Khan. The Sindh Government while justifying his out of turn promotion, has stated in its comments that while posted as Taluka Police officer, Tando Jam, District Hyderabad he displayed matchless gallantry act in busting the network of hardcore terrorists. He conducted raids and arrested five members belonging to the gang of Sindh Liberation Army.

76. Abdul Hadi Bullo an officer of OMG was transferred on deputation in Sindh police in 2003 and was absorbed in Police Department with backdated seniority in BS-18 and was encadred in PSP in 2011. In his case Sindh Government has mentioned that on the recommendations of the Prime Minister of Pakistan, he was transfer and appointed in Police Department on Shaheed Quota against the *Shahadat* of his brother Abdul

Aziz Bullo PSP/DIGP on 23.6.2003. Thereafter on 19.12.2007, he was assigned backdated seniority in BS-18 w.e.f. 23.02.1998. He was encadred in police service of Pakistan on 25.10.2011 and is presently posted as SSP/Principal PTC Shahdadpur.

77. Shahid Hussain Mahessar, who came on deputation from I.B in 2009. In 2011 though he was repatriated under the orders of the Court to I.B. In his case the Sindh Government has furnished comments stating therein that in the year 2009 his services were placed at the disposal of Sindh Government and he was posted as ADIGP/Special Branch Sindh, Karachi. He was recommended for absorption by Addl. AIG/ Special Branch Sindh. In the year 2011 vide Notification dated 04.01.2011 his deputation was cancelled/withdrawn. He filed a Constitutional Petition in the High Court of Sindh and obtained status quo order. Thereafter the said officer was appointed and transferred as SP (BS-18) in Sindh Police on 11.10.2011. There is no mention as to how he was granted BS-18.

78. Zameer Ahmed Abbasi Assistant Director NAB came on deputation in police Department in 2008. He was sent on training and after completion of training he was posted as SPO/Darakshan Clifton, Karachi in 2010. In his case Sindh Government has stated that his services were placed at the disposal of Sindh Police on deputation in the year 2008. After training he was assigned regular posting as DSP in Sindh Police. In the year 2010 his deputation was cancelled/withdrawn. He filed Constitutional Petition in Sindh High Court and in the said petition his order of repatriation was suspended. Recently Sindh High Court has ordered to issue a formal Notification of his absorption extending him benefit of the impugned

legislation. Vide letter dated 21.11.2011, his matter is referred to the Secretary Services Government of Sindh for filing leave to appeal against the judgment of the Sindh High Court. The issue of his absorption was not decided on merits by the High Court, nor order of this Court for his repatriation to the parent department was challenged.

79. Shiraz Asghar Shaikh came from PEMRA in Sindh Police on deputation in the year 2008 on the desire of Chief Minister Sindh. He was appointed as DSP. However, in the year 2011 he was recommended for absorption in police Department. In his case, the Sindh Government in its comments has stated that at the desire of Chief Minister his services were placed at the disposal of Sindh Government in 2008 for a period of three years. Thereafter he was posted in Sindh Police. His case was placed before a Committee for absorption in Sindh Police. His Notification of absorption was cancelled/withdrawn. However, he filed Constitutional petition before Sindh High Court wherein his order of repatriation was suspended and he was allowed to continue in Sindh Police till further orders. The Sindh High Court ordered for issuance of his formal Notification of absorption. The Home Department has absorbed him on 11.06.2012 in pursuance of the Court's order extending him the benefit of the impugned legislation without examining the effect of orders of this Court for his repatriation to the parent department.

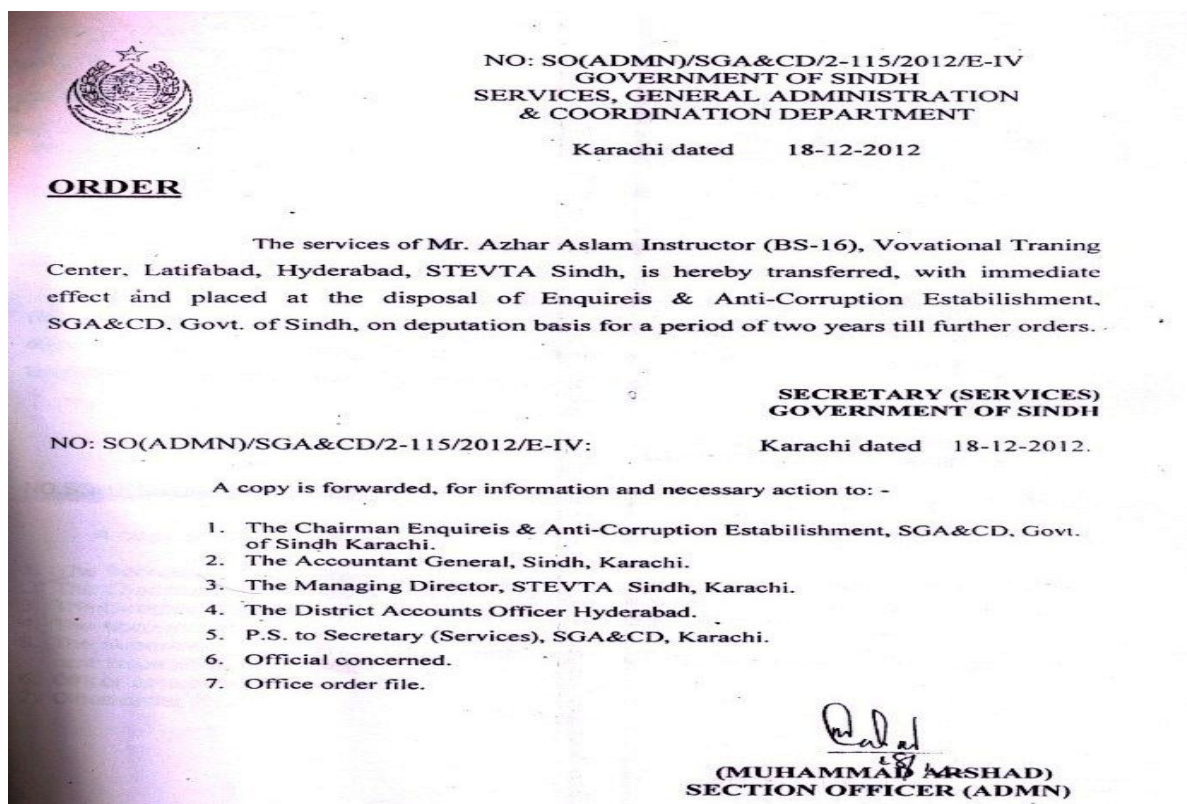
80. One Mohammad Yaqub Almani filed an application wherein he has stated that initially he was appointed as DSP in 1991 in Sindh Police. In 1997 he was promoted as S.P. He further submitted that on 02.05.2012 this Court ordered for repatriation of all the deputationists to their parent

departments. The Sindh Government, however, was allowed to retain eight officers on deputation till the completion of projects, on which the deputationists were working. The Sindh Government from time to time extended the period of deputation of some of the officers. The Sindh Government sought services of Abdul Wahab Shaikh Director Intelligence Bureau (BS-19) and posted him in Sindh Police on deputation. He therefore, prayed for repatriation of Abdul Wahab Shaikh to his parent department.

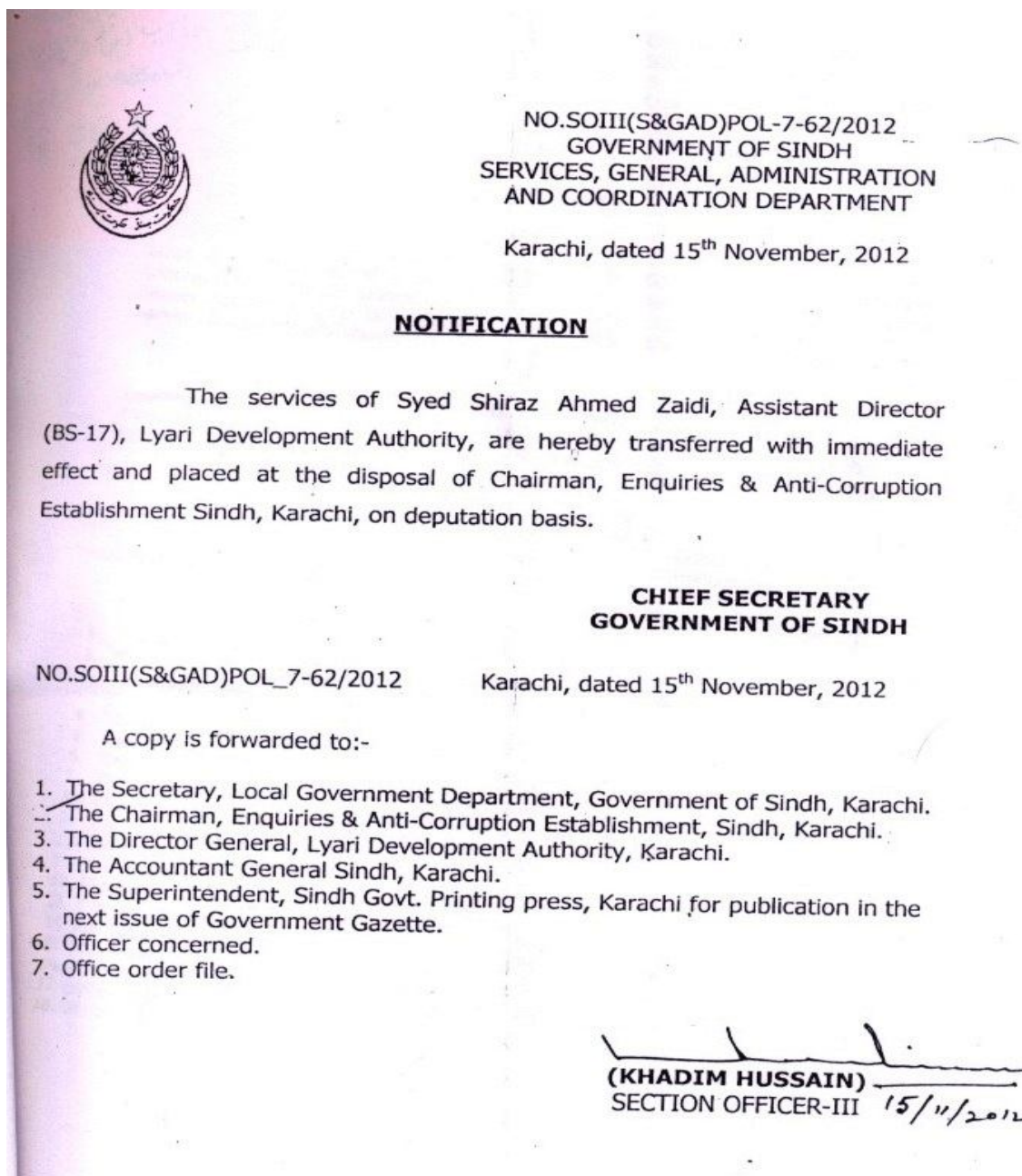
81. One Syed Mehboob Ali Shah Deputy Director (MI&E) Criminal Prosecution has also filed an application under Order XXXIII Rule 6 of the Supreme Court Rules 1980, wherein it is mentioned that 150 prosecutors were posted by judgment dated 01.04.2009 of the High Court and leave sought by Province of Sindh was refused. However, it is stated that high ups in Law Department were not providing facilities to them and instead creating hindrances in their work. He pleaded that on 02.05.2012 in the instant matter this Court ordered for repatriation of the deputationist but the high-ups in the Law Department did not comply with the orders which amounts to contempt of the authority of this Court. It is further pleaded that Prosecution/Law Department is being run by deputationists, employees on detailment and non-cadre officers, who do not have matching qualifications. It is further claimed that postings of Mr. Ahmed Nawaz Jagirani Special Secretary (BS-20) and Dr. Sarwat Faheem Director Monitoring, Implementation and Evaluation (BS-19) in Criminal Prosecution Service is in defiance of the order dated 03.09.2012 passed by this Court. It is further pleaded that Dr. Sarwat Faheem Director Monitoring, Implementation and Evaluation is still holding the post and was relieved only on papers. It is

further alleged that extension of Prosecutor General Sindh Criminal Prosecution Service for further three years is also against the judgment of this Court passed on 10.03.2011 in the case of Shahid Orakzai and Ch. Nisar Ali Khan. Lastly he prayed for impleading him as party to the present proceedings. We have noticed that in the lists mentioning the names of the 'deputationists' provided by the Secretary Services, did not contain name of any deputationist from the Law Department or Prosecution Branch for which Secretary Law and Secretary Prosecution (Wing) are responsible who wilfully have withheld list of the deputationists working in their Departments with the object to extend favour to them.

82. One Azhar Aslam, who was Instructor in BS-16 Vocational Training Center, Latifabad, Hyderabad, STEVTA Sindh was transferred and his services were placed at the disposal of Enquiries and Anti Corruption Establishment, SGA&CD, Government of Sindh on deputation basis for a period of two years on 18.12.2012. The order is reproduced herein-under:-




83. One Shiraz Ahmed Zaidi, Assistant Director (BS-17) Lyari Development Authority, was transferred and his services were placed at the disposal of Chairman, Enquiries & Anti-Corruption Establishment Sindh, on deputation basis on 15.11.2012. The order is reproduced herein under:-



84. One Fakhruddin Ahmed Babar Abro brother of former MPA, who was initially in the Board of Education was absorbed and appointed as Deputy Director Anti Corruption on 26.11.2012. The Notification is reproduced herein under:-



0-2012 00:02 FROM SINDH ASSEMBLY TO 0749410530



NO.SOIII(S&GAD)5-49/2012(CMD)  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 26<sup>th</sup> November, 2012

**NOTIFICATION**

This Department's Notification No.SOIII(S&GAD)POL-6-I/2012(T&P) dated 11.10.2012, regarding posting of Mr. Abdul Jabbar Dayo, an officer of School Administration (BS-18) District Officer (Secondary & Higher Secondary), Karachi as Deputy Director (H.Q-II), Directorate of Anti-Corruption Establishment, Sindh, Karachi, is hereby cancelled / withdrawn.

**II**


Mr. Fakhruddin Ahmed Babar Abro, Deputy Director (Executive) (BS-18), awaiting posting, is posted with immediate effect and until further orders as Deputy Director (Headquarter-II), Directorate of Anti-Corruption Establishment, Sindh, Karachi, against an existing vacancy.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)5-49/2012(CMD) Karachi, dated 26<sup>th</sup> November, 2012

A copy is forwarded to:-

1. The Additional Chief Secretaries (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Principal Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / IE&I Team.
10. The Military Secretary to Governor Sindh, Karachi
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Director Press, Information Department, for publication in the newspapers.
14. The Superintendent, Sindh Govt. Printing press, Karachi.
15. The Private Secretary to the Chief Secretary, Sindh, Karachi.
16. The Private Secretary to the Minister for E&ACE.
17. Officers concerned.
18. Office order file.

  
(KHADIM HUSSAIN)  
SECTION OFFICER-III  
26/11/2012

85. An application of Attaullah son of Khuda Bux Phulpoto, brother of Saifullah Phulpoto of Khairpur addressed to the Chief Minister Sindh with a request for absorption/appointment of his brother by transfer as Inspector Anti-Corruption Establishment Sindh of Saifuallah Phulpoto, is reproduced herein below:-





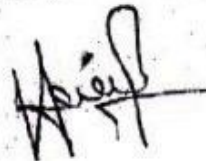
3. During his posting as a Circle Officer Anti-Corruption Establishment the finalized a number of High profile and sensitive enquires as well as Cases/ Investigations in which he unearthed Cases of Misappropriation.

4. At present some posts of Inspectors in Anti-Corruption Establishment Department are vacant. He possesses the prescribed qualification and fulfills the conditions for absorption/appointment by transfer as per requirement of the Sindh Civil Servants (ART Rules).

5. Keeping in view the valuable service rendered by Mr. Saifullah Phulpoto to this Establishment and an uninterrupted service experience in BPS-16, it would be feasible to utilized the services of Mr. Saifullah Phulpoto by appointing him in Anti-Corruption Department as Inspector BPS-16.

6. It is therefore, requested that a summary/note for Chief Secretary may please be ordered to consider his request for absorption/by way of transfer. There will be no financial implication involved in this proposal. This will encourage him to work hard in the best of interest of Government work. The Department will greatly benefit from his valuable services.

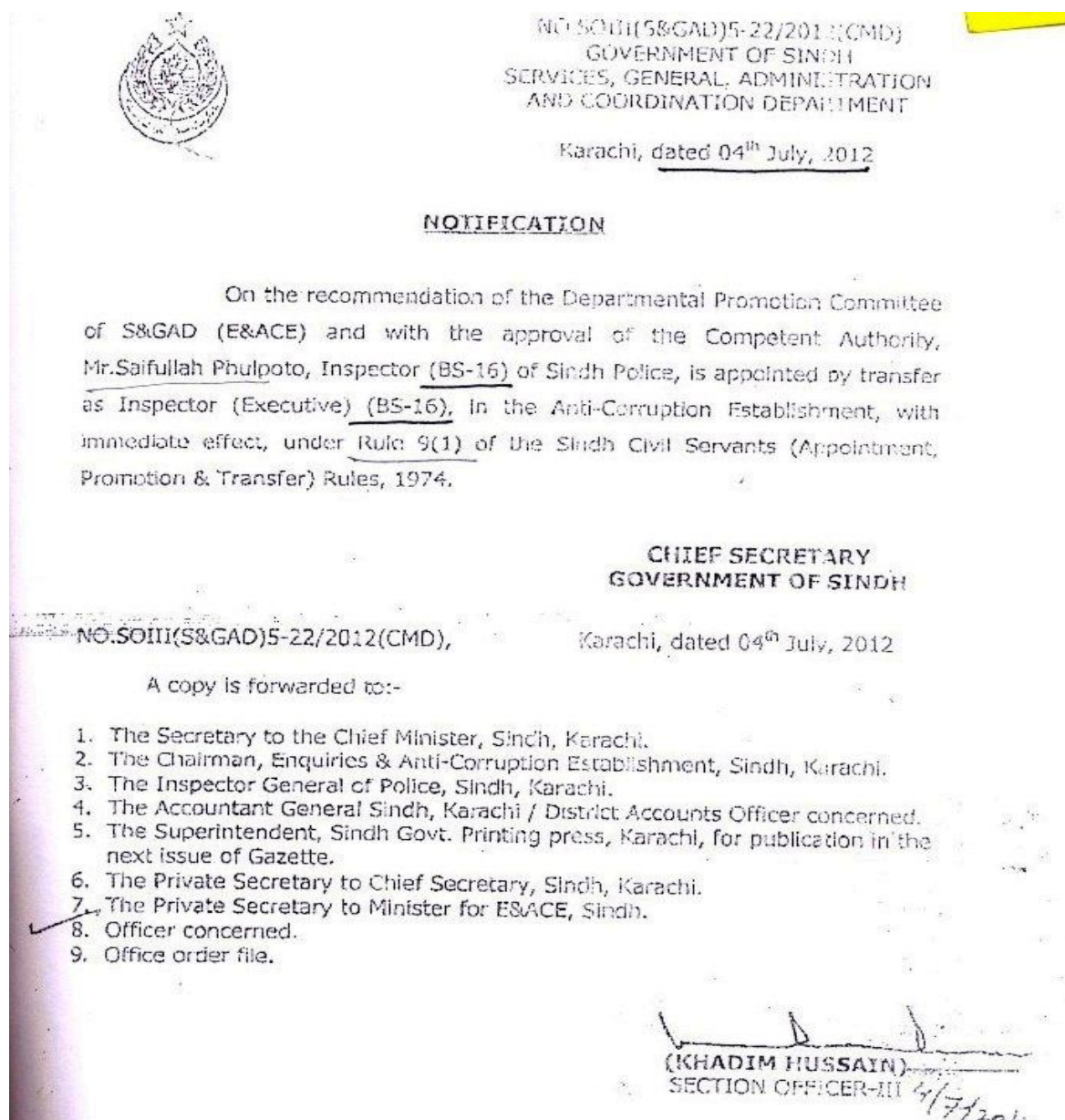
Yours Faithfully



Attaullah S/O Khuda Bux Phulpoto  
Brother of Saifullah Phulpoto  
R/O Near Session Court Khairpur

The Chief Minister marked the aforesaid application to the C.S with a note to examine and put up.

86. Saifullah Phulpoto pursuant to the application of his brother was appointed and transferred as Inspector in Anti-Corruption Establishment Sindh on 04<sup>th</sup> July 2012. For appointment as Inspector in ACE, a candidate must have a Masters Degree in IInd Division, a Law Degree and 2 years experience under the rules. The Chief Minister Sindh overlooked the mandatory qualifications and appointed him as Inspector by issuing following Notification:-



87. Mr. Saifullah Phulpoto was again promoted as an Assistant Director in Anti-Corruption Establishment on 20.09.2012 bypassing the mandatory requirement of 5 years experience for promotion from Inspector



to Assistant Director. The Notification of 20<sup>th</sup> September 2012 issued by the Sindh Government is reproduced herein below:-



NO.SOIII(S&GAD)5-22/2012  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 20<sup>th</sup> September, 2012

**NOTIFICATION**

On the recommendation of the Departmental Promotion Committee (E&ACE) S&GAD, and with the approval of the Competent Authority / Chief Minister Sindh, Mr. Saifullah Phulpto, Inspector (Executive) (BS-16), Anti-Corruption Establishment, is hereby promoted to the rank of Assistant Director (Executive) (BS-17), Anti-Corruption Establishment, on regular basis, with immediate effect.

CHIEF SECRETARY  
GOVERNMENT OF SINDH

NO.SOIII(S&GAD)5-22/2012,

Karachi, dated 20<sup>th</sup> September, 2012

A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(Including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / IE&I Team.
10. The Military Secretary to Governor Sindh, Karachi
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Superintendent, Sindh Govt. Printing press, Karachi.
14. The Private Secretary to the Chief Secretary, Sindh, Karachi.
15. The Private Secretary to the Minister for E&ACE.
16. Officer concerned.
17. Office order file.

(KHAQIM HUSSAIN)  
SECTION OFFICER-III

20/9

88. Saifullah Phulpoto was again promoted as Deputy Director Anti-Corruption on 19.03.2013 without completion of five years in B.S-17. The Notification of 19<sup>th</sup> March 2013 is reproduced herein below:-



NO.SOIII(S&GAD)5-22/2012  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 19<sup>th</sup> March, 2013

**NOTIFICATION**

On the recommendation of the Departmental Promotion Committee (E&ACE) S&GAD, and with the approval of the Competent Authority / Chief Minister Sindh, Mr. Saifullah Phulpoto, Assistant Director (Executive) (BS-17), Anti-Corruption Establishment, is hereby promoted to the rank of Deputy Director (Executive) (BS-18), Anti-Corruption Establishment, on regular basis, against future vacancy.

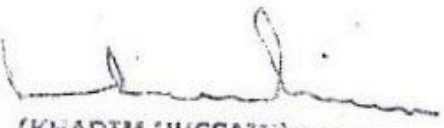
**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)5-22/2012,

Karachi, dated 19<sup>th</sup> March, 2013


A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / IE&I Team.
10. The Military Secretary to Governor Sindh, Karachi
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Superintendent, Sindh Govt. Printing press, Karachi.
14. The Private Secretary to the Chief Secretary, Sindh, Karachi.
15. The Private Secretary to the Minister for E&ACE.
16. Officer concerned.
17. Office order file.

  
(KHADIM HUSSAIN)  
SECTION OFFICER-III 19/3/24



89. One Nisar Ahmed Brohi was initially appointed as an ASI. He came on deputation in Anti-Corruption police and was granted out of turn promotion as DSP in 2011. He was absorbed in Anti-Corruption Establishment on 13.12.2011 and on 22.10.2012 he was appointed as S.P/Deputy Director. Nisar Brohi became S.P within one year after his absorption as Inspector. The relevant Notification of 22<sup>nd</sup> October 2012 is reproduced herein under:-



NO.SOIII(S&GAD)5-11/2010  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT  
Karachi, dated 22<sup>nd</sup> October, 2012

**NOTIFICATION**

On the recommendation of the Departmental Promotion Committee (E&ACE) S&GAD, and with the approval of the Competent Authority / Chief Minister Sindh, Mr. Nisar Ahmed Brohi, Assistant Director (Executive) (BS-17), Anti-Corruption Establishment, is hereby promoted to the rank of Deputy Director (H.Q-II) / (Executive) (BS-18), Anti-Corruption Establishment, on regular basis, with immediate effect.

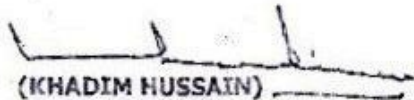
**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

Karachi, dated 22<sup>nd</sup> October, 2012

NO.SOIII(S&GAD)5-11/2010,

A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / IE&I Team.
10. The Military Secretary to Governor Sindh, Karachi
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Superintendent, Sindh Govt. Printing press, Karachi.
14. The Private Secretary to the Chief Secretary, Sindh, Karachi.
15. The Private Secretary to the Minister for E&ACE.
16. Officer concerned.
17. Office order file.

  
(KHADIM HUSSAIN)  
SECTION OFFICER-III 22/10/2012

90. One Dhani Bux was Motor Vehicle Inspector. He came on deputation to Anti Corruption Establishment in 2008 and was absorbed. On 27.04.2012 he was promoted as DSP and presently he is working as PSO. His case is processed for appointment as S.P in Anti-Corruption. Notification of 27<sup>th</sup> March 2008 is reproduced herein under:-

NO.SOIII(S&GAD)13-48/2008  
GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT

Karachi, dated 27<sup>th</sup> March, 2008

NOTIFICATION

On the recommendations of Departmental Promotion Committee of S&GAD (E&ACE) and with the approval of the Competent Authority, Mr. Dhani Bux Suhag, Motor Vehicle Inspector (BS-16), is appointed by transfer as Inspector (BS-16), in the Anti-Corruption Establishment, Sindh, in terms of Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974.

CHIEF SECRETARY  
GOVERNMENT OF SINDH

No.SOIII(S&GAD)13-48/2008,

Karachi dated 27<sup>th</sup> March, 2008

A copy is forwarded to:-


1. The Secretary, Home Department, Government of Sindh, Karachi.
2. The Provincial Police Officer, Sindh.
- ✓ 3. The Chairman, Enquiries & Anti-Corruption Establishment, Sindh, Karachi.
4. The Accountant General, Sindh, Karachi.
5. The Publisher, Sindh Government Gazette for publication of the next issue of Government gazette.
6. Officer concerned.
7. Office order file.

(RIAZ HUSSAIN SAHTO)  
SECTION OFFICER-III



91. One Kamran Ali Baloch Inspector in BS-16 in Police was inducted in Anti-Corruption Establishment and absorbed therein. The order dated 8<sup>th</sup> October 2012 is reproduced herein under:-

FROM : SECRETARY (I&C) SGA&AD FAX NO. : 0092219211327 Dec. 05 2011 01:24PM P4

 GOVERNMENT OF SINDH  
ENQUIRIES & ANTI-CORRUPTION ESTABLISHMENT  
SERVICES GENERAL ADMINISTRATION AND  
COORDINATION DEPARTMENT

**ORDER**


NO.SO (ADMN)/E&ACE/19-454/2010 - On the recommendation of the Departmental Promotion Committee of Enquiries & Anti-Corruption Establishment (SGA&CD), Mr. Kamran Ali Baloch, Inspector (BS-16) of Sindh Police is hereby appointed by way of transfer as Inspector (BS-16) in the Anti-Corruption Establishment, under Rule 9(1) of the Sindh Civil Services (Appointment, Promotion & Transfer) Rules, 1974 with immediate effect.

SYED JAWED ALI SHAH BUKHARI  
QPM,PPM,PSP  
CHAIRMAN

NO. SO(A)/E&ACE/19-545/2010 Karachi, dated the 08<sup>th</sup> October, 2012

A copy forwarded for information and necessary action to:-

1. The Secretary (Services) SGA&CD, Government of Sindh, Karachi.
2. The Inspector General of Police, Sindh, Karachi.
3. The Accountant General, Sindh, Karachi.
4. The Director, A.C.E., Sindh, Karachi.
5. The Deputy Director ACE South Zone, Karachi.
6. The AD (E)/Staff Officer to Chairman, E&ACE, Karachi.
7. The Officer concerned.
8. The Office Order File / Master File.

 (KIRAN SUKHI)  
DEPUTY SECRETARY(ADMN)  
021-99211252

92. One Ghulam Muhammad Zardari was granted out of turn promotion on 07.12.2012 as DSP and his file has also been processed for promotion as S.P. The Notification dated 7<sup>th</sup> December 2012 is reproduced herein below:-



GOVERNMENT OF SINDH  
HOME DEPARTMENT

## NOTIFICATION

No. POL-HD/4-28/2012:- With the approval of competent authority (Chief Minister Sindh), Mr. Ghulam Muhammad Zardari, Inspector (BS-16) is hereby promoted as Deputy Superintendent of Police (BS-17), under Section 9-A of the Sindh Civil Servants Act, 1973 with immediate effect.

ADDITIONAL CHIEF SECRETARY  
HOME DEPARTMENT

No. POL-HD/4-28/2012

Karachi dated the 07<sup>th</sup> December, 2012

A copy is forwarded to:-

- 1) The Additional Chief Secretary (All), Government of Sindh, Karachi.
- 2) The Senior Member, Board of Revenue, Sindh, Karachi.
- 3) The Administrative Secretaries (all) Government of Sindh.  
(Including Members Board of Revenue, Sindh)
- 4) The Accountant General Sindh, Karachi.
- 5) The Principal Secretary to Governor, Sindh, Karachi.
- 6) The Principal Secretary to Chief Minister, Sindh, Karachi.
- 7) The Advocate General, Sindh, Karachi.
- 8) The Secretary Provincial Ombudsman (Mohtasib), Sectt: Sindh.
- 9) Inspector General of Police, Sindh, Karachi with reference to Police Department's Summary No. 5754/E-I/2009 dated 13.05.2009.
- 10) The Chairman, E&ACE / IE&T Team.
- 11) The Military Secretary to Governor, Sindh, Karachi.
- 12) The Registrar, High Court of Sindh, Karachi.
- 13) The Addl / Dy. Secretaries (all) in SGA&CD.
- 14) The Director Press, Information Department, for publication in the newspapers.
- 15) The Superintendent, Sindh Govt. Printing Press, Karachi.
- 16) The Private Secretary to Chief Secretary, Sindh, Karachi.
- 17) The Private Secretary to Additional Chief Secretary, Home Department.
- 18) Officer concerned.
- 19) Office Order file.

*7-12-12*  
(ABDUL RASHEED JOKHIO)  
SECTION OFFICER (POLICE-I)  
PH # 021-99211343



93. One Mohammad Ali Shah an officer of Ex-PCS (BS-17) Assistant Commissioner (Revenue) came on deputation on 3<sup>rd</sup> December 2012 in Anti Corruption Establishment and presently he is working as DSP in Anti Corruption Establishment. Notification dated 3<sup>rd</sup> December 2012 is reproduced herein under:-



NO.SOIII(S&GAD)POL-7-67/2012  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 03<sup>rd</sup> December, 2012

**NOTIFICATION**

The services of Syed Muhammad Ali Shah, an officer of Ex-PCS (BS-17), Assistant Commissioner (Revenue), District South, Karachi, are hereby transferred with immediate effect and placed at the disposal of the Enquiries & Anti-Corruption Establishment, Sindh, on deputation basis.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)POL-7-67/2012

Karachi, dated 03<sup>rd</sup> December, 2012

A copy is forwarded to:-

1. The Additional Chief Secretaries (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Principal Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / IE&I Team.
10. The Military Secretary to Governor Sindh, Karachi
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Director Press, Information Department, for publication in the newspapers.
14. The Superintendent, Sindh Govt. Printing press, Karachi.
15. The Private Secretary to the Chief Secretary, Sindh, Karachi.
16. The Private Secretary to the Minister for E&ACE.
17. Officer concerned.
18. Office order file.

  
(KHADIM HUSSAIN)  
SECTION OFFICER-III 30/12/2012

94. One Ali Muzaffar Baloch, who was ASI, was granted out of turn promotion and was promoted as DSP. He came on deputation on 17.08.2012 in the Anti Corruption Establishment and was absorbed. On 27<sup>th</sup> November 2012 he was promoted as Deputy Director/S.P. Notification dated 27<sup>th</sup> November 2012 is reproduced herein under:-

FROM : SECRETARY (I&C) S&GAD FAX NO. : 0000219211327 Dec. 05 2011 02:20PM P1

NO.SOIII(S&GAD)13-124/2012  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT  
Karachi, dated 27<sup>th</sup> November, 2012

**NOTIFICATION**

On the recommendation of the Departmental Promotion Committee (E&ACE) S&GAD, and with the approval of the Competent Authority / Chief Minister Sindh, Mr. Ali Muzaffar Baloch, Assistant Director (Executive) (BS-17), Anti-Corruption Establishment, is hereby promoted to the rank of Deputy Director (Executive) (BS-18), Anti-Corruption Establishment, on regular basis, with immediate effect.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**  
NO.SOIII(S&GAD)13-124/2012, Karachi, dated 27<sup>th</sup> November, 2012

A copy is forwarded to:-


1. The Additional Chief Secretary (AI), Government of Sindh, Karachi.
2. The Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh, (including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Secretary to the Chief Minister, Sindh, Karachi.
7. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
8. The Inspector General of Police, Sindh, Karachi.
9. The Chairman, E&ACE / (E&I) Team.
10. The Military Secretary to Governor Sindh, Karachi.
11. The Registrar, High Court of Sindh, Karachi.
12. The Addl / Dy. Secretaries (all) in SGA&CD.
13. The Superintendent, Sindh Govt. Printing press, Karachi.
14. The Private Secretary to the Chief Secretary, Sindh, Karachi.
15. The Private Secretary to the Minister for E&ACE.
16. Officer concerned.
17. Office order file.

(KHADIM HUSSAIN)  
SECTION OFFICER-III 27/11/2012



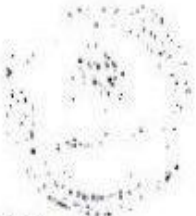
95. One Zahid Hussain Shah Bukhari Inspector was appointed by way of transfer as Inspector in the Anti-Corruption Establishment by the Chairman on 15<sup>th</sup> November 2012. Notification dated 15<sup>th</sup> November 2012 is reproduced herein under:-

SECRETARY (I&C) SGA&CD FAX NO. : 0092219211327 Dec. 05 2011 02:21PM P2

 GOVERNMENT OF SINDH  
ENQUIRIES & ANTI-CORRUPTION ESTABLISHMENT  
SERVICES GENERAL ADMINISTRATION AND  
COORDINATION DEPARTMENT

**ORDER**


NO.SO (ADMN)/E&ACE/19-648/2010 - On the recommendation of the Departmental Promotion Committee of Enquiries & Anti-Corruption Establishment (SGA&CD), Mr. Zahid Hussain Shah Bukhari, Inspector (BS-16) of Sindh Police is hereby appointed by way of transfer as Inspector (BS-16) in the Anti-Corruption Establishment, under Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 with immediate effect.

 SYED JAWED ALI SHAH BUKHARI  
QPM,PPM,PSP  
CHAIRMAN

NO. SO(A)/E&ACE/19-648/2010 Karachi, dated the 15th November, 2012

A copy forwarded for information and necessary action to:-

1. The Secretary (Services) SGA&CD, Government of Sindh, Karachi.
2. The Inspector General of Police, Sindh, Karachi.
3. The Accountant General, Sindh, Karachi.
4. The Director, ACE, Sindh, Karachi.
5. The Deputy Director ACE First Zone, Karachi.
6. The AD (E)/Staff Officer to Chairman, E&ACE, Karachi.
7. The Officer concerned.
8. The Office Order File / Master File.

 (ABDUL NAJAM GHOURI)  
SECTION OFFICER (ADMN)  
021-99213458

96. One Munir Ahmed Phulpoto DSP was granted out of turn promotion to the rank of S.P on regular basis by the Chief Minister Sindh vide Notification dated 13<sup>th</sup> March 2013. The Notification of 13<sup>th</sup> March 2013 is reproduced herein under:-



NO.SOIII(S&GAD)5-25 /2013  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 13<sup>th</sup> March, 2013

**NOTIFICATION**

With the approval of the Competent Authority (Chief Minister, Sindh), Mr. Munir Ahmed Phulpoto Deputy Superintendent of Police (BS-17), is hereby granted out of turn promotion to the rank of Superintendent of Police (BS-18), on regular basis, with immediate effect.

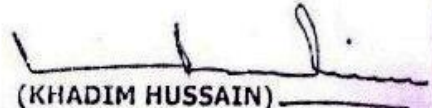
**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)5-25 /2013

Karachi, dated 13<sup>th</sup> March, 2013

A copy is forwarded to:-

1. The Additional Chief Secretary (Ali), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.
4. (including Members Board of Revenue, Sindh).
5. The Accountant General Sindh, Karachi.
6. The Principal Secretary to Governor, Sindh, Karachi.
7. The Principal Secretary to the Chief Minister, Sindh, Karachi.
8. The Advocate General, Sindh, Karachi.
9. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
10. The Inspector General of Police, Sindh, Karachi.
11. The Chairman, E&ACE / IE&I Team.
12. The Military Secretary to Governor Sindh, Karachi
13. The Registrar, High Court of Sindh, Karachi.
14. The Addl / Dy. Secretaries (all) in SGA&CD.
15. The Director Press, Information Department, for publication in the newspapers.
16. The Superintendent, Sindh Govt. Printing press, Karachi.
17. The Private Secretary to the Chief Secretary, Sindh, Karachi.
18. Officer concerned.
19. Office order file.


  
(KHADIM HUSSAIN)  
SECTION OFFICER-III

13/3/2013



97. One Ghulam Shabir Talpur DSP was granted out of turn promotion to the rank of S.P on 13.03.2013. The Notification of 13.03.2013 is reproduced herein under:-

FAS NO. :  
Mar. 15 2013 08:57AM P1



NO.SOIII(S&GAD)5-32/2013(CMD)  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 13<sup>th</sup> March, 2013

**NOTIFICATION**

With the approval of the Competent Authority (Chief Minister, Sindh), Mir Ghulam Shabir Talpur, Deputy Superintendent of Police (BS-17), is hereby granted out of turn promotion to the rank of Superintendent of Police (BS-18), on regular basis, with immediate effect.

NO.SOIII(S&GAD)5-32/2013(CMD)


**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

Karachi, dated 13<sup>th</sup> March, 2013

A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Principal Secretary to the Chief Minister, Sindh, Karachi.
7. The Advocate General, Sindh, Karachi.
8. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
9. The Inspector General of Police, Sindh, Karachi.
10. The Chairman, E&ACE / IE&I Team.
11. The Military Secretary to Governor Sindh, Karachi
12. The Registrar, High Court of Sindh, Karachi.
13. The Addl / Dy. Secretaries (all) in SGA&CD.
14. The Director Press, Information Department, for publication in the newspapers.
15. The Superintendent, Sindh Govt. Printing press, Karachi.
16. The Private Secretary to the Chief Secretary, Sindh, Karachi.
17. Officer concerned.
18. Office order file.

CIVICMS/K-V(16)/2008/3482  
STAT, SINDH

  
(KHADIM HUSSAIN)  
SECTION OFFICER-III 13/3/2013

98. One Mohammad Muzaffar Iqbal DSP was granted out of turn promotion to the rank of SP on 12<sup>th</sup> March 2013. Notification dated 12.03.2013 is reproduced herein below:-



NO.SOIII(S&GAD)POL-6-IV/2013  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 12<sup>th</sup> March, 2013

**NOTIFICATION**

With the approval of the Competent Authority (Chief Minister, Sindh), Mr. Muhammad Muzaffar Iqbal, Deputy Superintendent of Police (BS-17), is hereby granted out of turn promotion to the rank of Superintendent of Police (BS-18), with immediate effect.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)POL-6-IV/2013

Karachi, dated 12<sup>th</sup> March, 2013

A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.  
(including Members Board of Revenue, Sindh).
4. The Accountant General Sindh, Karachi.
5. The Principal Secretary to Governor, Sindh, Karachi.
6. The Principal Secretary to the Chief Minister, Sindh, Karachi.
7. The Advocate General, Sindh, Karachi.
8. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
9. The Inspector General of Police, Sindh, Karachi.
10. The Chairman, E&ACE / IE&I Team.
11. The Military Secretary to Governor Sindh, Karachi
12. The Registrar, High Court of Sindh, Karachi.
13. The Addl / Dy. Secretaries (all) in SGA&CD.
14. The Director Press, Information Department, for publication in the newspapers.
15. The Superintendent, Sindh Govt. Printing press, Karachi.
16. The Private Secretary to the Chief Secretary, Sindh, Karachi.
17. Officer concerned.
18. Office order file.

(KHADIM HUSSAIN)

SECTION OFFICER-III 12/3/2013



99. The Services of Syed Ali Asghar Shah as SP were regularized w.e.f 25.01.2011 vide Notification dated 08.10.2012. The Notification dated 08.10.2012 is reproduced as under:-



NO.SOIII(S&GAD)POL-7-9/2006  
GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION  
AND COORDINATION DEPARTMENT

Karachi, dated 08<sup>th</sup> October, 2012

**NOTIFICATION**

The Chief Minister Sindh / Competent Authority has been pleased to regularize the services of Syed Ali Asghar Shah as Superintendent of Police (BS-18) with effect from 25.01.2011, under Section-24 of the Sindh Civil Servants Act, 1973.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOIII(S&GAD)POL-7-9/2006

Karachi, dated 08<sup>th</sup> October, 2012

A copy is forwarded to:-

1. The Additional Chief Secretary (All), Government of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Karachi.
3. The Administrative Secretaries (all) Government of Sindh.
4. (including Members Board of Revenue, Sindh).
5. The Accountant General Sindh, Karachi.
6. The Principal Secretary to Governor, Sindh, Karachi.
7. The Principal Secretary to the Chief Minister, Sindh, Karachi.
8. The Secretary, Provincial Ombudsman (Mohtasib) Sectt: Sindh.
9. The Inspector General of Police, Sindh, Karachi.
10. The Chairman, E&ACE / IE&I Team.
11. The Military Secretary to Governor Sindh, Karachi
12. The Registrar, High Court of Sindh, Karachi.
13. The Addl / Dy. Secretaries (all) in SGA&CD.
14. The Director Press, Information Department, for publication in the newspapers.
15. The Superintendent, Sindh Govt. Printing press, Karachi.
16. The Private Secretary to the Chief Secretary, Sindh, Karachi.
17. Officer concerned.
18. Office order file.

(KHADIM HUSSAIN)

SECTION OFFICER-III 8/10/2012

100. Inspectors Imran Ahmed Siddiqui and Aijaz Hussain were granted out of turn promotions on the ground that *“they were performing their duties as Pilots with the VIPs as well as VVIPs for the last 15/20 years. They have rendered meritorious services with high sense of responsibility and dedications”* and they were recommended for out of turn promotion as under:-



*DSP*  
*Secy - Nazim*

**OFFICE OF THE SENIOR SUPERINTENDENT OF POLICE TRAFFIC ZONE-I  
CAPITAL CITY POLICE KARACHI**  
NO. SSPT/ZONE-1/RDR/ **133** /KARACHI DATED: **15-09-2010**

To,

The Deputy Inspector General of Police,  
Traffic, CCP, Karachi.

Subject:-

**RECOMMENDATION FOR OUT OF TURN PROMOTION TO THE RANK OF DSP.**

It is submitted that the following Inspectors who are posted as Section Officers in Traffic Zone-I, CCP, Karachi, are performing their duties as Pilots with the VIPs as well as VVIPs for the last 15/20 years. They have rendered meritorious services with high sense of responsibility and dedications. They are intelligent, smart, very hard working and ensure performance of VVIP pilot duties very effectively. Their enthusiastic performance deserves out of turn promotion to the next higher rank of DSP.

1. Inspector (K-1323) Imran Ahmed Siddiqui S/o Abdul Sattar Siddiqui.
2. Inspector (K-1815) Aijaz Hussain S/o Nazar Hussain.

Keeping in view of outstanding performance of both the above officers, it is recommended that the Provincial Police Officer, Secretary to Government of Sindh, Karachi, may kindly be requested for their accelerated promotion to the rank of Deputy Superintendent of Police in recognition of extra ordinary work done by them and for their further encouragement. They have also been rewarded suitably by the superiors at various occasions and are discharging their duties with zeal, zest and dedications.

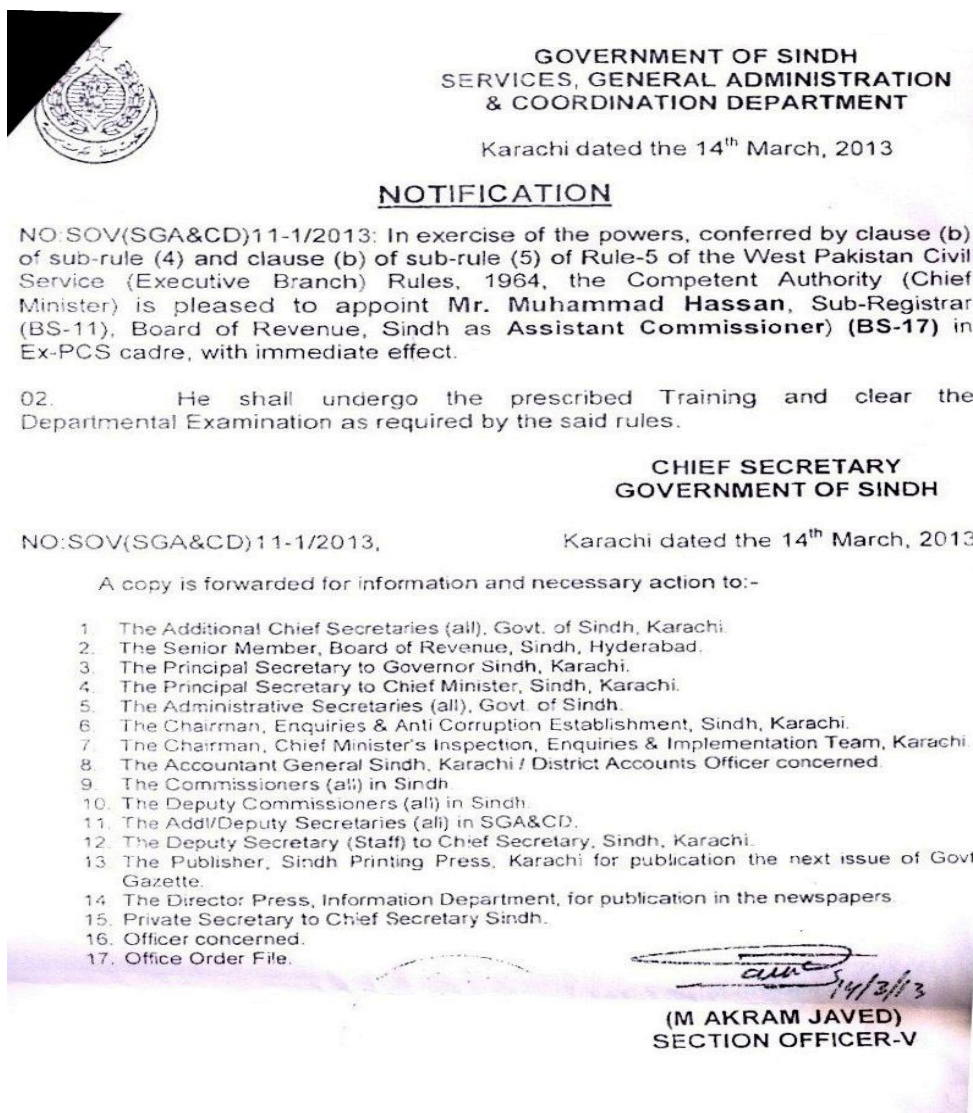
*(Signature)*  
**(MOHIB ALI)**  
SENIOR SUPERINTENDENT OF POLICE  
TRAFFIC ZONE-I CCP,  
KARACHI.



101. The Promotion Committee was formed which endorsed the recommendations made by the S.S.P (Traffic) and both were promoted to the post of DSP in Police.

102. Another application was received by this office on the subject of illegal appointments in the S&GAD. In the application it was alleged that in violation of the orders of this Court, the Chief Minister Sindh and Additional Secretary Services namely Suhail Ahmed Qureshi had appointed the following persons as Assistant Commissioners in violation of the Rules.

103. Muhammad Hassan was appointed on 14<sup>th</sup> March 2013. He was Sub-Registrar in Board of Revenue in BS-11 and was appointed as Assistant Commissioner in (BS-17) Ex-PCS cadre without undertaking competitive exams and the training prescribed for such appointment. Notification of his appointment is reproduced herein under:-



104. Affan Aftab was appointed as Assistant Commissioner in BS-17 in Ex-PCS Cadre and his services were placed at the disposal of Commissioner Hyderabad Division, Hyderabad for further attachment with Deputy Commissioner Shaheed Benazirabad for the field training till further orders vide Notification dated 6<sup>th</sup> March 2013. Notification dated 6.03.2013 is reproduced herein under:-



**GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT**

Karachi dated the 6<sup>th</sup> March, 2013

**NOTIFICATION**

NO:SOV(SGA&CD)3-2/2013: On his appointment as Assistant Commissioner (BS-17) in Ex-PCS cadre, vide this Department's Notification of even number dated 18.01.2013, the services of Mr. Affan Aftab, are hereby placed at the disposal of Commissioner Hyderabad Division, Hyderabad for further attachment with Deputy Commissioner Shaheed Benazirabad, for the field training till further orders.

02. He is allowed to draw salary during the training period against vacant post of OSD (BS-17) in Services, General Administration & Coordination Department.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO:SOV(SGA&CD)3-2/2013,

Karachi dated the 6<sup>th</sup> March, 2013

A copy is forwarded for information and necessary action to:-

1. The Additional Chief Secretaries (all), Govt. of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Hyderabad.
3. The Principal Secretary to Governor Sindh, Karachi.
4. The Principal Secretary to Chief Minister, Sindh, Karachi.
5. The Administrative Secretaries (all), Govt. of Sindh.
6. The Chairman, Enquiries & Anti Corruption Establishment, Sindh, Karachi.
7. The Chairman, Chief Minister's Inspection, Enquiries & Implementation Team, Karachi.
8. The Accountant General Sindh, Karachi / District Accounts Officer concerned
9. The Commissioners (all) in Sindh. *Hyderabad Division, Hyderabad*
10. The Deputy Commissioners (all) in Sindh.
11. The Addl/Deputy Secretaries (all) in SGA&CD.
12. The Deputy Secretary (Staff) to Chief Secretary, Sindh, Karachi.
13. The Director Press, Information Department, for publication in the newspapers
14. The Section Officer (Gen.), SGA&CD.
15. Private Secretary to Chief Secretary Sindh.
16. Officer concerned
17. Office Order File.

*6/3/13*  
**(M AKRAM JAVED)  
SECTION OFFICER-V**

105. Aamir Khan Jamali was appointed as Assistant Commissioner in BS-17 in Ex-PCS Cadre and his services were placed at the disposal of



Commissioner Hyderabad Division, Hyderabad. He was attached with the Deputy Commissioner Hyderabad for the field training till further orders vide Notification dated 21<sup>st</sup> March 2013. Notification dated 21.03.2013 is reproduced herein under:-



**GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT**

Karachi dated the 21<sup>st</sup> March, 2013

**NOTIFICATION**

NO:SOV(SGA&CD)11-12/2013: On his appointment as Assistant Commissioner (BS-17) in Ex-PCS cadre, vide this Department's Notification of even number dated 20.03.2013, the services of **Mr. Aamir Khan Jamali** are hereby placed at the disposal of Commissioner Hyderabad Division, Hyderabad for further attachment with Deputy Commissioner Hyderabad, for the field training till further orders.

02. He is allowed to draw salary during the training period against vacant post of OSD (BS-17) in Services, General Administration & Coordination Department.

**CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO:SOV(SGA&CD)11-12/2013,

Karachi dated the 21<sup>st</sup> March, 2013

A copy is forwarded for information and necessary action to:-

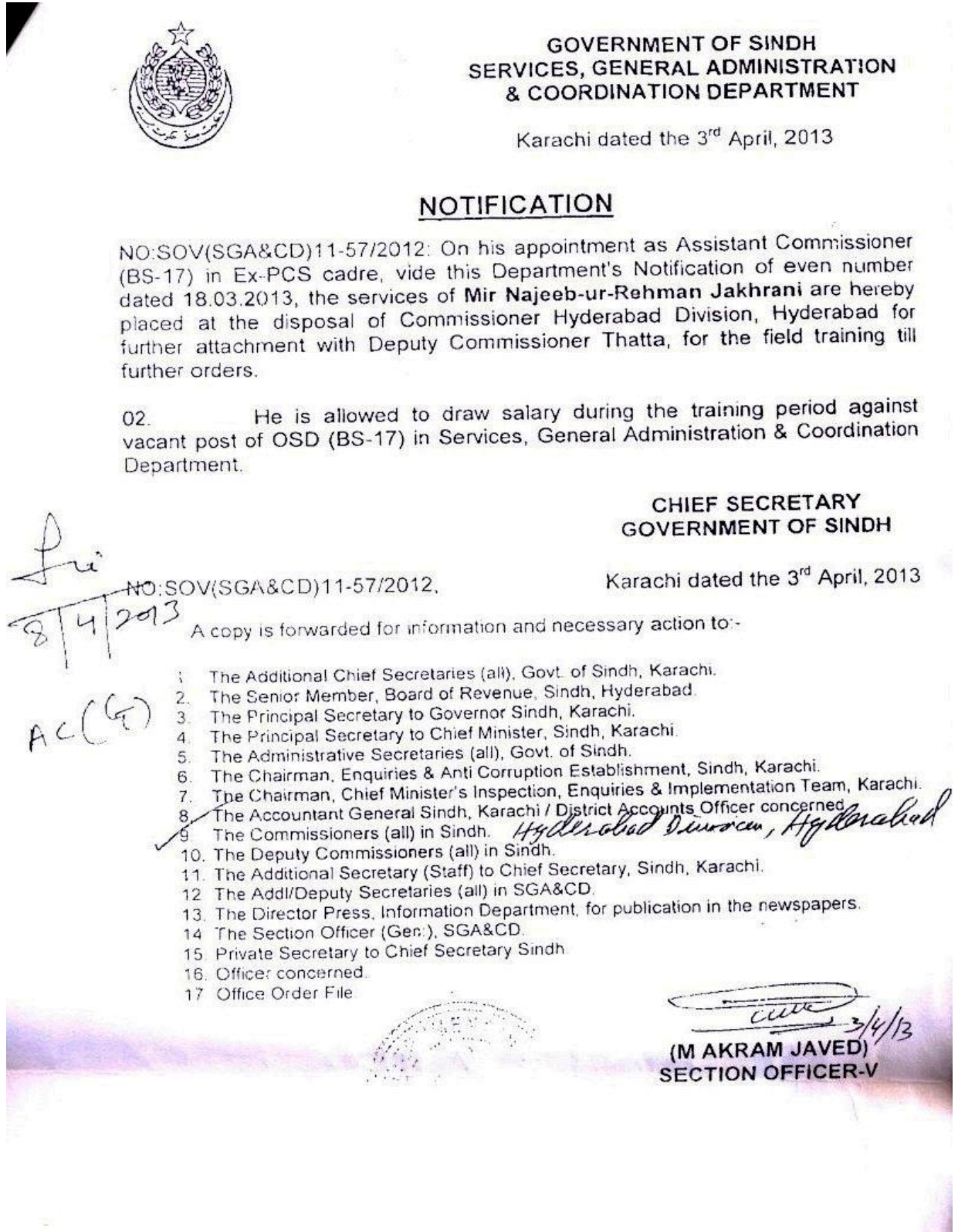
1. The Additional Chief Secretaries (all), Govt. of Sindh, Karachi.
2. The Senior Member, Board of Revenue, Sindh, Hyderabad.
3. The Principal Secretary to Governor Sindh, Karachi.
4. The Principal Secretary to Chief Minister, Sindh, Karachi.
5. The Administrative Secretaries (all), Govt. of Sindh.
6. The Chairman, Enquiries & Anti Corruption Establishment, Sindh, Karachi.
7. The Chairman, Chief Minister's Inspection, Enquiries & Implementation Team, Karachi.
8. The Accountant General Sindh, Karachi / District Accounts Officer concerned.
9. The Commissioners (all) in Sindh.
10. The Deputy Commissioners (all) in Sindh.
11. The Addl/Deputy Secretaries (all) in SGA&CD.
12. The Deputy Secretary (Staff) to Chief Secretary, Sindh, Karachi.
13. The Director Press, Information Department, for publication in the newspapers.
14. The Section Officer (Gen.), SGA&CD.
15. Private Secretary to Chief Secretary Sindh.
16. Officer concerned.
17. Office Order File.



*amc* 21/3/13  
**(M AKRAM JAVED)**  
**SECTION OFFICER-V**

106. Mir Najeeb-ur-Rehman Jakhrani was appointed as Assistant Commissioner in BS-17 in Ex-PCS Cadre and his services were placed at

the disposal of Commissioner Hyderabad Division, Hyderabad for further attachment with Deputy Commissioner Thatta for the field training till further orders vide Notification dated 3<sup>rd</sup> April 2013. Notification dated 03.04.2013 is reproduced herein under:-



107. We have been informed that Chief Minister in excess of the quota under the rules nominated the following persons as Assistant Commissioner. According to the information provided to us there are 265

sanctioned posts of Assistant Commissioners (BS-17) in Ex-PCS Cadre. 25% (66 posts) are reserved for posting of PAC (former DMG) Officers, leaving behind 75% (199 posts) which are to be filled by:-

- i. Initial appointment 50% (99 posts).
- ii. By promotion from amongst Mukhtiarkars 43.75% (88 posts).
- iii. By nomination 6.25% (12 posts)

- Following officers have been working in excess of prescribed quota of appointment by transfer/nomination:-

S.No.	Name of officer	Date of appointment
01.	Mr.Abu Bakar Mangrio	19.02.2007
02.	Syed Altaf Ali	23.11.2007
03.	Mr. Nazar Hussain Shahani	19.07.2011
04.	Mr. Yar Muhammad Bozdar	30.09.2011
05.	Mr. Sajjad Hussain Mehar	13.11.2012
06.	Mr. Danish Khan	07.12.2012
07.	Mr. Nadeem-ul-Haq	07.12.2012
08.	Syed Umaid Ali	18.01.2013
09.	Mr. Affan Aftab	18.01.2013
10.	Mr. Ammaduddin Qayyum Chachar	13.03.2013
11.	Syed Mohammad Omer	13.03.2013
12.	Mr. Mohammad Hassan	14.03.2013
13.	Mr. Imran Ahmed Shaikh	14.03.2013
14.	Mir Najeeb ur Rehman Jakhrani	18.03.2013
15.	Mr. Aamir Khan Jamali	20.03.2013

108. According to Rule 5(4)(b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, 12½ percent posts of such vacancies shall be filled from amongst persons, who hold posts of Assistants, Superintendents working in Secretariat attached departments, Private Secretaries, Public Relations Officers to the Governor, Chief Minister and Ministers and Chief Secretary having done their Graduation, will be considered fit for appointment by transfer to the post of Assistant



Commissioner (BS-17) in Ex-PCS Cadre by way of nomination. Selection List “B” and “C” is maintained in accordance with clause (b) quota and clause (c) of Sub Rule (5) of this Rule.

109. Against the share/quota of 12 posts, the Chief Minister has nominated by transfer 15 persons, after exhausting the prescribed quota. The complaints made by the applicants also mention the names of such persons reproduced hereinabove.

S.No.	Name of officer	Date of appointment
01.	Mr. Karamuddin Panhyar	13.08.1997
02.	Mr. Attaullah	14.02.2006
03.	Mr. Nazir Ahmed Soomro	14.02.2006
04.	Mr. Arshad Waris	13.03.2006
05.	Mr. Waseemuddin	21.03.2006
06.	Mr. Maqsood Hussain Ghummro	21.03.2006
07.	Mr. Shujat Hussain	21.03.2006
08.	Mr. Muhammad Khan Rind	12.05.2006
09.	Mr. Shaikh Mohammad Rafique	20.05.2006
10.	Dr. Muhammad Rafique Sahito	30.05.2006
11.	Mr. Abdul Fahim Khan	12.09.2006
12.	Dr. Ali Nawaz Bhoot	14.09.2006

110. We may observe that nominations of Assistant Commissioners by the Chief Minister after exhausting his quota shall affect the seniority of the incumbents who will pass the P.C.S exams on merits and appointed as Assistant Commissioners till 2017. Therefore, all the aforesaid officers inducted in excess of the quota shall relegate to their original positions. In future, the Sindh Government shall formulate mechanism for nomination of such appointments by transfer to the post of Assistant Commissioner (BS-17) in Ex.PCS cadre.

111. The applicants in the aforesaid applications have raised individual grievances, *inter alia*, on the ground that powers conferred on the

Chief Minister/ Sindh Government by virtue of the impugned legislative instruments had affected their rights under the service law and the Constitution. We refrain from commenting upon the complaints made by the applicants and the material placed before us. We will also not like to comment on the exercise of powers of the Chief Minister in the individual cases.

112. We have heard learned counsel as well as learned Advocate General Sindh/ Additional Advocate General Sindh and have perused their written arguments. Before addressing the issue of '*absorption*', '*deputation*', '*out of turn promotion*', '*re-employment*' and '*appointments on contracts*' in the Sindh Government, we would like to first answer the objections raised by the learned Advocate General Sindh, Dr. Farough Naseem, Mr. Anwar Mansoor Khan, Mr. Yawar Farooqui and Mr. M.M. Aqil Awan (Respondent No.5 in C.P. No.71/2011) on the maintainability of C.P. No.71/2011 and CP No.21 of 2013 by which vires of the impugned legislative instruments have been challenged.

### **MAINTAINABILITY OF PETITIONS.**

113. The learned counsel named hereinabove, appearing on behalf of the different Respondents in the aforesaid Constitution Petitions have commonly objected to the maintainability of the aforesaid Petitions under Article 184(3) of the Constitution inter alia, on the ground that in the aforesaid petitions, the Petitioners have raised individual grievances in regard to their seniority and promotion, which under the service laws are not construed as '*vested right*' of a Civil Servant. Their next argument was that

if at all, any right of the Petitioners is impaired, they can approach the appropriate forum for redressal of their grievance.

114. We have considered the arguments of the learned counsel for the Respondents and found them without force for more than one reason. In the first place, if this Court is of the view that impugned enactment is violative of fundamental rights guaranteed under the Constitution, it can examine the vires of such an enactment either on its own or on an application/petition filed by any party. The Petitioners have challenged the vires of the impugned enactments which raise questions of public importance relating to the rights of the Civil Servants in Sindh. This Court in the case of Watan Party and others vs. Federation of Pakistan and others (PLD 2012 S.C 292) has held that term “*public importance*” is one of the components to attract the jurisdiction of Supreme Court under Article 184(3) of the Constitution coupled with the facts that three elements i.e. question of public importance; question of enforcement of fundamental rights and fundamental rights sought to be enforced as conferred by Chapter-I, Part-II of the Constitution are required to be satisfied. In the case in hand the issues raised in the Petition cover parameters, which attract the jurisdiction of this Court under Article 184(3) of the Constitution. Moreover, this Court in the case of Tariq Aziz-ud-Din reported in (2010 SCMR 1301) while interpreting Article 184 (3) of the Constitution has held that it can examine the exercise of discretion of competent authority whereby it has upset the settled principle of service law adversely affecting upon the structure of civil servants. For the aforesaid reasons, we hold that these Petitions are maintainable under Article 184(3) of the Constitution.



### **ABSORPTION**

115. To appreciate the contentions of the parties, we intend to take up different issues arising out of impugned enactments one by one. We will first take up the issue of “*absorption*” of different employees regularized by the Sindh Government in exercise of the powers conferred upon them under the impugned legislations:-

- i. The Sindh Civil Servants (Regularization of Absorption) Ordinance, 2011 (Ordinance III of 2011).
- ii. The Sindh Civil Servants (Regularization of Absorption) Act, 2011 (Act XVII of 2011).
- iii. The Sindh Civil Servants (Amendment) Ordinance, 2012.
- iv. The Sindh Civil Servants (Second Amendment) Ordinance, 2012.
- v. The Sindh Civil Servants (Amendment) Act, 2013.
- vi. The Sindh Civil Servants (Second Amendment) Act, 2013.

116. From the contentions of the learned Additional Advocate General Sindh and the learned counsel for the parties, we can safely conclude that the term “*absorption*” has neither been defined by the Act of 1973 nor by the Rules framed thereunder. The impugned legislative instruments have also failed to give any meaningful definition to the said term. In the impugned instruments, the Provincial Assembly has given unbridled powers to the Chief Minister to appoint by transfer (absorb) any person from any organization. The Act of 1973 is promulgated pursuant to Articles 240 and 242 of the Constitution, which provides mode of appointment in terms of Section 5. Section 26 of the Act of 1973 empowers Government to make Rules in order to carry out the purposes of the Act. In exercise of such powers the Sindh Government has framed Rules which are

called Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974. These Rules provide the procedure for appointment of Civil Servants by three modes (i) Recruitment by initial appointment, (ii) Appointment by promotion and (iii) Appointment by transfer. 'Absorption' itself is an appointment by transfer and could only be made under Rule 9A of the Rules of 1974. Under Rule 9A, if a person, who has been rendered surplus on account of abolition of his post in any office or Department of the government or autonomous body and or on account of permanently taking over of the administration of such autonomous body wholly or partially by the Government, can be appointed by transfer to any post in a Department or office in the Government subject to (i) he possesses such qualifications as laid down under Rule 3(2) for appointment to such post, (ii) he shall be appointed to a post of equivalent or comparable scale and in case, if such post is not available then to a post of lower scale and (iii) his seniority shall be reckoned from the date of appointment in that cadre with a further rider that his previous service, if not pensionable, shall not be counted for pension and gratuity. By present impugned legislations, no mechanism has been provided for absorption of an employee, who is appointed by transfer (absorbed) from different organizations in Sindh Government. In fact those who did not have matching qualifications, experience and expertise were transferred on deputation, and absorbed against the language of parent statute and the Rules framed thereunder. Such absorption in absence of mechanism under the newly added section, on the face of it, is violative of the provisions of the Constitution. We during the hearing, required the Secretary Services to provide us the list of the Civil Servants, who are

employed in the Sindh Government. He has provided copy of such list, which is reproduced herein under:-

DEPARTMENT AND BS WISE NUMBER OF POSTS 2012-13 AS PER VOL-III																										
DEPARTMENT	BS-1	BS-2	BS-3	BS-4	BS-5	BS-6	BS-7	BS-8	BS-9	BS-10	BS-11	BS-12	BS-13	BS-14	BS-15	BS-16	BS-17	BS-18	BS-19	BS-20	BS-21	BS-22	FIXED	SPECIAL	TOTAL	
ORGANS OF STATE (EXCL. LAW	1995	3492	39	728	2497	82	2650	27	851	20	172	773	8	866	303	637	587	211	130	67	6	3	0	290	16,034	
LAW DEPARTMENT	828	21		89	1		747		78		5	137		165	105	144	429	171	43	21				11	2,995	
FINANCE DEPARTMENT	420	108	6	168	26		170		19	1	26	175		625	188	168	183	65	16	11	4	1		10	2,390	
TAX MANAGEMENT - BOARD OF REV	489	176	4	136	1,537	21	599	5	263	10	106	94		266	18	239	58	25	13	7	8			1	4,075	
TAX MANAGEMENT - EXCISE & PLANNING	151	14		43	1,555	73	766	8	95		25	24		715	9	252	109	6	12	2					3,859	
WEIGHTS & MEASURES-BUREAU OF STATISTICS	109	7		42	26	1	20	5	11		1	27		13	18	14	68	16	12	20	1				411	
PUBLICITY AND INFORMATION	162	3		41	36	3	81	9		3	297	56		14	7	10	136	13	4	1					759	
ADMINISTRATIVE TRAINING	94	9		58	25	8	39	39	14	1	14	34	33	26	15	10	66	36	13	2					876	
JUSTICE - LAW COURTS	48	1		5	6	2	16	2	4		3	7		2	1	5	17	5	2	1					127	
POLICE	2516	307	44	196	48	68	1264	420	102	160	31	253	0	100	98	99	104	322	112	101	49	0	0	41	6,435	
JAILS AND DETENTION PLACES	1,116	60	39	120	73,074	48	17,029	1	9,356			176		6,822		1,971	430	132	46	21	6	1		7,500	115,948	
CIVIL DEFENCE	252	136	18	2	2,907	70	592	6	165		20	80		59	5	136	74	18	7	3	1			2	4,553	
TRAINING AND RESEARCH IN LAW	17	63	4	11	38		39	26	31			3		8		31	8	1	1						281	
ADMINISTRATION (Works)	176	3	1	11	1,191	16	451		427			25		297		65	26	9	1	3	1				2,703	
PUBLIC HEALTH SERVICES	2,935	3,193	178	947	1,933	207	1,069	101	673	146	1,099	195	96	254	33	150	537	128	43	9					13,926	
URBAN / TOWN PLANNING AND EDUCATION	1,231	174		322	1,226	150	304	82	144	89	407	65	56	12	7	94	120	34	6	3					4,504	
HEALTH	23	4		11	12		11		6	5	16	4	2	11	1	5	8	1							120	
MANPOWER AND LABOUR MANAGEN	9,141	38,786	2,093	799	1,256	890	22,027	303	109,202	6,167	1,629	975	16	26,479	4,239	26,044	13,253	4,486	2,296	246			167	8,002	278,496	
SPORTS AND RECREATION FACILITI	6,783	11,112	1,406	1,576	2,835	4,744	1,428	226	6,644	35	240	219		706	70	3,592	6,709	5,353	1,348	174	1		552	5,252	61,005	
SOCIAL SECURITY AND SOCIAL WEL	489	181	15	58	24	29	149	38	187	9	55	70		357	15	286	139	58	24	4					2,187	
NATURAL CALAMITIES AND OTHER	55	65		14	4		77		39		3	7		43	2	10	25	7	3	2					356	
RELIGIOUS AFFAIRS	1,074	561	3	143	135	284	440	189	130	4	143	93		193	97	103	374	67	16	5					4,054	
AGRICULTURE AND FOOD-ADMINIST	16	5		7	1		14	1			1	1		4	1	3	6	3	1	1					65	
LAND MANAGEMENT	287	195	22	61	182	112	89	2	14	1	22	77	2	91	15	59	72	20	7	4					1,334	
ANIMAL HUSBANDRY	1,703	1,239	470	480	930	752	697	57	238	138	1,260	355	3	290	68	282	1,371	218	51	9					10,511	
FORESTRY	417	1,038	2	72	1,143	18	311	19	169	1	57	12		51	1	53	24	4	6	1					3,399	
FISHERIES	651	829	45	132	181	830	287	5	128	3	34	25	2	43	9	31	428	90	5	4					3,762	
CO-OPERATION	247	300	12	80	627	48	382	4	76	7	8	29	1	61	10	115	22	38	8	3					2,078	
IRRIGATION	223	157	42	51	55	22	59	6	84	2	14	19		25	6	22	75	32	7	1					902	
LAND RECLAMATION	82	167		11	7	1	108		223	1	99	13		22	3	9	42	12	2	1					803	
FUEL AND POWER	10,513	1,593	65	2,019	2,160	346	1,008	33	548	77	585	80	84	128	7	114	298	61	20	8					19,747	
RURAL DEVELOPMENT	5,976	368	74	1,491	1,076	70	303	25	115	14	146	28	28	28	4	30	64	19	5	1					9,865	
INDUSTRIES AND MINERAL RESOURC	95	20	3	31	18		93		33		62	24	1	35	7	16	56	21	4	1				1	531	
STATIONERY AND PRINTING	401	20		33	61	3	257		57	8	109	72	1	57	8	27	163	41	5	1					1,325	
TRANSPORT AND COMMUNICATION	184	10		34	15		114	1	85	1	50	49		53	20	63	48	28	14	5					774	
TOTAL	50703	64432	6594	10221	97065	8919	54115	1658	130402	6889	6770	4225	333	37111	5401	34968	30221	11771	4288	745	77	5	720	21110	582,746	

117. According to the list, there are in all 582,746 civil servants in the Sindh Government. The present impugned legislation is likely to affect the civil servants, who are presently working in BS-11 to BS-22, which comes to 153745 in number. The Civil Servants under the mandate of the Constitution have been guaranteed the fundamental rights being citizens. Article 4(1) provides that all citizens are entitled to enjoy equal protection of law and have inalienable right to be treated in accordance with law. In this respect the Act of 1973 framed under the command of Articles 240 and 242 of the Constitution provides protection to all the Civil servants by assuring them that the law promulgated by the Parliament and/or Provincial

Assemblies will be subject to the Constitution. The phrase “*subject to the Constitution*” has been used as prefix to Article 240 which imports that Assemblies cannot legislate law against service structure provided in Part XII of Chapter 1 of the Constitution.

118. Article 9 of the Constitution provides protection to every citizen of life and liberty. The term “*life and liberty*”, used in this Article is very significant as it covers all facets of human existence. The term “*life*” has not been defined in the Constitution, but it does not mean nor it can be restricted only to the vegetative or animal life or mere existence from conception to death. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The term “*life*” includes ‘*reputation*’ ‘*status*’ and all other ancillary privileges which the law confers on the citizen. A civil servant is fully protected under Article 9 and cannot be deprived of his right of reputation and status. Under the impugned instruments a person, who without competing through the recruitment process is conferred status of a civil servant. The impugned legislation has amended service laws in a manner to deprive the civil servants from their rights to status and reputation under Article 9 of the Constitution.

119. A civil servant, who after passing the competitive exam in terms of the recruitment rules, is appointed on merits, loses his right to be considered for promotion, when an employee from any other organization is absorbed under the impugned legislative instruments, without competing or undertaking competitive process with the backdated seniority and is conferred the status of a civil servant in complete disregard of recruitment rules. Under the impugned enactments, it is the sole discretion of the Chief

Minister to absorb any employee serving in any other organization in Pakistan to any cadre in the Sindh Government. The discretion of the Chief Minister to absorb any employee from any part of Pakistan to any cadre with backdated seniority directly affects the fundamental rights of all the civil servants in Sindh being violative of the Article 4 which provides equal protection of law to every citizen to be treated in accordance with law, which is inalienable right of a citizen. The impugned legislative instruments have been promulgated to extend undue favour to few individuals for political consideration and are against the mandate of the Civil Servant Act and recruitment rules framed thereunder. The impugned instruments are discriminatory and pre-judicial to public interest as such enactments would be instrumental in affecting the Civil servants' tenurial limitations and their legitimate expectancy of future advancement. The provision of absorption on the plain reading reveals that this provision has been promulgated to circumvent and obviate the very framework of the Provincial civil structure, as envisaged by the Constitution and law. By such impugned instruments, a parallel system based on discrimination and favoritism has been imposed to supersede the existing law, Rules and Regulations governing the important matters of civil servants like '*absorption*', therefore, it can be safely held that the impugned instruments being discriminatory are violative of Article 25 of the Constitution, as it is not based on intelligible differentia not relatable to the lawful object.

120. The impugned Ordinance and Act of 2011 validating absorption by the Sindh Government are ultra vires of Articles 240 and 242 of the Constitution, as these instruments, in the first place, have been promulgated

without amending the Act of 1973, and the rules framed there-under. Moreover, the impugned validation instruments are multiple legislation and do not provide mechanism by which absorption of different employees took place in complete disregard of the parent statute and the rules framed there-under. By these impugned validating instruments restriction placed by Articles 240 and 242 of the Constitution has been done away. The validating instruments allowed absorption of a non Civil Servant conferring on him status of a Civil Servant and likewise absorption of a Civil Servant from non cadre post to cadre post without undertaking the competitive process under the recruitment rules. We may further observe that the Provincial Assembly can promulgate law relating to service matters pursuant to the parameters defined under Articles 240 and 242 of the Constitution read with Act of 1973 but, in no way, the Provincial Assembly can introduce any validation Act in the nature of multiple or parallel legislation on the subject of service law.

121. By the impugned legislations ‘absorption’ of an employee in ex-cadre group would deprive the seniority and progression of career of meritorious civil servants. A substantial number of unfit and unmeritorious officers and beneficiaries have been absorbed in the important groups, services, positions with the help of authorities and such legislations allow this to continue. The absorption, by way of impugned instruments, would practically cause removal of constitutional and legal differentiations that exist between various cadres, posts and services. Moreover, the culture of patronage will intensify the activity of bringing more politicization, inefficiency and corruption in the provincial services. The Civil Servants Act

and Rules framed provide transparency in appointments, which would disappear and the employees who could not get in service through competitive process may also be obliged to look for a political mentor instead of relying on merits in order to protect their careers. We may also observe here that the absorption under the aforesaid impugned instruments is not only confined to non-civil servants to civil servants but through these impugned instruments non-civil servants, who were serving on non-cadre posts, have been transferred and absorbed to cadre posts, the pre-requisite of which is competitive process through Public Service Commission or by other mode provided in the relevant recruitment rules. Law of such nature which is violative of the recruitment rules will encourage corruption and bad governance and the public at large will loose confidence in the officials who are being absorbed under the garb of the aforesaid impugned instruments.

122. In the case of Syed Mahmood Akhtar Naqvi and others vs. Federation of Pakistan and others (PLD 2013 S.C 195), this Court while interpreting the guarantees extended to civil servants, has observed in Para-10 as under:-

*“10. It is worth noting that the Constitution of 1956 and 1962 contained chapters outlining certain safeguards for the civil services. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted “because those who served came from outside and they needed these protections in respect of service”. However, since now “this country [was] being run by the leaders of the people” such protections were no more deemed necessary. The purpose of this change therefore, was to “[break] away from the past colonial traditions” and to emphasize the point that civil servants were not entitled to “any superior or higher status” compared to other citizens. Another reason the Law Minister gave was that the “Constitution is the basic document*

*providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution.” (Parliamentary Debates, 31<sup>st</sup> December, 1972 and 19<sup>th</sup> February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate of civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country’s founding father quoted earlier : “fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service.”*

123. Though the Court interpreted the provisions of Federal Civil Servants Act of 1973 in the aforesaid judgment but the law and the rules prescribed therein are identical to the language of the Act of 1973 with minor exceptions. We therefore, can safely hold that the impugned instruments empowering validation to the absorbees and appointment by transfer (absorption) of non-civil servant to a cadre post in Sindh Government are contrary to the parameters guaranteed by the Constitution under Articles 240 and 242 and absorptions in such manner to extend favours to unmeritorious employees by the Sindh Government. Such absorption has led to the burnt of increasing lawlessness and violence on one hand and on the other hand meritorious officers despite discharging their duties with utmost dedication and professional excellence are affected with a griping sense of insecurity in respect of their future prospects in careers.

124. We have also noticed the absorption of employees from different departments/organizations in the Sindh Police through the impugned legislation and the material placed before us reflects that almost all of them have been absorbed for political considerations. The senior



police officers in the rank of D.I.G, SSP, SP, DSP etc., without undergoing the mandatory police training, are posted in field particularly in Karachi, which has resulted in deteriorating law and order situation in Sindh specially in Karachi owing to their lack of competence. This Court in the case of Watan Party and another vs. Federation of Pakistan and others (PLD 2011 S.C 997) popularly known as “Karachi Law & Order case”, has noticed this situation and observed as under:-

*“31. It seems that the police primarily being responsible to enforce law and order has no intention to deliver. Either they are scared or they are dishonest or absolutely lack the requisite skills. It could be that in the year 1992 operation clean up was launched against MQM wherein statedly, the police had played an active role, but subsequently, 92 police officers/officials disappeared and up till now there is no clue of their whereabouts nor is it known that by whom, and under whose patronage, such persons were abducted and/or killed. Another reason appears to be that police force has been highly politicized, recruitments have been made in political consideration. It came to light during hearing of the case that in police force many police officers have been recruited on political considerations who have managed to occupy such posts for extraneous considerations and senior officers in the rank of SSP, SP and DSP etc. have been inducted into the force from other organizations without following any rules and even they have not undergone training for the purpose of policing. To highlight this aspect, following information has been obtained from the Advocate General, Sindh: -*

- 1. Mr. Dost Ali Baloch from Intelligence Bureau, absorbed in Sindh Police with effect from 14-10-1998, presently working as Director General Finance, CPO Sindh Karachi (BS-20).*
- 2. Mr. Muhammad Malik from FIA, absorbed in Sindh Police with effect from 31-10-2007, presently working as Director General Traffic, Planning & Regulation, Sindh Karachi (BS-20).*
- 3. Mr. Muhammad Riaz Soomro from Anti-Narcotic Force, absorbed in Sindh Police with effect from 26-02-2008, presently working as SSP, District Mirpurkhas (BS-19).*
- 4. Mr. Muhammad Ali Baloch appointed as Assistant Director (Computer) in Sindh Police on 6-4-1999, presently working as SSP, District Tando Muhammad Khan (BS-19).*

5. *Mr. Abdul Hadi Bullo from OMG, absorbed in Sindh Police with effect from 16-7-2003, presently working as SSP District Matiari (BS-19).*
  6. *Mr. Attaullah K. Chandio, from Solicitor Department, absorbed in Sindh Police with effect from 1-6-1995, presently working as SP, Special Branch, Mirpurkhas (BS-18).*
  7. *Mr. Shahid Hussain Mahesar on deputation from Intelligence Bureau with effect from 26-7-2009, presently working as SSP Political (SB) Karachi (BS-18).*
  8. *Mr. Zameer Ahmed Abbasi on deputation from National Accountability Bureau with effect from 31-12-2008, presently working as SDPO/Frere, District South, Karachi Range (BS-17).*
  9. *Mr. Shiraz Asghar Shaikh, on deputation from PEMRA with effect from 23-8-2008, presently working as SDPO/Darakhshan, District South, Karachi Range (BS-17).*
  10. *Mr. Faisal Mukhtar Vakaasi on deputation from National Accountability Bureau with effect from 31-3-2009, presently working as Principal, Training & Recruitment, Karachi Range (BS-17).*
  11. *Mr. I.D. Mangi, on deputation from ACE, Sindh with effect from 10-4-2009, presently working as DSP/ACLC, Karachi Range (BS-17).*
  12. *Major (R) Khurram Gulzar, re-employed on contract basis as DIGP (BS-20) for a period of one year with effect from 27-12-2010.*
  13. *Col. (R) M.A. Wahid Khan, re-employed as Principal, S.B.B. EPT Razzakabad, Karachi (BS-19) for a period of one year with effect from 1-9-2008. Extension granted for two years with effect from 1-9-2009.*
  14. *Major Col. (R) Muhammad Ahsan Umar, re-employed as SSP, District East, Karachi Range (BS-19) for a period of two years with effect from 24-9-2010.*
125. The impugned legislation on absorption is persons/class specific as it extends favours to specific persons infringing the rights guaranteed to all the civil servants under the service structure provided under Articles 240 and 242 of the Constitution. This Court in the case of Baz Muhammad Kakar and others vs. Federation of Pakistan and others (PLD

2012 S.C 870) has held that the legislature cannot promulgate laws which are person/class specific as such legislation instead of promoting the administration of justice caused injustice in the society amongst the citizens, who were being governed under the Constitution. In the case in hand the impugned legislation, prima facie, has been made to protect, promote and select specific persons who are close to centre of power, and has altered the terms and conditions of service of the civil servants to their disadvantage in violation of Article 25 of the Constitution.

126. From the above discussion, the aforesaid legislative instruments on the issue of absorption are liable to be struck down being violative of Constitutional provisions referred to hereinabove, therefore, we hold as under:-

- (i) ***That the Sindh Government can only appoint a person by absorption by resorting to Rule 9A of the Rules of 1974.***
- (ii) ***Sindh Government cannot order absorption of an employee who is a non-civil servant, however, an employee of an autonomous body can be absorbed in Sindh Government subject to conditions laid down under Rule 9-A of the Rules of 1974.***
- (iii) ***Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.***
- (iv) ***Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.***
- (v) ***No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A civil servant can be transferred out of cadre to any other department of the government subject to the restrictions contained under Rule 9 (1) of the Rules of 1974.***

- (vi) *The legislature cannot enlarge the definition of “civil servant” by appointing a non-civil servant through transfer on the basis of absorption conferring him status of civil servant pursuant to the impugned legislation which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution.*

### **DEPUTATION**

127. The issue of ‘*deputation*’ has created lot of unrest amongst the Civil Servants. From the arguments of the learned counsel and the material produced before us, we are of the considered view that the term “*deputation*” has not been provided under any civil service law and this term has been borrowed from Esta Code 2009 Edition Chapter-III at page 385. Part-II at Page 426 of the Esta Code which deals with the issue of deputation and serial No.29, which defines “*deputation*”, is reproduced herein below:-

*“Hitherto the term ‘deputation’ has not been formally defined. However, according to the practice in vogue a Government servant begins to be regarded as a “deputationist” when he is appointed or transferred, through the process of selection, to a post in a department or service altogether different from the one to which he permanently belongs, he continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post.”*

128. In the case of Muhammad Arshad Sultan and another vs. Prime Minister of Pakistan, Islamabad and others (PLD 1996 SC 771) at page 777, this Court has defined “*deputation*” in the following terms:-

*“Deputationist’ to be a Government servant who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs. Such a Government servant continues to enjoy this status so long as he holds the new post*

*in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post. The departmental interpretation referred to by the said Tribunal as having the effect of statutory rule has still being retained, as is evident from the ESTACODE (1983 Edition) in Chapter III, Part II at page 217. This Court has also accepted the aforesaid definition of the term 'deputation' in Islamic Republic of Pakistan v. Israrul Haq and others PLD 1981 SC 531.*

129. From the aforesaid definition, we can safely hold that no non-civil servant can be transferred and appointed in the Sindh Government by way of deputation to any cadre. The procedure provided under the Esta Code reproduced hereinabove has been approved by this Court in the case of Mohammad Arshad Sultan. The Act of 1973 or the rules framed thereunder does not provide mechanism to regulate appointment by transfer on deputation and therefore in the case of Lal Khan vs. Employee Old Age Benefit Institution (2010 PLC (CS) 1377), a Division Bench of Sindh High Court has held as under:-

*“This brings us to the conclusion that there is no legislation in violation of Article 240(b) of the Constitution in Sindh, to regulate the transfer by way of Deputation, therefore, at provincial Level, same view can be adopted to the effect that neither law permits, nor there is any provision, which can authorize, the transfer of non-civil servant, by way of Deputation.”*

130. This Court while affirming the aforesaid judgment has refused the leave. The Sindh Government in exercise of powers under Section 10 read with Section 24 started appointing by transfer on deputation the employees of different Organizations in Sindh government, who were not civil servants. This act of Sindh Government has created unrest amongst the civil servants and as a result, a Petition was filed in the High Court of Sindh

at Hyderabad by Syed Imtiaz Ali Shah, which was allowed in the following terms:-

“6. We feel that approach of the Sindh Government is not complying with the directives contained in the judgment was ex-facie contemptuous. At the request of Secretary Services we found it appropriate to decide this issue of transfer of the civil servants by the government authority in detail under section 10 of the Civil Servants Act 1973 besides the power of the competent authority to appoint them on deputation in the province. In the first place the aforesaid judgment of this Court fully covers this issue but in order to remove wrong impression if any of the Sindh Government. The postings of the officers in the different departments of Sindh, list of which has been reproduced hereinabove would hamper the good governance on one side damage the department on the other hand. If such actions which are ex-facie outside the civil servant laws and rules are un-checked it would paralyze the system besides it would cause anger dissatisfaction and heart burning to those who are entitled to promotions and are otherwise eligible to hold the office, which is occupied by the strangers under the garb of deputation and or out cadre transfer and or posting non-cadre officers against the cadre posts. In the first place there is no provision either under the Sindh Civil Servant Act or the rules framed there under authorizing the competent authority to order deputation of an officer. A detailed discussion has been made in the judgment referred to hereinabove on this issue. We have examined the list of the officers of the federal government who were posted in different departments in the Sindh Government on deputation under the garb of exigency of services. None of them had the eligibility and or competence to be posted against such officer cadre post and when confronted the Secretary Services has conceded before us that the officers of the Federal Government in occupational group who are posted in the Sindh Government in different departments against cadre posts neither qualify nor had the eligibility to hold such post. Posting of such officers on deputation in Sindh would never improve the system within the department, as the deputationists on expiry of his deputation period would join his parent department. Such officer even otherwise is not accountable and the department in which he is appointed would ultimately suffer. Additionally those who are eligible and are likely to be promoted in the department are deprived of their lawful right to promotions which is a permanent cause of heart burning to the cadre officers. A civil servant who is on deputation even loses the status of civil servant during the period of deputation as has been held by Honourable Supreme Court in the case of Mazhar Ali v. Federation of Pakistan reported in **1992 SCMR 435** which by itself is sufficient ground to discourage the posting of the

*nature. Additionally Article 240 of the Constitution provides that appointments to and the conditions of services of a person could be determined by Act of the Parliament and or of the Provincial Assembly. In other words the terms and conditions of a civil servant cannot be deviated from by an Administrative/ Executive order which in the case in hand has been done by the competent authority under the garb of exigency. Such orders have no sanction of law.*

*7. Section 10 of the Sindh Civil Servants Act also restricts out of cadre transfer of a civil servant. The posting and transfer under section 10 of the civil Servants Act authorizes the competent authority the transfer within the cadre and not out of cadre as the provisions of section 10 of the Act has to be read with a rider that the terms and conditions of service shall not be changed by such an order. The Honourable Supreme Court in the case of Muhammad Karim v. director Health Services reported 1987 SCMR 295 and Masood Ahmed v. Taj Muhammad Baloch reported in 1999 SCMR 755 has held that Section 10 does not authorize the competent authority to transfer a civil servant out of cadre.*

*8. What we have noticed from the list of the officers who are either performing their duties as deputationists or have been posted by way of transfer to a cadre post do not have the required qualification nor the eligibility to hold such office. In law a civil servant can only be appointed against the cadre post if he has passed the competitive examination or his appointment was made through competitive process which means either he is a PCS Officer or PSS Officer or he is officer from APUG (All Pakistan Unified Grade) group. The Secretary services has frankly conceded that the officers from the federal government who are serving in the Sindh Government are neither qualified for the post for which they are posted on deputation in the Sindh government nor have expertise and or knowledge of such office. We have noticed that under the garb of exigencies non cadre officers have been posted out of cadre in different administrative departments in Sindh on deputation basis irrespective of their qualification and or eligibility having no relevance between their experience and past service with their current places of postings. The Secretary services on our inquiry has stated before us that there are sufficient number of cadre officers available for posting and if the out of cadre officers are retransferred and posted to their in cadre department there will be no vacuum at all.*

*9. To improve the working of the departments we are of the considered view that postings of the nature should be discouraged and respect should be given to the law and the rules in order to minimize the unrest amongst the officers of the department who suffer and or being deprived of their lawful*

*right to promotion or otherwise. The postings of officers mentioned in the lists reproduced hereinabove are not inconformity of the findings of this Court given in the cases of Lal Khan Jatoi which findings were affirmed by the Honourable Supreme Court in its order referred to hereinabove.*

*10. We for the aforesaid reasons direct the respondents to immediately take steps to withdraw all the officers (mentioned in the list) posted either on the basis of deputation and or on transfer out of their cadre and posted to different cadre posts in different departments of Sindh, be repatriated to their parent departments in the Federal Government and or to be transferred and posted to their own cadre and department in Sindh within 15 days from the date of communication of this order. In future the Sindh government/competent authority is restrained from issuing order of posting of any non-cadre officer against cadre posting by transfer under section 10 of the Civil Servant Act nor they would depute any officer from Occupational Group of the Federal Government or from autonomous except in exigency unless he meets the criteria of matching qualification, eligibility and experience to the proposed post.*

*11. We are informed that some petitions have been filed by deputationists before the Principal seat. Neither the petitions nor its number nor any order of the Court has been placed before us. We have been informed that amongst them one petitioner has filed a petition before this court which was dismissed and on appeal before the Honourable Supreme Court, leave was refused. Pendency of such petitions in no way restricts this Bench from seeking implementation of the order of Honourable Supreme Court referred to hereinabove.*

*12.....*

*13.....*

*14. This petition is allowed in the above terms with the aforesaid directions with the listed application.*

131. The Petition for leave to appeal was filed by some of the deputationists, in which leave was refused with the following observations affirming the judgment of the Sindh High Court:-

*“4. We have heard learned counsel for the petitioners in CP No.802-K of 2010 and we have examined the material made available before us. The petitioners appear to have grievance against directions in para No.10 of impugned judgment so far*



*as it relates to their repatriation or relieving them from their deputation. The main contention raised by their learned counsel was that the unexpired period of deputation could not be cancelled/withdrawn and the petitioners were ordered to be relieved and repatriated to their departments without providing them an opportunity of hearing. When confronted whether the petitioners enjoy any vested right as deputationist or otherwise to hold any particular post for all times to come, he admitted that no such right inhered in the petitioners. He, however, contended that in the impugned judgment there were some observations to the detriment of the petitioners which need to be deleted particularly, when the same have been made without providing an opportunity of hearing to them.*

5. *It is well settled that a deputationist does not have any vested right to remain on the post as deputationists for ever or for a stipulated period. He can be repatriated to the parent department at any time. In this reference may be made to the case of Shafiur Rehman Afridi v. CDA (2010 SCMR 378). As regards the question of contention of the petitioners that they were not provided an opportunity of hearing before passing the impugned judgment, it may be stated that there is no cavil with the proposition that the principle of audi alteram partem (hear the other side; hear both sides; no man to be condemned unheard) has always been considered to be embedded in the statute even if there is no specific or express provision because no adverse action can be taken against any one yet, at the same time this principle could not be treated to be of universal nature because before invoking/applying this principle one has to specify that as against action contemplated, prima-facie, he has a vested right to defend the action. Equally, in cases where the claimant has no entitlement in his favour he would not be entitled to the principle of natural justice. In this reference may be made to the case of Justice Khurshid Anwar Bhindar v. Federation of Pakistan (PLD 2010 SC 483). In the instant case, as noted hereinabove, learned counsel for petitioners could bring nothing to our notice that the petitioners have any vested right to remain on a post as a deputationist or otherwise and that they cannot be repatriated/relieved at any time. Thus, the petitioners cannot claim the protection of the cited principle. Besides repatriation of the petitioners, if any, shall, in this case, be as a fall out of the judgment impugned herein which cannot be questioned individually. Be that as it may, learned Judges of Division Bench have taken note of unrest of officers of concerned departments who are deprived of their lawful rights to promotion on account of such kind of postings causing heart burning to the cadre officers besides the over all effect on the system within departments etc. and in this they have pertinently observed:*

*“To improve the working of the departments we are of the considered view that postings of the nature should be discouraged and respect should be given to the law and the rules in order to minimize the unrest amongst the officers of the department who suffer and or being deprived of their lawful right to promotion or otherwise. The postings of officers mentioned in the lists reproduced hereinabove are not in conformity of the findings of this Court given in the cases of Lal Khan Jatoti which findings were affirmed by the Honourable Supreme Court in its order referred to hereinabove.”*

*As regards contention of learned counsel for petitioners, to the effect that some observations to the detriment against the employees/petitioners have been made, it may be stated that no adverse remarks seem to have been made specifically against the petitioners some of whom even do not appear in the list of officers reproduced in the impugned judgment so as the same be kept in their service record in their respective departments.*

*6. Considering the case of the petitioners in the above petition, in the above perspective, we find no merit in the petition which is dismissed accordingly. Leave refused.*

**C.P.No.4-K of 2011**

*Through C.M.A.No.82 of 2011 Mr. K.A.Wahab, AOR for the petitioner has sought permission to withdraw this petition. Order accordingly. CPLA No.4-K of 2011 is dismissed as withdrawn.”*

132. The procedure provided under the Esta Code requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing Government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in Government must have matching qualifications, expertise in the field with required experience. In absence of these conditions, the Government cannot appoint anyone by transfer on deputation. The Sindh Government has conceded before this Court that the deputationists did not have the matching qualifications to the cadre in which they were working on deputation and

were ordered to be repatriated. Instead of repatriation, the Sindh Government absorbed them by the impugned instruments granting them backdated seniority as well. Some of the civil servants serving in their parent department on non-cadre posts were transferred and absorbed to the cadre posts against the language of Section 10 of the Act of 1973 on the basis of the impugned enactments. We are conscious of the definition given under Section 2(1)(b)(i) of the Act of 1973 reproduced here under:-

*“2(1)(b) “civil servant” means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include--*

*(i) a person who is on deputation to the Province from the Federation or any other Province or authority or,*

*(ii).....*

*(iii).....*

133. The aforesaid sub-section specifically mentions that a person on deputation will loose the status of a civil servant. The word “*authority*” used under this sub-section does not authorize the Sindh Government to transfer and appoint on deputation any person who is not a civil servant within the definition given under the Sindh Civil Servants Act, 1973 and or Government Servant as mentioned under the Esta Code. In order to harmonize Section 2(1)(b)(i) and bring it in conformity with the language of Esta Code, should be read as under:-

*“2(1)(b) “civil servant” means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include--*

*(i) a person who is on deputation to the Province from the Federation or (to) any other Province or (to) authority or,*

*(ii).....*

*(iii).....*

The aforesaid word ‘to’ shall bring an end to the controversy on deputation besides it will be in conformity with the civil service structure and the Esta Code.

134. The Provincial Assembly through the impugned instruments pronounced a legislative judgment with the sole object to accommodate their blue-eyed, who were neither civil servants nor Government servants. The deputationists brought in were not recruited through the process of the competitive exams and were appointed on deputation to the cadre posts, which appointments affected the rights of the civil servants serving in the different Government departments, as their promotions were blocked.

135. Through the impugned instruments, definition of Civil Servant has been widened by including non-civil servants employed in the different organizations having different service rules regulating their terms and conditions of service. The interpretation of Section 2(1) (b) of the Act of 1973 does not confer powers on the Sindh Government to grant status of civil servant to an employee of an autonomous body and non-civil servant nor does it authorize under the scheme of the Constitution to transfer on deputation a civil servant from non-cadre post to a cadre post. In the case of Muhammad Mubeen-us-Salam reported in (PLD 2006 SC 602), this Court while examining the vires of Section 2-A of the Service Tribunals Act 1973 declared it ultra vires of the Articles 240 and 260 of the Constitution to the extent of category of employees, whose terms and conditions of service were not regulated by the Federal legislature and by deeming clause, they were conferred the status of Civil Servants as defined under Section 2(1) (b) of the

Act of 1973. The present impugned legislation has conferred the status of a civil servant to a deputationist, who is an employee of an Organization having distinct service rules. The term “*deputationist*” as has been interpreted by this Court clearly draws line between the Government servant and a non-civil servant.

136. The transfer by appointing on deputation of an employee having no matching qualifications has created sense of insecurity which multiplied the concern of the civil servants when these deputationists were absorbed under the impugned legislative instruments. It is a misconception that by an amendment in the parent statute, the definition of ‘civil servant’ can be enlarged as has been done through the impugned legislations. By a deeming clause as introduced under the impugned legislation, an employee holding a post under any authority or corporation, body or organization established by or under any Provincial or Federal law or which is owned or controlled by Federal or Provincial Government or in which Federal Government or Provincial Government has controlling share or interest could not be conferred status of a civil servant. The law does not confer such powers upon a Provincial Assembly to change the structure of service law in conflict with the provisions of Article 240(b) or Article 242(1B).

137. The concept of power under our Constitution is distinct from other constitutions of common law countries. Under the Constitution of Pakistan, the sovereignty vests in Allah and it is to be exercised by “the people within the limits prescribed by Him”, as a sacred trust. The Authorities in Pakistan while exercising powers must keep in mind that it is not their prerogative but a trust reposed in them by the Almighty Allah and

the Constitution. The impugned legislation is promulgated to benefit patent class of persons specific and violative of Article 25 of the Constitution as it is not based on intelligible differentia not relatable to the lawful object. The impugned legislation on deputation is violative of the service structure guaranteed under Article 240 and 242 of the Constitution which provides mechanism for appointments of Civil Servants and their terms and conditions as envisaged under Act of 1973 and the Rules of 1974 framed thereunder. The object of the Act of 1973 is to maintain transparency in appointments, postings and transfers of Civil Servants, whereas deputationists who otherwise are transferred and appointed by the Sindh Government under the impugned instruments have destroyed the service structure in Sindh and has blocked the promotions of the meritorious civil servants in violation of the fundamental rights guaranteed to them under Articles 4, 8, 9, 25, 240 and 242 of the Constitution, as discussed hereinabove and are liable to be struck down.

### **RE-EMPLOYMENT**

138. Dr. Farough Naseem, Mr. Anwar Mansoor Khan and Mr. Yawar Farooqui did not address the Court on this issue.

138. Through the impugned Ordinance No.VI of 2012 and Act XIV of 2013, the Sindh Government, by virtue of the amendment in Section 14 was given power to re-employ a retired civil servants. The provisions of un-amended section 14(1) and (2) were interpreted by this Court and the amended sub-section (3) was introduced to defeat the judicial pronouncement with regard to induction through re-employment of retired officers on contract basis. The post retirement re-employment is major

problem in the smooth service of career officers in terms of promotions and postings instilling a sense of injustice. This Court has time and again recorded its displeasure and reservations to re-employment. In Human Rights Cases No. 57701-P of 2010 and others reported as (PLD 2011 SC 205), this Court has held as under:-

*“6. This Court is fully conscious of its duty, which has to be discharged under the Constitution and when it is attempted to hush up the corruption cases, such as one under consideration, the Court can pass appropriate order as it has already directed and it could also not be oblivious of its function to ensure that in the departments like the police and FIA, people, who deserve to be promoted on the basis of efficiency or performance etc. are appointed and not on contract basis. Therefore, we direct the Secretary, Establishment Division to furnish the list of all Police officers, including the Director General, FIA who have been appointed on contract basis and also furnish the reasons for the necessity and the interest of the Government for allowing them to continue with such posts like IG and DG, which are of high importance and the persons occupying these posts are supposed to be responsible to ensure the rule of law in the country. The list shall be furnished by the Secretary, Establishment Division by 21.1.2011. On receipt of such list, the office shall issue notices to all such officers to appear and explain as to under what authority they have been appointed on contract basis, and as to why notifications for their appointments should not be cancelled.”*

140. Un-amended Section 14 of Act of 1973 allowed re-employment of retired civil servants, but only in exceptional and compelling circumstances that too, in the public interest, whereas the impugned instruments has opened flood gates of re-employment for those who have access to Authorities. There is no scheme provided by the Sindh Government by amending sub-section, which authorizes the Sindh Government for re-employment of the retired government servants to regulate re-employment. The power of re-employment would adversely affect the terms and conditions of the civil servants, who are in service. The

impugned legislation has impinged upon the civil service tenurial limitations and civil servants' legitimate expectancy of future advancement. This Court in the case of Mrs. Farkhanda Talat vs. Federation of Pakistan and others (2007 SCMR 886) has ruled out as under:-

*“is that the same hold out a guarantee to all civil servants that no action could ever be taken which could adversely effect terms and conditions of their service e.g. tenure of their employment; pay and grade earned by them through years of labour and hard work; the right to promotion including legitimate expectancy of future advancement in their respective careers; the retirement benefits such as pension, the gratuity and provident fund etc. and all other terms and conditions which were prescribed by Chapter II of the said Act of 1973 and by other laws, rules and regulations relating to the subject.”*

141. The original purpose of un-amended section 14 was to provide stopgap arrangement allowing the Government to recruit the officer having matching qualifications by the modes provided under the recruitment rules. Presently we have been informed that the retired officers of the Government are serving on cadre posts for years together. The Sindh Government is allowing retired servant to continue as Secretaries on the misconception that such persons have expertise on subject. The Secretary of a department under the Rules of Business is to play administrative role and is provided technical assistance by the wing within the Department. It is a cadre post and by allowing the re-employment of a retired civil servant for years together would block the promotions of the prospective officers who have gained sufficient experience by passage of time by serving in the Government.

142. Likewise re-employment itself negates the mandate of the provisions of Act of 1973 and the rules framed thereunder inasmuch as a retired officer re-employed is not governed by the rules regulating the terms



and conditions of civil servants instead by the terms of contract under which he is re-employed.

143. Issue of re-employment also came under discussion before the larger Bench of this Court in Suo Moto Case No.16 of 2011 and on 22.03.2013, the larger Bench while dealing with the issues has observed that re-employment of a person on his retirement must be made in public interest because re-employment against sanctioned post is likely to affect the interest of junior officers, who are waiting for promotion to the next higher ranks and their rights of promotion are blocked. Likewise, the officer whose right is matured for promotion has to wait till such time that the re-employed completes his contract. In the intervening period the officer has to face difficulties in maintaining his seniority. It is settled principle of law that if the right of promotion is not blocked by re-employment then such powers can be exercised, then too in exceptional cases for a definite period.

144. We, therefore, hold that re-employment of such a nature as proposed under the amended sub-section (3) of Section 14 is violative of the provisions of Act of 1973 and rules framed thereunder, besides it violates the fundamental rights of the serving civil servants, who on account of such re-hiring on contract are deprived of their legitimate expectancy of promotion to a higher cadre, which is violative of the provisions of Articles 4, 9 and 25 of the Constitution.

### **OUT OF TURN PROMOTIONS**

145. Dr. Farough Naseem, M/s Anwar Mansoor Khan and Yawar Farooqui did not make any contention on the issue of out of turn promotions, however, written synopsis were filed by the Advocate General Sindh and

Mr. M.M.Aqil Awan. In addition to the written synopsis filed by Mr. M.M. Aqil Awan, he also made oral submissions in which he submits that no mechanism has been provided under the impugned legislation for out of turn promotions.

146. We have considered the arguments of the learned counsel and have perused the record. By the Ordinance dated 22<sup>nd</sup> January 2002, the Governor of Sindh amended Act of 1973 by inserting sub-section 9A, empowering the competent authority to grant out of turn promotions or award or reward in such manner as may be prescribed to a civil servant, who provenly exhibits the act of gallantry while performing his duties or very exceptional performance beyond the call of duty. It was further provided under the Ordinance that the aforesaid out of turn promotions or award/reward will be conferred in the manner prescribed. The term '*prescribed*' is defined under Section 2(1)(g) of the Act of 1973 and means "*prescribed by Rules*". This Ordinance of 2002 was protected by Article 270AA made under 17<sup>th</sup> amendment of the Constitution.

147. In this background the Government framed and added Rule 8-B in the Rules of 1974 notified on 10.02.2005. On 11.05.2005 Rule 8-B was omitted.

148. The Ordinance III of 2008 was issued by which Section 9-A was omitted. However, this Ordinance was not placed before Assembly as a result of which, it lapsed after 90 days and Section 9A which was introduced pursuant to the Ordinance 2002 stood revived in view of judgments of this Court in the case of Sabir Shah (PLD 1995 SC 66), Federation of Pakistan

vs. M. Nawaz Khokhar (PLD 2000 SC 26) and Air League P.I.A.C Employees vs. Federation of Pakistan (2011 SCMR 1524).

149. On 31.03.2009, the Sindh High Court vide its judgment in C.P.No.D-1595/2005 challenging out of turn promotions of different police officers directed the Sindh Government to revive Rule 8-B and the Committee constituted therein shall examine the case of each police officer. On 29.05.2009, the amendment was brought in the Rules of 1974 and Rule 8-B was revived. However, the directives contained in the judgment of the Sindh High Court were never complied with instead, out of turn promotions were not only being granted to the police officers, but this concession was also extended to civil servants, who were not members of police force. Through the impugned legislation, section 9A was further amended in the manner that it omitted the term '*prescribed*'. In other words, the power of the Committee under the rule to examine and recommend a case of '*out of turn promotion*' was done away. Through impugned legislation Sections 23-A and 23-B in the Act of 1973 were further amended by Ordinance VI of 2012 and Ordinance XVII of 2012. The impugned legislation by Ordinance and by impugned Acts of 2013, all the out of turn promotions made immediately before the commencement of the impugned Acts were regularized from the date of such promotions which means that the beneficiaries of out of turn promotions were further conferred the backdated seniority from the date of their promotion.

150. On the issue of '*out of turn promotion*' a Division Bench of this Court in its judgment in the case of Capt. (Retd) Abdul Qayyum Executive Engineer vs. Muhammad Iqbal Khokhar and 4 others (PLD 1992 SC 184)

has held that “*Competent Authority was empowered to grant out of turn promotion.*” However, this view was reviewed by this Court in the judgment of Muhammad Nadeem Arif and others vs. Inspector General of Police Punjab, Lahore and others (2010 PLC (C.S) 924), where Full Bench of this Court has concluded that out of turn promotions is violative of Articles 9 and 25 of the Constitution. The relevant finding on the out of turn promotions is given in the aforesaid judgment, reads as under:-

*“Out of turn promotion, as envisaged in the impugned instruction, is not only against Constitution but also against Injunctions of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community but it should not be made basis of accelerated promotion.”*

151. After the aforesaid judgment of this Court, the Punjab Government deleted the provision by which out of turn promotions were granted to the civil servants. The view propounded by this Court in the case of Muhammad Nadeem Arif, was endorsed by this Court in another judgment dated 02.03.2011 in C.P.No.657-K/2010, of which one of us (Amir Hani Muslim,J) was a member, and reported as Ghulam Shabbir vs. Muhammad Munir Abbasi and others (2011 PLC (C.S) 763, where this Court has held that out of turn promotion was not only against the Constitution, but against the Injunctions of Islam. Reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

152. Additionally we have noticed that Sections 23-A and 23-B were inserted by amending the Act of 1973 by Ordinance XXXV of 2002 on

12.10.2002. By impugned instruments, Sections 23-A and 23-B were introduced without substituting the previous Sections 23-A and 23-B, which shows unwarranted haste on the part of the legislatures.

153. On examining the language of impugned legislative instruments, we are of the view that Section 9A of the Act of 1973, introduced by the Ordinance in 2002 is largely a police specific class, which caters regularization of out of turn promotions made under Section 9A of the Act. In the past this section 9A has caused heart burning and ill will amongst the police officers both at individual and collective levels as it vested excessive and abusive discretionary powers in the Provincial Authorities to indulge in favoritism and gross nepotism, which is another germinated culture of patronage and politicization in the Sindh police.

154. Indeed out of turn promotion has become a vehicle of accelerated progression for a large number of favorite officers using various measures and means. A large number of favorite police officers were conferred out of turn promotions under Section 9A of the Act of 1973. This Court repeatedly disapproved the culture of patronage creeping in the Sindh police by abuse of authority which has gravely eroded efficiency, morale and image of the police officers. In the recent order of this Court in the case of Suo Moto No.16/2011, this Court has observed as under:-

*“It is also a hard fact that the police has been politicized by out of turn promotions and inductions from other departments time and again, through lateral entries which has brought unrest amongst the deserving police officers waiting their promotions on merits. The posting and transfers of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within the Karachi on senior positions lack qualifications and competence*

*both.....If this is the state of affairs, how can there be peace in Karachi. It seems instead of depoliticizing police force further damage has been caused by the government by introducing their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions.”*

155. In the case of Watan Party and another vs. Federation of Pakistan and others (PLD 2011 S.C 997), this Court has made observations with the directions that *“further observe that to come out of instant grave situation of law and order in Karachi, police force being principal law enforcing agency has to be de-politicized and strengthened so that they could, with full commitment, dedication, zeal and zest perform its bounden duty, and unless there is a de-politicized police, the situation of law and order is likely to become more aggravated, no sooner the assistance of Rangers is withdrawn.”*

156. However, instead of effecting reforms, the Authorities have resorted to employing legislative means to impose executive will, which has nurtured a culture of patronage protecting interest of influential group of blue-eyed persons. By the impugned legislative instruments unbridled discretionary powers were conferred on the Authorities to protect culture of favoritism and nepotism that has prevailed for many years particularly in Sindh Police if not other services. That last impugned legislative instrument which is Act XXIV of 2013 was passed hours before the Provincial Government was to complete its term and without much debate or discussion in the Assembly which signifies the haste to protect specific class of officials/individuals by regularizing their ex-cadre and out of turn promotions, which have deprived the rights of other meritorious and

deserving civil servants/officers. Through the impugned legislation under the grab of “*act of gallantry*” or “*very exceptional performance beyond the call of duty*”, the Chief Minister was vested with unrestrained power to grant out of turn promotion to any civil servant, whom he deemed fit and also to indemnify the existing beneficiaries of the said, or similar earlier provisions, regardless of merit or justification of being so rewarded. This section 9A benefits particular class of officials on seemingly political and other impermissible grounds. By the impugned legislation retrospective seniorities were given to a large number of influential officers causing injustice to the meritorious and deserving civil servants. Section 9A through the impugned Acts has extended protection to the selected beneficiaries, which is bound to generate rancor and disaffection amongst the civil servants/ police officers, who were appointed through competitive process and their seniority and smooth progress in career stands seriously abridged.

157. Unfortunately, the impugned Acts have bypassed the stipulation of Rule 8-B and provided a blanket cover to all out of turn promotions even to those which have been contested in the Courts for being granted in gross violation of rules and infringing the seniority of many deserving officers.

158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9A would affect the performance of hundreds of thousands of the civil

servants serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9A.

159. On account of the promulgation of impugned legislative instruments, employees brought on contracts and or appointed or transferred on the basis of deputation were absorbed in the Sindh Government against the law declared by this Court and the Sindh High Court and thereafter they were granted out of turn promotions. The Sindh Government through the impugned legislation have conferred undue favour on a select group of undeserving and unmeritorious persons by way of deputation, posting, induction, out of turn promotion, ante-dated seniority, re-hiring. The impugned legislation protects and promotes the interests of select group of officers/ individuals to the disadvantage of hundreds of thousands of civil servants, depriving them of the equal protection of law under Articles 4 and 25 of the Constitution.

160. The impugned legislative instruments are violative of Article 143 of the Constitution. Article 240 of the Constitution provides for service structure of civil servants. It refers (i) Federal Service (ii) Provincial Service (iii) All Pakistan Service. The last category of service, among others, can be exemplified by All Pakistan Unified Group. The provincial civil servants join All Pakistan Unified Group or Police Service of Pakistan in accordance



with their provincial quota when they acquire BS-19. They retain their original inter-se seniority with the provincial cadre, but they also compete, within the given federal quota, for their promotions to the higher grades i.e BS-20 and above. This policy of encadrement is regulated by the Esta Code. These guidelines/ instructions are applicable to all the Federal civil servants including those joining the All Pakistan United Group/Police Service of Pakistan on their provincial quota. By the impugned instruments, the civil servants have been granted out of turn promotion with backdated seniority.

161. Therefore, it is important to ensure that both provincial and federal laws should be complementary rather than conflicting, or else the smooth progression from the provincial service to the All Pakistan Unified Group/P.S.P would become impossible and there would be an administrative chaos caused by conflicting laws and a myriad of litigation. The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All Pakistan Unified Group/PSP. The impugned legislation would distort inter-se seniority of the civil servants not only within the province but also the federal civil servants.

162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self respect and dignity of

the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.

163. In order to discover the intent and wisdom behind the impugned legislation, we required the Additional Advocate General to place before us the debates of Assembly during the passage of the Bills. Such record was placed before us. After perusal of the record, we found that the Bills/proposed laws were not sent to the Standing Committee. No debate had taken place on the proposed laws which had far reaching effect on the rights of the civil servants. One of the impugned Acts contained statement of objects and reasons for promulgating the impugned legislation, which is reproduced here-under:-

*“The law enforcement personnel of Sindh Police in the past have risked their lives and exhibited exceptional acts of gallantry in the line of duty. Therefore, in order to retain the morale of the Force, it is expedient to make certain amendments in the Sindh Civil Servants Act, 1973.*

*The Bill seeks to achieve the above object.”*

164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sind Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word ‘Gallantry’ in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.

**WHETHER THE IMPUGNED INSTRUMENTS HAVE  
NULLIFIED THE EFFECT OF THE JUDGMENTS OF  
THIS COURT AND THE SINDH HIGH COURT.**

165. The leading judgment on the subject issue, which our Courts have approvingly referred to the case of Indira Nehru Gandhi vs. Raj Narain (AIR 1975 S.C 2299) which relates to amendment in the Election Laws of India. In the said judgment Paras 190 and 191 are important and reproduced here-under:-

**“190.** A declaration that an order made by a court of law is void is normally part of the judicial function and is not a legislative function. Although there is in the Constitution of India no rigid separation of powers, by and large the spheres of judicial function and legislative function have been demarcated and it is not permissible for the legislature to encroach upon the judicial sphere. It has accordingly been held that a legislature while it is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible to the legislature to declare the judgment of the court to be void or not binding (see *Shri Prithvi Cotton Mills Ltd. V. Broach Borough Municipality*, (1970) I SCR 388 (at page 392) = (AIR 1970 SC 192 *Janapada Sabha, Chhindwara v. The Central Provinces Syndicate Ltd.*, (1970 3 SCR 745 (at page 751) = (AIR 1971 SC 57) *Municipal Corporation of the City of Ahmedabad etc. v. New Shorock Spg. & Wvg. Col. Ltd. Etc* (1971) I SCR 288 = (AIR 1970 SC 1292) and *State of Tamil Nadu v. M. Rayappa Gounder*, AIR 1971 SC 231).

**191.** The position is it prevails in the United States, where guarantee of due process of law is in operation, is given on pages 318-19 of Vol. 46 of the American Jurisprudence 2d as under:

“The general rule is that the legislature may not destroy, annul, set aside, vacate, reverse, modify, or impair the final judgment of a court

of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been held unconstitutional as an attempt on the part of the legislature to exercise judicial power, and as to violation of the constitutional guarantee of due process of law. The legislature is not only prohibited from reopening cases previously decided by the Courts, but is also forbidden to affect the inherent attributes of a judgment. That the statute is under the guise of an act affecting remedies does not alter the rule. It is worthy of notice, however, that there are cases in which judgments requiring acts to be done in the future may validly be affected by subsequent legislation making illegal that which the judgment found to be legal, or making legal that which the judgment found to be illegal.

**10.--- Judgment as to public right.**

With respect to legislative interference with a judgment, a distinction has been made between public and private rights under which distinction a statute may be valid even though it renders ineffective a judgment concerning a public right. Even after a public right has been established by the judgment of the court, it may be annulled by subsequent legislation.”

166. This Court in the case of Fecto Belarus Tractor Ltd. vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 S.C 605) has held that when a legislature intends to validate the tax declared by a Court to be illegally collected under an individual law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to have taken place effectively. It will not be sufficient merely to

pronounce in the statute by means of a non-obstante clause that the decision of the Court shall not bind the authorities, because that will amount to reversing a judicial decision rendered in exercise of the judicial power which is not within the domain of the legislature. It is therefore necessary that the conditions on which the decision of the Court intended to be avoided is based, must be altered so fundamentally, that the decision would not any longer be applicable to the altered circumstances. One of the accepted modes of achieving this object by the legislature is to re-enact retrospectively a valid and legal taxing provision, and adopting the fiction to make the tax already collected to stand under the re-enacted law. The legislature can even give its own meaning and interpretation of the law under which the tax was collected and by “*legislative fiat*” make the new meaning binding upon Courts. It is in one of these ways that the legislature can neutralize the effect of the earlier decision of the Court. The legislature has, within the bounds of the Constitutional limitations, the power to make such a law and give it retrospective effect so as to bind even past transactions. In ultimate analysis, therefore, the primary test of validating piece of legislation is whether the new provision removes the defect which the Court had found in the existing law and whether adequate provisions in the validating law for a valid imposition of tax were made.

167. In order to nullify the judgment of the Court, unless basis for judgment in favour of a party is not removed, it could not affect the rights of a party in whose favour the same was passed. The issue of effect of nullification of judgment has already been discussed in the case of Mobashir Hassan reported in (PLD 2010 S.C 265), Para-76 discusses the effect of

nullification of a judgment by means of a legislation. In the said case, the view formed is identical to the one in the case of Indira Nehru Gandhi vs. Raj Narain (AIR 1975 S.C 2299) and Fecto Belarus Tractor Ltd. vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 S.C 605) and it was observed that legislature cannot nullify the effect of the judgment and there are certain limitations placed on its powers including the one i.e. by amending the law with retrospective effect on the basis of which the order or judgment has been passed thereby removing basis of the decision. In other words, the arguments of the learned AAG, Dr. Farough Naseem and Mr. Anwar Mansoor Khan that the legislature has the power to nullify the effect of judgment on the facts in the present case are without force.

168. In the case in hand the Provincial Assembly has validated/regularized the absorptions and out of turn promotions by the Ordinance of 2011, Act XVII of 2011 and Act XXIV of 2013 without providing mechanism by which the absorptions and out of turn promotions with backdated seniority were given to the employees. The judgments on the issue of absorption were clear and in fact through impugned instruments, the Assembly validated the absorptions/out of turn promotions without noticing that while granting concessions to few blue-eyed persons, rights of all the civil servants guaranteed under the Constitution and Civil Servant Act were impaired. In fact the impugned instruments are in the nature of legislative judgment as they purport to take away jurisdiction of the Superior Courts to abridge the writ and legality of the provisions by which Sindh Government has conferred undue favours on a select group of undeserving persons by



way of deputation, posting, absorption out of turn promotions, ante-date seniority and re-hiring, hence they are violative of Article 175 of the Constitution. It goes without saying that a repugnancy to the Constitution declared by this Court or a High Court cannot be validated or condoned by a legislature unless the Constitution is itself amended.

169. We have also noticed that the amendments brought in by the impugned legislation are not in conformity with the principles defining parameters of ‘amendments’ brought in a statute. “*Amendment*” has been defined by Earl T. Crawford in the book authored by him titled as “*The Construction of Statutes*”. While defining the “*Amendment*”, he has referred to different books and case law developed by the Courts of United Kingdom and America that “*A law is amended when it is in whole or in part permitted to remain and something is added to, or taken from it, or it is in some way changed or altered in order to make it more complete or perfect or effective*”.

170. The amendments made in the Act of 1973 through the impugned legislations have in fact changed the structure of the Act by introducing power (unrestrained discretion in the Chief Minister) which runs parallel to the Civil Servants Act and the recruitment rules framed thereunder. The amendment must meet the requirements of an original Statute. Since amendatory acts, strictly speaking, are not new laws but continuations of the old, the old act must be adequately identified. If the principles set forthwith hereinabove are applied to the impugned instruments then it can easily be concluded that virtually a parallel civil service system has been brought into existence which the provincial legislature is not

competent to do so, whereas Article 242 of the Constitution provides a uniform method of induction/recruitment to the services of the Federation and the Provinces by establishing Federal or Provincial Service Commissions through Federal and Provincial legislature.

171. The contention of the learned Additional Advocate General is that defects/anomalies observed by the Courts in their judgments were cured/ removed by promulgating these legislative instruments. The material placed before us does not support the contention of the learned Additional Advocate General. In fact, we have noticed that some of the applicants before us were inducted on deputation in the Sindh Government. After the judgment of the Sindh High Court in C.P.No.1491 of 2010, they alongwith many other deputationists were ordered to be repatriated to their parent departments on 14.12.2010. The judgment of the Sindh High Court was appealed against by some of the deputationists and on 1.1.2011, leave was refused by this Court affirming the judgment of the Sindh High Court. In spite of the directives of this Court and the Sindh High Court, the deputationists, in connivance with the Sindh Government, had obtained interim orders from the Sindh High Court by filing constitutional petitions. Upon intervention by this Court, the petitions filed by the deputationists were withdrawn and they were relieved on 2.5.2012, under the orders of this Court. In the intervening period and thereafter, these validation Acts were promulgated to defeat the orders of this Court and the Sindh High Court, which provided unwarranted protection to the unmeritorious and undeserving persons, who were absorbed by the Sindh Government in defiance of the orders of the Courts.

172. The contention of the learned Advocate General that the Provincial Assembly has absolute powers to promulgate law which may nullify the effect of a judgment is misconceived, as a general rule the legislature cannot destroy, annul, set aside, vacate, reverse, modify or impair a final judgment of a court of competent jurisdiction, nor fundamental rights guaranteed under the Constitution can be abridged by the legislature. The legislature is not only prohibited from reopening cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment through a piece of legislation as has been done in the case in hand. In ultimate analysis, therefore, the primary test for examining the vires of an instrument (validating) is whether the new provision removes the defect, which the court had found in the existing law and whether adequate provisions in the validating law have been introduced to the terms 'absorption', 'out of turn promotion', 're-employment and 'deputation'. We have already discussed hereinabove, the aforesaid terms, used in the impugned legislative instruments and have been interpreted by the courts prior to coming into field the impugned legislations. After examining the impugned legislations, we are of the considered view that these instruments cannot be construed to have nullified the effect of the judgments discussed hereinabove, as the instruments sought to be challenged, in fact, encourages nepotism and discourages transparent process of appointments of civil servants by recruitment and or by transfer in all the three modes provided by the Act of 1973 and the rules framed there-under. This court in fiscal matters has applied restraints from interfering in the legislative domain while examining the vires of a statute, but in the case in hand, the impugned

legislations through amendments and validation/regularization have hampered the fundamental rights of the civil servants with the sole object to extend favours to few blue-eyed of the government.

173. We, therefore, are clear in our mind that amendments brought in the Act of 1973 by the impugned validating instruments do not meet the standards of jurisprudence which mandate safeguard provided to the civil servants under the Constitution. The impugned legislative instruments, therefore, do not have the effect to neutralize or nullify the judgments of the Courts referred to hereinabove.

### **PRINCIPLE OF LOCUS POENITENTIAE**

174. Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case, the benefits extended to different employees or civil servants through the impugned legislations are not only violative of law but are also ultra vires of the Constitution referred hereinabove. In such like situation the principle of locus poenitentiae does not attract and in this regard this Court in the cases of Muhammad Nadeem Arif and others vs. Inspector General of Police, Punjab, Lahore and others (2010 PLC (C.S) 924) and The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another vs. Jalaluddin (PLD 1992 S.C 207) has held that principle of locus poenitentiae would not be attracted in a case under which the benefit has been extended by a law, which is violative of the provisions of the Constitution.

175. For the aforesaid reasons we allow Constitution Petitions.No.71/2011, 23-K/2012, 21/2013 and 24 of 2013, and dispose of all the Misc. Applications and hold that the impugned legislations mentioned in para 115 are violative of the provisions of the Constitution discussed hereinabove. We further hold and declare that benefit of ‘absorptions’ extended by the Sindh Government since 1994, with or without backdated seniority, are declared ultra vires of the Constitution, as the learned Additional Advocate General has made a statement during hearing that the impugned validation instruments have granted legal cover to the employees/civil servants, who were absorbed since 1994. Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servants Act, 1973, by the Sindh Government to an employee or civil servant with or without backdated seniority since 22.1.2002, when section 9-A was inserted through Ordinance IV of 2002, are ultra vires of the Constitution. All Misc. Applications made by the absorbees in which interim orders were passed by this Court restraining the Government from complying with the orders of this Court dated 02.05.2012 stand vacated. We also hold that all the re-employment/rehiring of the retired Civil/Government Servants under the impugned instruments being violative of the constitution are declared nullity. We further direct that the nominations made by the Chief Minister in excess of the quota given by Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, are without lawful authority and all the 15 nominees (Assistant Commissioners) are reverted to their original positions.

176. For the aforesaid reasons, Civil Petition No.6-K of 2011 filed by Inayatullah Marwat is dismissed. Civil Appeals No.98 of 2010, 100-K of 2010 and 131-K of 2010 filed by Government of Sindh are allowed and impugned judgments of the Sindh Service Tribunal dated 23.2.1010, 22.3.2010 and 31.3.2010 passed in Appeals No.01 of 2009, 65 of 2009 and 94 of 2009 respectively are set aside. Civil Appeal No.12-K of 2012 filed by Dr. Nasimul Ghani Sahito and others against the absorption by Rule 5(4)(b) of the West Pakistan Civil Service (Execution Branch) Rule 1964 of S.M. Kaleem Makki is allowed and the respondent is directed to be absorbed in a non-cadre post. Civil Appeals No.183-K of 2011, 184-K of 2011 and 185-K of 2011 are also allowed and the impugned judgments dated 17.2.2011, 12.3.2011 passed by the Sindh Service Tribunal, Karachi in Appeals No.39, 40 and 46 of 2008 respectively are set aside.

177. Before parting with the judgment, we are surprised if not shocked to see that the Sindh High Court has entertained a Civil Suit No.102 of 2013 filed by Mirza Shahbaz Mughal relating to out of turn promotion, which is one of the issues pending adjudication before this Court. In this respect the background is that a Criminal Misc.Application No.278/2013 was filed by Syed Mehmood Akhtar Naqvi, in which he has given brief story of Shahbaz Mughal, who was appointed ASI on 29.01.1996 and promoted as Sub-Inspector on 17.12.2001 and was confirmed as Sub-Inspector on 18.12.2003. He was promoted as Inspector on 26.04.2004 on adhoc basis with the condition that he will not claim seniority over his seniors and will retain his original position in the promotion list and his promotion will be regularized on his turn alongwith his batch mates vide order dated

18.02.2009. However, he was promoted out of turn on adhoc basis as DSP in his own pay and scale. An application was made to the Chief Minister by his mother and his seniority was fixed and regularized on 01.04.2011. On the intervention of this Court on 03.09.2012 out of turn promotion granted to him along with Hamid Ali Bhurgari and Abdul Jabbar Khan and their inter-se seniorities were revised and he was reverted to his original rank of Sub-Inspector.

178. Thereafter Mirza Shahbaz Mughal was appointed by the Sindh Government as D.S.P along with 9 others bypassing recruitment rules and a complaint in the nature of an application was made before this Court. Comments were called and the Assistant AIG (Legal) informed the Court that Mirza Shahbaz Mughal along with 09 DSPs, was de-notified. After this Court reserved the judgment, we were informed that Notification denotifying Mirza Shahbaz Mughal as DSP was suspended by the Sindh High Court. The relevant R&Ps was called through the Registrar of the Sindh High Court and it was noticed that Suit bearing No.102/2013 challenging his reversion to the rank of Sub-Inspector against the Sindh Government, Inspector General of Police and the Home Department with the following prayers:-

### **PRAYER**

*It is, therefore, prayed that this Hon'ble Court may be pleased to pass judgment and decree in favour of the Plaintiff as under:*

- A. *Declare that the Notification dated 13-1-2012 issued by Defendant No.1 withdrawing the name of the Plaintiff from the Notification dated 3-09-2012 is in accordance with law.*
- B. *Declare that the Impugned Letter dated 28-1-2012 issued by the Defendant No.2 is illegal, mala fide, without*



*jurisdiction, unwarranted in law and fact as well as in violation of principles of Natural Justice.*

- C. Suspend the Impugned Letter dated 28-1-2012 issued by the Defendant No.2.*
- D. Grant permanent Injunction prohibiting / restraining the Defendants, their employees or any person acting under them or on their behalf from taking any coercive action against the Plaintiff in pursuant to Impugned Letter dated 28-1-2013.*
- E. Grant permanent Injunction prohibiting / restraining the Defendants, their employees or any person acting under them or on their behalf from withdrawing Notification dated 13-1-2013.*
- F. Grant any other relief deemed just and appropriate in the circumstances of the case.*
- G. Grant costs of the suit.*

179. Along with the suit, an injunction was sought and the learned Single Judge (in Chambers) on 01.02.2013 issued notice of the injunction application and in response on 04.02.2013 Ms. Naheed Naz Advocate for A.G Sindh appeared and sought time to file counter affidavit and Court while adjourning the matter ordered status-quo. The order dated 04.02.2013 is reproduced herein below:-

*“04.02.2013. Mr. Muhammad Haseeb Jamali, Advocate for the plaintiff  
Ms. Naheed Naz, Advocate for A.G. Sindh*

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*Notice of CMA No.940/2013 was issued to the defendants. In response thereto Ms. Naheed Naz, Advocate appears and seeks time to file counter-affidavit. Parties may exchange their counter-affidavit and rejoinder if any, prior to the next date of hearing.*

*To come up on 12.02.2013. Till next date of hearing both parties to maintain status-quo.*

*Sd/-  
Judge”*

180. It is interesting to observe that on perusal of the R&Ps we have noticed that a copy of the order of this Court dated 03.09.2012 passed in Civil Appeal No.131-K of 2010 and others was also filed alongwith the plaint. In the said order the statement of the Advocate General was recorded that notification of his reversion to the rank of Sub-Inspector will be issued. Para-2 of the order of this Court annexed with plaint was made illegible. In any event, the issue of out of turn promotions was alive before this Court and the order of this Court which was annexed along with plaint refers to it. After grant of status-quo in the suit, no counter affidavit was filed by the Advocate General office. On 8.5.2013, a notification by which Mirza Shahbaz Mughal was denotified as DSP was produced before this Court by the Additional Advocate General Sind along with Mr. Ali Sher Jakhrani AIG Legal at Islamabad, without disclosing the pendency of suit or of interim orders passed therein. Mirza Shahbaz Mughal, on issuance of aforesaid notification, appears to have approached the Sindh High Court by filing CMA in the said suit and on 16.05.2013, the Notification by which he was de-notified as DSP was suspended and contempt notice was issued to the Additional Chief Secretary for issuance of the Notification. Order dated 16.05.2013 is reproduced herein below:-

“16.05.2013

*Mr. M. Haseeb Jamali Advocate for the Plaintiff.*

..-.-.-.-.-.

- 1) *Urgent application is granted.*
- 2) *Issue notice to the alleged contemnor.*
- 3) *Learned Counsel for the Plaintiff contends that on 04.02.2013 order to maintain status-quo was passed by this Court in the present suit. Learned Counsel for the Plaintiff*

*submits that in violation of the order passed by this Court alleged contemnor/Additional Chief Secretary on 07.05.2013 issued Notification No.POL-HD/8-15/2012 and has withdrawn the earlier notification with immediate effect. Learned counsel for the Plaintiff further submits that the case of the Plaintiff does not fall to the officers who were given out of turn promotion and his case is of fresh appointment. Issue notice to the Defendants for 30.05.2013. Till next date of hearing operation of Notification No.POL-HD/8-15/2012 dated 07.05.2013, issued by the alleged contemnor when the status-quo is operating, is suspended.*

*sd/-  
JUDGE”*

181. In fact, order of the nature has disturbed us and in such like situation earlier this Court has passed orders when the Sindh High Court entertained Constitutional Petitions and suspended Notifications of the Sind Government which were issued under the directives of this Court. AG office has also failed to discharge its duties by not bringing the real facts to the notice of the Sind High Court, which has resulted in suspension of the Notification. In any event the proceedings in Suit will be regulated by the findings in these proceedings.

182. We also record appreciation for the assistance provided by the learned Additional Advocate General, Ch. Afrasiab Dr. Farough Naseem, Mr. Anwar Mansoor Khan, Mr. Yawar Farooqui and Mr. M.M.Aqil Awan during the proceedings.

183. A copy of this judgment be sent to the Chief Justice, Sindh High Court through Registrar for circulating it amongst the learned Judges. A copy of this judgment be also sent to all the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction to streamline the service structure of

civil servants in line with the principles laid down in this judgment. The Chief Secretary and Secretary, Services, Sindh, are further required to comply with this judgment in letter and spirit and report compliance within three weeks.

J.

J.

J.

Announced in Open Court on \_\_\_\_\_

J

**APPROVED FOR REPORTING.**

**Asif Saeed Khan Khosa, J.:** It is true that the judicial precedent available thus far declares that *mala fide* cannot be attributed to the legislature but if a legislature deliberately and repeatedly embarks upon a venture to nullify considered judicial verdicts in an unlawful manner, trample the constitutional mandate and violate the law in the manner it was done in the present case then it is difficult to attribute *bona fide* to it either.

Judge