

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Jawwad S. Khawaja
Mr. Justice Amir Hani Muslim

SUO MOTU CASE NO. 24 of 2010

[Regarding Corruption in Hajj Arrangements in 2010]

Criminal Original petition 68 AND 93 OF 2012

[Muhammad Mushtaq and another v. Federation of Pakistan]
[Khushdil Khan Malik v. Sohail Ahmed and other]

And

Human Rights Case No.42130-G of 2012

(Complaint of Dr. M. Naeed Akhter against re-employment of Dr. Pakeeza Haider)

For the petitioner: Qazi Ahmed Qureshi, ASC (in Crl.O.P.68/2012)

Nemo (in Crl.O.P.93/2012)

On Court Notice: Mr. Shah Khawar,
Addl. Attorney General for Pakistan

For FIA: Mr. Hussain Asghar, Director
Mr. Khalid Rasool, Addl. Director
M/s Ghazanfar Abbas, Adnan &
Zia-ul-Hassan, Inspectors

For Hamid Saeed Kazmi former Minister Religious Affairs: Mian Khalid Habib, ASC
Mr. Mehmood A. Sheikh, AOR

For Syed Yousaf Raza Gilani, former PM: Mr. Amjad Iqbal Qureshi, ASC

For Abdul Qadir Gilani: Mian Gul Hassan Aurangzeb, ASC (not present)
(in CMAs.56-57/2013)

For Zain Iftikhar Sukheira:

For M/o Religious Affairs: Mr. Hasnat Rasool, Joint Secy.
Mr. Farid Islam Khattak, Dy.Secy.

For M/o Interior: Nemo

For Establishment Division: Mr. Abdul Hafeez Pirzada, Sr.ASC (not present)
Mr. Shahbaz Kirmani, SO

For NAB: Mr. Fauzi Zafar, ADPG

In CMA No.218/2011: Mr. M. Ikram Chaudhry, ASC

For Tour Operators: Syed Zulfiqar Abbas Naqvi, ASC

Officers on Contract: Mr. Afnan Karim Kundi, ASC
(on behalf of Prof. Ghazala Mehmood)
Mr. Abdul Hafeez Amjad, ASC (in CrI.O.P.68/12)
Air Vice Martial (R) Aftab Hussain, in person
Dr. Pakeeza Haider, in person
Mr. Iftikhar Ahmed, NSPP, in person

Date of hearing: 20.11.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ – Instant case has been initiated under Article 184(3) of the Constitution of Islamic Republic of Pakistan regarding massive corruption in the arrangements of Hajj for the year 2010.

2. The word *Hajj* (the holy pilgrimage) means “to intend a journey” which connotes both the outward act of a journey and the inward act of intentions. *Hajj* is a worship which used to be performed even during pre-Islamic period. Although the *Arabs* had forgotten most of the teachings of the *Abrahamic* religion, yet they, regarding it a sacred duty, continued practicing *Hajj* throughout their history. During that period, tribes from all around the Arabian Peninsula used to congregate at Makkah. Like the other teachings of religion, they had lost the true form of this worship and introduced some new practices that they deemed appropriate. However, the Prophet Muhammad (Peace be Upon Him) revived the same among the Muslims according to Shariat-e-Muhammadi.

3. *Hajj* has a great significance among the basic tenets of Islam. Allah Almighty has made it compulsory for all Muslims, including male and female, to perform it at least once in their lifetime, if they can afford. It is ordained in the Holy *Quran* by the Allah Almighty, ***"And whosoever can afford should visit the House on pilgrimage as duty to God. Whosoever denies should remember that God is above heed of the world"*** (3:97). The Holy Prophet (Peace be Upon Him) while highlighting the importance of *Hajj* said, ***"If a man unhindered by a compelling necessity, or a tyrant ruler, or a disabling disease dies without offering Hajj, God doesn't care if he dies the death of a Jew or a Christian"*** (*Darmi*, No: 1792). *Hajj* is one of the main pillars of Islam, including Tuheed, Namaz, Roza and Zakat. The Prophet (Peace Be Upon Him) once answering a question said, ***"Islam means that you openly state that there is no god except Allah, and Muhammad (Peace Be Upon Him) is the Messenger of Allah; establish the prayer, pay Zakah; fast during the month of Ramadan and offer the Hajj of the House of Allah if you are able to afford journey to it"*** (*Muslim*, No: 8). The Prophet (Peace Be Upon Him) at some other place said, ***"Islam is based on five fundamentals: to proclaim that there is no god but Allah and Muhammad (Peace Be Upon Him) is the Messenger of Allah, and to establish the prayer, and pay Zakah, to offer pilgrimage of the House [of God] and to fast during Ramadan"*** (*Bukhari*, No: 7).

4. For the weak and women, *Hajj* is a *Jehaad* (holy crusade, supreme effort). Past sins of the pilgrim are erased and poverty is removed, as the blacksmith's furnace separates dross from iron. Allah

Almighty forgives "*Haaji*" (the pilgrim) and those too for whom he prays. The Prophet (Peace Be Upon Him) once said, **"One who offers *Hajj* in His way and doesn't speak obscene language, and doesn't commit sins, will come back [purified] as he was at the time of his birth"** (*Bukhari*, No: 1421). According to Islamic injunctions, the reward of *Hajj* (accepted by Allah Almighty) is nothing but paradise. A *Haaji* will intercede for four hundred of his family members on the Day of Judgment. It is also important because one who performs *Hajj* gets to experience what life was like as a Muslim during the Prophet Muhammad's time.

5. *Hujaj* (the pilgrims) are delegates, guests of Allah Almighty. Allah summoned them and they presented themselves to His service. They supplicated Him and He granted them. One who leaves his home for *Hajj* and dies in the way will keep gaining the reward of every year's *Hajj* till *Qiyamah* (the ultimate Judgment Day). He will not be made to account for his doings on the Judgment Day and will be entered into heavens without reckoning.

6. In order to obey the command of Allah almighty, Muslims all over the world travel to *Makkah*, Saudi Arabia where the *Baitullah* is situated. The pilgrimage occurs from the 8th to 12th of the month of *Zul-Hijjah*, the last month of the Islamic calendar. About three million Muslims perform *Hajj* each year out of which approximately two million foreign pilgrims visit *Makkah*.

7. Since the independence, the Government of Pakistan has been making *Hajj* arrangements and hundreds of thousands of pilgrims travel to *Makkah* for performance of *Hajj*. The *Hajj* arrangements are made in an effective manner and generally there were no complaints

at large scale by *Hujaj* regarding mismanagement and irregularities committed by the concerned authorities of Pakistan. In the year 2010, some irregularities and instances of corruption were highlighted in print and electronic media. Inasmuch as, one of the Senators, Khalid Mahmood Soomro in TV Programme "دنیا میرے آگے" broadcast by a private channel, requested this Court through electronic media to initiate probe into the matter. Prior to the request made by the Parliamentarians, H.E. Prince Bander Bin Khalid Bin Abdul Aziz al-Saud sent a letter to this Court alleging corruption and embezzlement in Hajj arrangements on the part of the officials, who were responsible in the hiring accommodation for the *Hujjaj*. In pursuance of said letter, *vide* order dated 29.10.2010 comments were called from Secretary, Religious Affairs and the Ministry of Foreign Affairs.

8. In the meantime, a news item was published in the Daily Dawn dated 07.11.2010 titled "Hajj Accommodation Scam ", wherein a Senator demanded a 'House Committee' to probe into the allegations contained in the letter of the Saudi Prince, addressed to this Court (Chief Justice) about exorbitant rent being charged from Pakistani pilgrims for their accommodations in Makkah. Similarly, a report titled, "حج انتظامات میں ہونے والی کرپشن" was published in the 'Daily *Nawa-i-Waqt*' on 10.11.2010, alleging therein that the former DG, Hajj Rao Shakeel Ahmed was appointed to the office in violation of the rules, with a view to facilitate him in indulging in corruption.

9. In addition to that, a representation was submitted to Mr. Justice (R) Khalil-ur-Rehman Ramday, Judge (as he then was) by some of the *Hujjaj* complaining ill treatment during the Hajj, which was forwarded to one of us (Chief Justice) with the following remarks:

"A large number of persons came to me in Makkah Mukarramah and even in Mina complaining of grave mismanagement in the Hajj arrangements regarding the buildings hired in Makkah and Madina and the accommodation in Mina. The stories narrated were pathetic. Complaints were made even in writing. I appear to have misplaced those written complaints, but two of them are available with me, which I am placing before you for such action as may be deemed appropriate to eliminate the sufferings of thousands of Hajis who collect pennies all their lives to perform Hajj and this is how the money earned by them through their blood and sweat is wasted. "

The matter was ordered to be heard in the Court *vide* order dated 02.12.2010 and the hearing of the case commenced under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973. During hearing of the case, it was revealed that the Ministry of Hajj had charged SR 700 from each *Haji* for providing them suitable accommodation in *Mina*, however, they were not provided accommodation despite collecting the rent from them and were made to suffer the agony of non-accommodation. Therefore, *vide* order dated 13.12.2010 the Secretary, Ministry of Religious Affairs was directed to refund the said amount of SR 700 to the pilgrims and submit certificate to that effect before the Court. In pursuance of the aforesaid directions, the Government of Pakistan reimbursed an amount of Rs.470 million to about 25000 *Hujjaj*, towards the rent charged from them.

10. The investigation of the matter was entrusted to Federal Investigation Agency (FIA) and Mr. Hussain Asghar, Director, FIA with

the rank of DIG, Police was appointed as head of the investigating team. It was informed that an accused namely Ahmad Faiz s/o Muhammad Shafi had been arrested and interrogated in Kingdom of Saudi Arabia, therefore, incriminating evidence was to be collected from there. In order to collect evidence and to determinate the accusation of the persons involved in crime, directly or indirectly, the FIA team proceeded to Saudi Arabia, where all transactions took place, funds (ill-gotten money) were transferred/remitted and the concerned officials and private persons were located.

11. One of the Federal Ministers was leveling the allegation of corruption against another Federal Minister; therefore, in order to ensure the fair and transparent investigation of the case, this Court desired that the facts be brought in the notice of the Prime Minister, who may personally look into the matter and ensure that the investigation is conducted without influence of any official against whom allegations of corruption and or corrupt practices have been levelled.

12. As a result of investigation, many criminal cases were registered against various accused persons. First case was registered vide FIR No. 5/2010 dated 12.11.2010 under sections 409/420/467/468/471/109/3/4 PPC read with section 5(2) Prohibition of Corruption Act, 1947. Second case was registered vide FIR No.06/2010 dated 20.12.2010 against Malik Abdullah Mehmood Khokhar (brother-in-law of Syed Hamid Saeed Kazmi) on the allegation that he received an amount of Rs.200,000/- as token money from one Raja Tariq Mehmood resident of Rawalpindi for providing Hajj

Quota for 110 individuals against the payment of Rs.2,200,000/- (2.2 million) @Rs.20,000/- per person which was to be paid later on. Third case was registered vide FIR No.1/2011 dated 15.02.2011 against Zain Iftikhar Sukhera and Majeebullah Malik with the allegations that Zain Iftikhar Sukhera fraudulently obtained job of IT Consultant (BS-20) in the Ministry of Information Technology, Islamabad by misrepresenting himself and using fake Certificates/Degree. Yet another case was registered vide FIR No.3/2011 dated 17.03.2011 against Shakeel Ahmad Rao, former DG Hajj; Mr. Ismail Qureshi, former Secretary Establishment Division; S.M. Tahir, the then JS (T), Establishment Division and some other persons for maneuvering appointment of Shakeel Ahmad Rao as DG Hajj in violation of rules and the law as he was over age, on ECL, facing trial in Accountability Court in Lahore and a reference was pending against him with NAB, Punjab.

13. It is permanent to mention here that Mr. Hussain Asghar, who was heading the investigation team, started unfolding different aspects of the case and collected sufficient material against influential persons including the politicians and Government Officers. In the meantime, Syed Jawaid Ali Shah Bokhari, was posted as Additional Director General, FIA. After his appointment, without assigning any reason, Mr. Hussain Asghar was disassociated from the investigation and Syed Jawaid Ali Shah was assigned the said task. However, he disassociated himself for which his explanation was sought. In his reply, he explained that as his promotion was due in grade-22, therefore, he wanted to avail the chance. The Government was directed to initiate departmental proceedings against him as he had

refused to perform his duties. It is to be noted that the result of the departmental proceedings has not been communicated to this Court.

14. Malik Muhammad Iqbal, in the meanwhile, took over the charge as DG, FIA and Mr. Hussain Asghar was transferred to Gilgit-Baltistan as Inspector General of Police. He was posted out on the basis of a report submitted by the DG, FIA, wherein it was dishonestly mentioned that he had completed the investigation and the challans in the said cases had been submitted before the Courts knowing well that Mr. Hussain Asghar was conducting investigation of an important case in which not only the pilgrims had been looted but it had also brought a bad name to the country.

15. After the transfer of Mr. Hussain Asghar, things came to a standstill and no progress in the investigation was made. This Court was of the view that Malik Muhammad Iqbal, DG, FIA being a senior officer instead of ensuring to accelerate progress of the investigation in the right direction, started hampering the investigation after taking over the charge, therefore, he was called upon to explain as to why in the mid of the investigation when the case was proceeding towards its logical end, he spared and relieved Mr. Hussain Asghar without bringing it in the notice of this Court. Thereafter, the then DG, FIA sent a letter for reposting of Mr. Hussain Asghar, but no response was received from the competent authority.

16. On 10.06.2011, the then Secretary Establishment Division and DG, FIA appeared in Court and sought time to enable them to approach the competent authority for reposting of Mr. Hussain Asghar in the FIA. The Court directed the Secretary, Establishment to immediately issue transfer orders of Mr. Hussain Asghar as Director,

FIA, enabling him to resume his duty and continue to investigate the case, otherwise he had to face the proceedings for non-compliance of the order. He was also directed to place on record the list of the officers available at that time when Mr. Hussain Asghar was posted as IG, Gilgit-Baltistan. The then DG, FIA was directed to provide every cooperation and assistance to Mr. Hussain Asghar and his team which was already conducting the investigation.

17. The then Secretary Establishment forwarded a summary for the reposting of Mr. Hussain Asghar but the needful was not done, therefore, on 26.07.2011 in compliance of judicial order, he issued notification of transfer of Mr. Hussain Asghar to FIA. However, Mr. Hussain Asghar did not report to the FIA Headquarter and the then learned Attorney General for Pakistan informed the Court that no direct contact had been established with him except information collected from the documents from the Chief Secretary, Gilgit-Baltistan that the said administration had declined to relieve him without provision of replacement. The report of the Attorney General dated 28.07.2011 is reproduced hereinbelow: -

- (i) ADG Mr. Muhammad Manzoor tried to contact from his cell number 0321-9480003 with Mr. Hussain Asghar on his cell phone number 0345-3056663 & .0355-5550161 but the same were not responding.
- (ii) DIG HQ Gilgit Baltistan Police was contacted to know about IGP (Mr. Hussain Asghar). He informed that the IGP was in Skardu but he is having no contact with him. The DIG however, Faxed a copy of the Service Department, Government of Gilgit Baltistan Notification dated 26-7-2011 addressed to IGP, containing directions that "the Chief Minister Gilgit Baltistan has verbally directed you not to relinquish the charge of IG Police Gilgit Baltistan without approval of the competent authority (Chief Minister, GB) and without provision of your replacement " ...,

- (iii) DIG HQ was asked to establish contact with IGP and inform him about the orders of Hon'ble Supreme Court of Pakistan, dated 27-7-2011. He was also asked to communicate with SP Skardu for locating Mr. Hussain Asghar and deliver the message to IGP by utilizing wireless communication network.
- (iv) The copies of the orders of Hon'ble Supreme Court of Pakistan dated 27-7-2011 have separately been faxed to the Chief Secretary, Government of Gilgit Baltistan (fax No.05811-920144) and the Inspector General Police G.B. (fax No.05811-'930015) for immediate compliance.
- (v) Director General FIA gives an assurance to the apex court that as and when Mr. Hussain Asghar reports for duty in FIA, the investigation of Hajj Scam cases will be handed over to him and the investigation team, already working with him, will be re-attached with the officer. He will also be facilitated in all manners to carry put the investigation of the Hajj Scam cases.

Sd/-

Syed Tahsin Anwar Ali Shah
Director General/FIA 28.7.2011 "

Thereafter, vide notification dated 26.07.2011, Mr. Sohail Ahmed, the then Secretary Establishment, who in compliance with the order of this Court had issued notification of transfer of Mr. Hussain Asghar, was made OSD. Relevant para of the said notification reads as follows: -

"Mr. Sohail Ahmed, a BS-22 officer of Secretariat Group, presently posted as Secretary, Establishment Division, is transferred and posted as OSD, Establishment Division, with immediate effect and until further orders."

18. It is to be noted that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servant Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973. Therefore, this Court was of the view that a civil servant like Mr. Sohail Ahmad, who stood for supremacy of the Constitution and rule of law, by obeying

the judicial order, should not have been penalized by making him OSD. These facts were incorporated in order dated 27.07.2011, relevant paras therefrom read as under: -

"3. It has been reported in the Electronic and Print Media that Mr. Sohail Ahmed, Secretary Establishment has been removed from his office and has been made OSD. This development has taken place soon after the issuance of the Notification by him transferring Mr. Hussain Asghar from the office of the Inspector General of Police Gilgit Baltistan to Director FIA to enable him to continue the investigation of the Hajj corruption scam. In fact the Secretary Establishment in compliance with the orders of this Court, has issued the notification of transfer of Mr. Hussain Asghar as Director FIA.

5. Needless to observe that this Court is of the considered view that once a judicial order is passed, it has binding effect on the Executive as well as Judicial functionaries in terms of Articles 5 and 190 of the Constitution of Islamic Republic of Pakistan. Therefore, the attention of Mr. Sohail Ahmed, Secretary Establishment was drawn towards these Constitutional provisions, non-compliance of which would have exposed him liable to contempt proceedings. This fact finds place in our order passed in the earlier past of the day on 26-7-2011. However, Mr. Sohail Ahmed, Secretary Establishment has complied with the order after tea break when the Court assembled for further hearing and placed the copy of the notification in terms of order of this Court. The language of the notification clearly speaks this fact that the notification was issued in compliance with the orders of this Court which act on his part was in discharge of his Constitutional commitment as required under Article 190 of the Constitution. Such officer cannot be penalized inter alia on the ground that he issued the notification in violation of the rules. The Secretary Establishment has issued the notification in compliance with the order of this Court dated 25-7-2011 and 26-7-2011. If such officer is made OSD it will not send a good message to the country.

7. The manner in which Mr. Sohail Ahmed, Secretary

Establishment has been penalized persuade us to have strong reasons to believe that it was an act designed to frustrate the orders of this Court. The immediate reaction shown by the Competent Authority was not called for, because Mr. Sohail Ahmed has obeyed the judicial order, which he was bound under the Constitution, which is a sacred document and every authority in the country is bound to follow it; if any Authority makes a departure from any of its provisions, it is likely to lead to chaos in the country which may lead to serious consequences. Such an eventuality ought to be avoided by all persons in authority. Under the Constitution, if this Court passes orders, it should be complied with and no approval of any authority in Executive is required for its implementation. The rules or even statutes, which are subordinate to the Constitution could not place bar on the authority of this Court to seek the enforcement of its orders.

9. At this stage, we have asked the learned Attorney General for Pakistan, in whose presence this order has been dictated, to contact the Competent Authority and convey the above order and also ensure that Mr. Sohail Ahmed be reinstated as Secretary Establishment and the notification/order of his being posted as OSD be withdrawn. The Attorney General shall submit the report in writing in this behalf i.e. whatever he has communicated to the Competent Authority and the reply he has received in response thereto. "

19. This Court considered all the facts and circumstances of the case as well as the law and the rulings on the subject and vide order dated 29.07.2011 reported as Corruption in Hajj Arrangements in 2010 (PLD 2011 SC 963), held as under: -

(1) The Notification dated 26th July, 2011 issued by the Secretary Establishment Division, Government of Pakistan, whereby Mr. Hussain Asghar, presently posted as Inspector General, Gilgit-Baltistan under Kashmir Affairs and Gilgit-Baltistan Division, was transferred and posted as Director, FIA under Ministry of Interior in pursuance of the order of this Court

dated 25th July, 2011 passed in the instant case, shall be implemented in letter and spirit by the Government, i.e. the Secretary Interior and Secretary Establishment by adopting all appropriate measures;

(2) The Notification No.F.41/335/2009-E-I dated 26th July, 2011, placing Mr. Sohail Ahmed as OSD is not sustainable in law. However, it is the prerogative of the competent authority to post him either as Secretary Establishment or give him any other assignment commensurate with his status, performance, ability and work etc., as early as possible, but not later than a period of 7 days from the date of receipt of this order. If no order of his posting and transfer is passed on or before the stipulated period, the aforesaid Notification placing him as OSD shall cease to have effect and he shall be deemed to be Secretary Establishment until otherwise transferred and posted elsewhere by the competent authority;

(3) The DG, FIA shall take all necessary steps to ensure that no sooner Mr. Hussain Asghar reports for duty, the investigation team working earlier with him will be provided to him and shall be extended all the facilities so that he can complete investigation of mega corruption in Hajj arrangements. In the meanwhile, DG, FIA shall also submit report for our perusal after every 7 days of the progress in the investigation of the case.

Despite clear orders of this Court as well as issuance of notification of transfer of Mr. Hussain Asghar from the post of IG Police, Gilgit-Baltistan, he did not join as Director, FIA.

20. It is to be noted that in somewhat similar circumstances, when many police officers after transfer to the province of Balochistan did not join their duties, this Court directed that if the transferred police officers decline or fail to obey the orders of the competent authority, disciplinary proceedings should be initiated against them [President Balochistan High Court Bar Association v. Federation of

Pakistan (Const. Petition No. 77/2012)]. In line with said directions, in the instant case too, the Secretaries, Establishment Division and Interior were directed to follow the same course of action and implement the orders of this Court, failing which they were to appear before the court in person. Mr. Hussain Asghar did not join FIA, therefore, it was clarified vide order dated 05.06.2012 that the Secretary Establishment is bound to proceed against him not only for violating the order of competent authority but also orders of this Court.

21. Secretary, Establishment, vide Memo dated 05.06.2012, directed Mr. Hussain Asghar to immediately relinquish the charge in Government of Gilgat-Baltistan and report to FIA, failing which he would be proceeded against in terms of rule 5(1)(iii) of E&D rules, 1973. As Mr. Hussain Asghar, failed to comply with the directions of the competent authority, disciplinary proceedings were initiated against him and on 27.06.2012 a summary was sent to Prime Minister of Pakistan for approval of authorized officer. Resultantly, Mr. Hussain Asghar was suspended vide notification dated 18.07.2012.

22. One of the main accused in the Hajj scam, namely, Hamid Saeed Kazmi, former Minister for Religious Affairs was granted bail on statutory ground of delay in the conclusion of trial. It was for the reason that the case could not be proceeded/concluded within reasonable time as the post of Special Judge (Rawalpindi) remained vacant, therefore, the Federal Government was directed to ensure appointment to the said post expeditiously.

23. In the meantime, it was informed that Mr. Hussain Asghar

had returned from Gilgit to Islamabad but on account of departmental proceedings he was not allowed to join as Director FIA as he was under suspension. It was made clear by the Court that as he had been transferred to FIA for the purpose of conducting investigation of Hajj scam, pending decision of the departmental proceedings, he may takeover charge as Director, FIA and start investigation of the matter. As such, Mr. Hussain Asghar started the investigation of the cases.

24. Vide order dated 24.03.2011, the FIA was restrained to cause the arrest, without the leave of this Court, of Mr. Muhammad Ismail Qureshi, the then Secretary (Establishment), who succeeded in making appointment of Rao Shakeel Ahemd as DG, Hajj. On 08.04.2011, the FIA was directed that he may not be arrested till further orders. However, on 13.11.2012, it was informed that due to above said order, the FIA was handicapped to further interrogate the case on that issue. In such view of the matter, notice was issued to Mr. Muhammad Ismail Qureshi, the then Secretary Establishment.

25. On 09.04.2013, Mr. Hussain Asghar informed that accused Ahmed Faiz had been declared proclaimed offender and though his passport had been cancelled and red warrants had been issued, he could not be arrested from Saudi Arabia. A treaty for extradition of persons involved in criminal cases existed between Saudi Arabia and Pakistan but the Saudi Government informed that Interior Ministry of Pakistan should take up the matter with its counter part in this regard. Regarding appointment of Zain Iftikhar Sukhera and Rao Shakeel Ahmed as Incharge, IT and DG, Hajj respectively, the then Prime Minister Syed Yousaf Raza Gilani was required by FIA to join the

investigation, however, vide letter dated 01.03.2012, issued by M/o Law & Justice, Government of Pakistan informed the FIA that he, being the Prime Minister, has immunity under Article 248(1) of the Constitution. The Court directed to issue notice to Syed Yousaf Raza Gilani to appear in person. It was further informed that Mr. Muhammad Ismail Qureshi after obtaining protective bail on 06.04.2012 from Lahore High Court, instead of joining the investigation had left for America.

26. The case remained pending for many years in this Court, during hearing whereof following issues surfaced: -

- (1) Corruption was done by political persons as well as officers in the higher echelons of government due to which *Hujjaj* were robbed as not only extra money was charged from them but the accommodation was not provided to them at *Mina*;
- (2) During investigation of the cases arising out of the Hajj scam, many officers/officials, who succeeded in collecting evidence against politicians/government officers involved in the corruption/looting of money, were disassociated from the investigation and transferred to other positions; and
- (3) Hajj tour operators charged Rs.5000/- extra from each Haji.

27. As far as the first issue is concerned, it is to be noted that the investigating agency succeeded in registration of many FIRs against various accused persons involved in corruption and corrupt practice. In this regard, FIR No.5/2010 dated 12.11.2010 was registered under sections 409/420/467/468/471/109/3/4 PPC read

with section 5(2) Prohibition of Corruption Act, 1947, wherein four challans under section 173 Cr.PC dated 03.01.2011, 03.05.2011, 18.01.2012 and 08.06.2012 were submitted in the court of Special Judge (Central) Rawalpindi (now in Islamabad).

28. During the investigation of the said case, accused Shakeel Ahmad Rao, former DG Hajj was arrested on 13.11.2010 while accused Aftab-ul-Islam Raja, former JS, Hajj Ministry of Religious Affairs was arrested on 9.12.2010 and both of them are still behind the bars, whereas, Syed Hamid Saeed Kazmi, former Minister for Religious Affairs was arrested 15.3.2011 but was released on bail. One of the accused namely Ahmed Faiz has not been arrested however, efforts are being made through different channels i.e. Interpol, Ministry of Foreign Affairs, Ministry of Interior, etc., as reportedly he is stationed at Jeddah in Saudia Arabia. Properties/assets worth Rs.117,652,815/- (117.65 million) belonging to accused Shakeel Ahmad Rao, Syed Hamind Saeed Kazmi and Ahmad Faiz have been seized under section 5(5) of the FIA Act, 1974. However, International Letter of Request has been sent to United Kingdom Central Authority, Judicial Corporation Unit, London through Ministry of Foreign Affairs for obtaining details of Bank account No.0008080320001 in the name of Syed Hamid Saeed Kazmi maintained with United National Bank London GB.

29. Another FIR No.06/2010 dated 20.12.2010 has been registered against Malik Abdullah Mehmood Khokhar (brother-in-law of Syed Hamid Saeed Kazmi) on the allegation that he received an amount of Rs.200,000/- as token money from one Raja Tariq

Mehmood resident of Rawalpindi for providing Hajj Quota for 110 individuals against the payment of Rs.2,200,000/- (2.2 million) @Rs.20,000/- per person which was to be paid later on. During investigation of the case the said accused was arrested on 22.12.2010, the Challan was submitted on 07.01.2011 and the trial is in progress.

30. *Vide* FIR No.1/2011 dated 15.02.2011, a case was registered against Zain Iftikhar Sukhera and Majeebullah Malik. The allegations contained in the FIR against Zain Iftikhar Sukhera are that he fraudulently obtained job of IT Consultant (BS-20) in the Ministry of Information Technology, Islamabad by misrepresenting himself and using fake Certificates/Degree. However, pr-arrest bail of both the accused was confirmed on 11.05.2011 by the Special Judge (Central) Rawalpindi [now in Islamabad] and application for cancellation of bail is pending before the learned Islamabad High Court. The interim challan in the said FIR has been submitted on 12.03.2013. Whereas, final challan has been forwarded to Law Officer of FIA for onward submission to the trial Court.

31. Yet another case was registered vide FIR No.3/2011 dated 17.03.2011 against Shakeel Ahmad Rao, former DG Hajj; Mr. Ismail Qureshi, former Secretary Establishment Division; S.M. Tahir, the then JS (T), Establishment Division and some other persons for maneuvering appointment of Shakeel Ahmad Rao as DG Hajj in violation of rules and the law as he was over age, on ECL, facing trial in Accountability Court in Lahore and a reference was pending against him with NAB, Punjab. S.M. Tahir accused has been discharged by the learned High Court vide Order dated 10.04.2012 passed in W.P. No.

3519/2011. However, three interim challans dated 30.11.2011, 24.04.2012 and 30.05.2012 have been submitted in the trial Court. Charge against Shakeel Ahmad Rao has been framed and the trial is in progress. With regard to the role of Mr. Ismail Qureshi, the then Secretary Establishment Division and the competent Authority i.e. the former Prime Minister of Pakistan who approved the appointment of Shakeel Ahmad Rao as DG Hajj, investigation/probe is still going on. The final challan has been forwarded to the Law Officer for submission before the trial Court.

32. It is to be noted that except one accused Ahmed Faiz (PO) all the other accused have been arrested and the trials have been going on before the competent Jurisdiction. However, the investigating agencies have failed to bring back the above named accused who is presently residing in Jaddah Saudia Arabia despite existence of a treaty for extradition of persons involved in criminal cases between Saudi Arabia and Pakistan. It was informed that the Saudi Government asked that Interior Ministry of Pakistan should take up the matter with its counter part in this regard. The efforts are being made at the diplomatic channel for his extradition but so far no success has been achieved. In this regard, it may be noted that Pakistan is a sovereign State and Government is bound to exercise its authority to ensure that any person involved in a criminal case should be brought to this country to face the law under the principal of rule of Law.

33. The matter of corruption is always of prime concern throughout the world. In order to achieve the object of elimination of corruption from the society, a convention known as United Nation's

Convention Against Corruption, was signed by the comity of nations. The Government of Pakistan signed the above UN Convention on 09.12.2003 and ratified the same on 31.08.2007, regarding international cooperation in criminal matters in accordance with Articles 44 to 50 of the above noted UN Convention, according to which, where appropriate and consistent with their domestic legal system, the State Parties shall consider assisting each other in investigation or proceedings in civil and administrative matters, relating to corruption. Relevant portion therefrom is reproduced hereinbelow for convenience: --

"The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote, integrity accountability' and proper management of public affairs and public property.

Recalling the work carried out by other international and regional organizations in this field, including the "activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, .the Organization for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 212(sic) November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and the African Union Convention on Preventing and Combating

Corruption; adopted by the Heads of State and Government of the African Union on 12 July, 2003.

Welcoming the entry into force on 29 September, 2003 of the United Nations Convention against Transnational Organized Crime. "

It is pertinent to note here that the Kingdom of Saudi Arabia has also signed the above noted UN Convention on 09.01.2004 and ratified it on 29.04.2013. Therefore, the Government Pakistan may have also agitated the matter with the Saudi Government for extradition of accused Ahmed Faiz involved in the corruption of large magnitude, under the said Convention.

34. Under the above circumstances, we direct the Federal Government to expedite the matter of extradition of said Ahmed Faiz from Saudi Arabia to Pakistan and ensure his return to Pakistan as early as could be possible by taking all the necessary steps required in this regard, so that the accused may be placed before the authority of law. The concerned authorities are also directed to complete investigation of the cases within shortest possible time and ensure completion of trials as early as possible.

35. With regard to issue of employment of retired government servants, it is to be noted that section 14 of the Civil Servants Act, 1973 provides the mechanism for such appointments. It provides that a retired civil servant shall not be re-employed under the Federal Government unless such re-employment is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority, provided that, where the appointing authority is the President, such re-employment may be ordered with the approval of the President. For convenience, section 14 *ibid* is

reproduced hereinbelow: -

“14. Employment after retirement. (1) A retired civil servant shall not be re-employed under the Federal Government, unless such re-employment is necessary in the public interest and is made with the Prior approval of the authority next above the appointing authority:
Provided that, where the appointing authority is the President, such re-employment may be ordered with the approval of the President.

(2) Subject to the provisions of sub-section (1) of section 3 of the Ex-Government Servants (Employment with Foreign Governments) (Prohibition) Act, 1966 (XII of 1966), a civil servant may during leave preparatory to retirement, or after retirement from Government service, seek any private employment:
Provided that, where employment is sought by a civil servant while on leave preparatory to retirement or within two years of the date of his retirement, he shall obtain the prior approval of the prescribed authority. ”

In the instant case, following officers were re-appointed after retirement: -

S. No.	NAME	RE-EMPLOYED AS	PERIOD		COMMENTS
			FROM	TO	
1.	Rear Admiral (Retd) Saeed Ahmed Sargana	Deputy Chairman, National Accountability Bureau (NAB).	17.10.2012	In terms of Section 7 of NAB Ordinance, 1999.	He was appointed as Deputy Chairman, NAB, on 17.10.2012 in terms of Section 7 of National Accountability Bureau Ordinance, 1999, which provides that the Deputy Chairman, NAB, will be appointed by the President in consultation with the Chairman NAB and he shall be a person who is or has been an officer of the Armed Forces of Pakistan equivalent to the rank of a Major General or a Federal Government officer in BPS-21. In terms thereof, the Deputy Chairman, NAB, holds office for a (non-extendable) period of three years and cannot be removed except on the ground of misconduct as

					defined in sub-rule (4) of rule 2 of the Government Servants (Efficiency & Discipline) Rules, 1973.
2.	Mr. Muhammad Riaz Khan, a retired officer of Government of Balochistan.	Member (Coordination & Monitoring), Pakistan Agriculture Research Council (PARC).	08.06.2012	07.06.2014	He was retired as Director General, <u>Agriculture Research Directorate, Government of Balochistan.</u> He has been appointed as Member (Coordination & Monitoring) taking into consideration his qualification / 39 years' experience <u>in the relevant field in terms of Section 10 of PARC Ordinance, 1981 (XXXVIII of 1981) read with Rule 9 of PARC Rules, 1984, which provides</u> that the President of Pakistan may appoint a Whole Time Member (Coordination & Monitoring), on contract basis, for a period of two years.
3.	Mr. Shahid Nasim, a retired BS-21 officer of Income Tax Group	Directing Staff, National School of Public Policy.	04.11.2012	03.11.2014	National School of Public Policy (NSPP) is a body corporate established under Ordinance No. XCIX of 2002 <u>and its faculty members are appointed in terms of Section 7 read with Section 11 of NSPP Ordinance, 2002.</u> Furthermore, the post of Directing Staff is not a promotion post. In view thereof, Mr. Shahid Nasim, has been re-employed as Directing Staff, National School of Public Policy, Lahore, on contract basis in terms of Sections referred to above.
4.	Major (Retd) Haroon Rashid, a retired BS-22 officer of Secretariat Group.	Member, NEPRA from province of Balochistan.	24.11.2012	23.11.2016	National Electric Power Regulatory Authority (NEPRA) consists of a Chairman and four Members, one from each province. <u>The Member of National Electric Power Regulatory Authority (NEPRA) is appointed by the Federal Government after considering the recommendations of the respective Provincial Governments in terms of Section 3 of Regulation of Generation, Transmission and Distribution of Electric Power, Act, 1997 (XL of 1997).</u> Consequent upon the completion of four years' tenure of Mr. Ghiasuddin

					Ahmed, former Member, National Electric Power Regulatory Authority (NEPRA) representing the Province of Balochistan, Government of Balochistan, was requested to provide a panel of three suitable nominees for appointment as Member, National Electric Power Regulatory Authority (NEPRA). In response thereto, Government of Balochistan submitted a panel of suitable nominees including Major ® Haroon Rashid. Accordingly, he has been appointed as Member, National Electric Power Regulatory Authority in terms of Section referred to above.
5.	Malik Ghulab Khan, a retired BS-20 Officer of Secretariat Group.	Director (Coordination), National Health Information Resources Centre (NHIRC).	25.08.2010	His contract has been further extended for a period of two years on 26.08.2012 or till the completion of NHIRC Project.	The post of Director (Coordination) is a project post. Mr. Ghulab Khan, a retired BS-20 officer of Secretariat Group, was initially appointed as Director (Coordination) on 25.08.2010, for a period of two years. His contract has been further extended for a period of two years on 26.08.2012 or till the completion of NHIRC Project, whichever is earlier, on standard terms and conditions, in the public interest, as his services were essentially required after the devolution of Ministry of Health.
6.	Ch. Riaz Ahmad, a retired officer of Evacuee Trust Property Board.	Vice Chairman, Evacuee Trust Property Board (ETPB).	01.05.2012	30.04.2014	Ch. Riaz Ahmad has been re-employed as Vice Chairman, Evacuee Trust Property Board (ETPB), on contract basis, for a period of two years as there was no suitable replacement thereof.
7.	Mr. Shah Zaman Khan, a retired BS-21 officer of Secretariat Group	Managing Director, Shalimar Recording Broadcasting Company (SRBC).	21.02.2012	20.02.2014	Mr. Shah Zaman Khan was originally from Information Group and retired in BS-21. Shalimar Recording & Broadcasting Company is a Company registered under the Companies Ordinance, 1984 and is owned by PTVC, PBC and PNCA. Traditionally, retired officers of Information Group are appointed thereupon. In view thereof, Mr. Shah Zaman Khan has been re-

					employed as Managing Director, SRBC, on 21.02.2012, on contract basis, for a period of two years.
8.	Mr. Iqbal Nabi Nadeem, a retired BS-20 officer of Secretariat Group.	Director General, Urdu Science Board (USB).	12.03.2012	11.03.2014	The post of Director General, Urdu Science Board, is an ex-cadre post. In the past, even Director Generals have also been appointed from the private sector. As service rules of the post have not been framed, Mr. Iqbal Nabi Nadeem, has, therefore, been re-employed as Director General, Urdu Science Board, on 12.03.2012, on contract basis, for a period of two years in terms of Establishment Division's instructions issued vide d.o letter No. 7/3/89-OMG-II dated 28.01.1989 from amongst the panel of suitable persons taking into consideration his earlier experience as Director General.
9.	Mr. Abdul Hameed, ex-Chairman / Director General, Pakistan Post.	Chairman, Pakistan Academy of Letters (PAL).	12.03.2012	11.03.2014	The post of Chairman falls in the category of direct recruitment quota. Pakistan Academy of Letters is a subordinate Office of Ministry of Information, Broadcasting and National Heritage. In the past, the post of Chairman has also been traditionally held by the renowned Men of Letters. Mr. Abdul Hameed has been re-employed as Chairman, Pakistan Academy of Letters (PAL) on 12.03.2012, on contract basis, for a period of two years from amongst the panel of suitable persons.
10.	Air Vice Marshal (Retd) Aftab Hussain	Director General, Civil Defence, Islamabad.	01.10.2012	30.09.2014	He has been appointed as Director General, Civil Defence, on 01.10.2012, on contract basis, for a period of two years, on a Prime Minister's directive dated 03.09.2012.
11.	Dr. Pakiza Hyder, a retired BS-19 officer of FGPH.	Dental Surgeon (BS-19), Federal Government Polyclinic Hospital, Islamabad.	11.10.2012	10.10.2014	She has been re-employed on contract basis, for a period of two years against a newly created post in the public interest as she was imparting training to Postgraduate students of MCPS as well as FCPS

					Trainees and her retirement was likely to affect the performance of the Hospital.
12.	Mr. Saeed Ahmed Khan, a retired BS-22 officer of Secretari at Group	Chairman, Oil and Gas Regulatory Authority (OGRA).	13.04.2012 , on contract basis, for a period of four years.	12.04.2016	The post of Chairman, OGRA was advertised in local and international press. In response thereto, 91 applications were received. In order to shortlist candidates, the Cabinet Secretary constituted a short-listing Committee. The Committee held five meetings on 15 th , 17 th , 29 th , 21 st & 28 th February, 2012 and scrutinized each and every application, strictly in accordance with the criteria published in the advertisement, provisions of OGRA Ordinance and guidelines given by the Hon'able Supreme Court of Pakistan in its Judgment dated 25.11.2011 passed in Constitution Petition No. 42/2011 and shortlisted ten (10) candidates, who fulfilled eligibility criteria. The Prime Minister approved the Selection Committee as per composition for interview of the ten (10) short-listed candidates. In the meantime, one of the short-listed candidates, Mr. Muhammad Ejaz Chaudhry, withdrew his application. Out of the remaining candidates, only 07 appeared in interview. The Selection Committee after interviewing the eligible candidates recommended a panel of suitable persons amongst whom Mr. Saeed Ahmed Khan was appointed as Chairman OGRA in terms of Section 3(8)(a) of OGRA Ordinance, 2002.
13.	Lt. Col. (Retd) Engr. Hassan Salim Haqqani	Managing Director, National Construction Limited (NCL), Islamabad.	28.07.2009 , on contract basis.	His contract has further been extended for another term of two years w.e.f. 28.07.2012 to 27.07.2014	National Construction Limited (NCL), Islamabad, is a Public Limited Company registered under the Companies Ordinance, 1984. It is functioning since 1978 under the administrative control of Ministry of Housing and Works on self-sustaining basis without any budgetary support from the government. In pursuance of directions of the Prime Minister, the post of

					Managing Director, National Construction Limited (NCL) was advertised in the press. In order to shortlist candidates, a Selection Committee was constituted vide Notification dated 17.06.2009. In the meantime, out of the five candidates, Syed Manzar Hussain did not appear due to his pre-occupations and as such the remaining four candidates were interviewed as per laid down selection criteria. The Selection Committee after interviewing the eligible candidates, recommended Lt. Col. (Retd) Engr. Hassan Salim Haqqani taking into consideration his qualifications, experience, professional competence, expression and presentation skills, for appointment as Managing Director, National Construction Limited (NCL).
14.	Mr. Muhammad Roshan Junejo.	Deputy Director in Capital Development Authority.	01.01.2012	31.12.2014	Mr. Muhammad Roshan Junejo has been re-employed as Deputy Director, Capital Development Authority from the date of his retirement i.e. 01.01.2012 in the public interest taking into consideration his earlier experience in various special assignments as the officer had an immaculate carrier record by all perspectives in accordance with rule and professionalism.
15.	Mr. Baqir Ali Rana.	Member, National Industrial Relation Commission (NIRC).	15-03-2013	For a period of two years i.e till 15-03-2015	Mr. Baqir Ali Rana was appointed as Member, National Industrial Relations Commission (NIRC) on contract basis, on standard terms and conditions, for a period of two years in terms of Ministry of Labour & Manpower (devolved) SRO No. 662(1)/2002, dated 16.09.2002, promulgated in exercise of powers conferred by Sub-Section (3) of Section 22-A of the Industrial Relations Ordinance, 1969, which provides that the Member of Commission shall be a retired or serving District and Session Judge.
16.	Mirza	Directing Staff,	01.11.2010	His contract	National School of Public

	Shams-ul-Hassan, a retired BS-21 officer of PSP	National School of Public Policy, Lahore.		has been further extended for a period of six months w.e.f. 01.11.2013 , on existing terms and conditions.	Policy (NSPP) is a body corporate established under Ordinance No. XCIX of 2002 and its faculty members are appointed in terms of Section 7 read with Section 11 of NSPP Ordinance, 2002. Furthermore, the post of Directing Staff is not a promotion post. In view thereof, Mirza Shams-ul-Hassan has been re-employed as Directing Staff, National School of Public Policy, Lahore, on contract basis in terms of Sections referred to above.
17.	Mr. Iftikhar Ahmad, a retired BS-21 officer of PAS	Dean, National School of Public Policy (NSPP), Lahore.	19.08.2009	His contract has been further extended for a period of six months w.e.f. 19.08.2013 .	National School of Public Policy (NSPP) is a body corporate established under Ordinance No. XCIX of 2002 and its faculty members are appointed in terms of Section 7 read with Section 11 of NSPP Ordinance, 2002. Furthermore, the post of Dean is not a promotion post. In view thereof, Mr. Iftikhar Ahmad, has been re-employed as Dean, National School of Public Policy, Lahore, on contract basis in terms of Sections referred above.
18.	Professor Ghazala Mahmud	Gyne & Obs and Dean, Pakistan Institute of Medical Sciences (PIMS).	22.07.2012 , on contract basis, for a period of two years.	21.07.2014	Professor Ghazala Mahmud was re-employed as Gyne & Obs and Dean, Pakistan Institute of Medical Sciences (PIMS), on contract basis, for a period of two years, with effect from 22.07.2012 on a Summary dated 11.06.2013 submitted by Ministry of Capital Administration and Development
19.	Lt. General (Retd) Asif Yasin Malik (Retd) Pak Army	Secretary, Defence Division	27-07-2012	26-07-2014	On verbal approval of the Prime Minister which was confirmed through Summary for the Prime Minister dated 17-10-2012 moved by the Establishment Division.
20.	Mr. Justice (Retired) Muhammad Raza Khan (BS-22)	Special Secretary, Law and Justice Division	17-04-2013	16-04-2015	Law, Justice and Human Rights Division moved the Summary for the Prime Minister dated 05-03-2013 wherein that Division proposed the contract appointment of Mr. Justice (Retd) Muhammad Raza Khan former Chief Justice, Peshawar High Court as Secretary to Government of

					Pakistan, Law and Justice Division.
21.	Mr. Aziz Ahmed Bilour (Retired SG BS-22)	Member, (Social Sector), Planning Commission	16-03-2013	15-03-2014	The officer was re-employed on contract basis as Member (Social Sector), P & D Division, in view of his experience in the service of Pakistan through a Summary for the Prime Minister on 14-03-2013.
22.	Mr. Shamsud din Mangrio (BS-20)	JEA, CA&D Division	9-01-2013	8-01-2016	CA&D Division in the Summary for the Prime Minister dated 13-07-2012 proposed the re-employment of Mr. Shamsuddin Mangrio, in view of his professional experience in the field of education.
23.	Mr. Muhammad Javed Malik (Retd)/BS-22)	Member, Planning Commission	7-01-2013	6-01-2014	Planning and Development Division proposed the re-employment of the officer on contract basis, for two years, in view of his service background and experience
24.	Maj. Gen (Retd.) Raja Muhammad Arif Nazir	Additional Secretary, Defence Division	14-05-2013	13-05-2015	GHQ recommended that the Maj. Gen ® Raja Muhammad Arif Nazir, after his retirement from Pakistan Army, may be re-employed on contract basis for a period of two years.
25.	Lt. General (Retd) Tanvir Tahir HI (M)	Secretary, Defence Production Division	03-07-2013	02-07-2015	Defence Division proposed that Lt. General (Retd) Tanvir Tahir HI (M) may be appointed as Secretary, Defence Production Division on contract basis for a period of two years.
26.	Rana Assad Amin	Advisor, Finance Division	16-04-2013	15-04-2014	In the light of the request of Ministry of Finance, the Prime Minister has confirmed the previous approval for extension in the contact appointment of Rana Assad Amin for one year 16-04-2013.
27.	Major (Retd.) Mubashir ullah (Retd.) PSP/ BS-20.	Member, Directing Staff, National School of Public Policy (NSPP).	07.01.2013	06.01.2015	He was re-employed as Directing Staff, National School of Public Policy (NSPP), on contract basis, for a period of two years, on standard terms and conditions vide Establishment Division's notification dated 07.01.2013, with the approval of the Prime Minister.
28.	Mr. Muhammad Riaz Maken (Retd.)	Director (BS-19), National Vocational and Technical Trainign	21.01.2013	21.01.2014	He was re-employed as Director (BS-19), National Vocational and Technical Training Commission (NAV TTC), on contract

	PSP / BS-19.	Commission (NAVTTTC).			basis, for a period of one year, on standard terms and conditions with effect from 21.01.2013 vide Establishment Division's notification dated 17.01.2013, with the approval of the Prime Minister.
29.	Mr. Muhammad Tariq Rafiq (Retd / PAS / BS-20) Date of superannuation 14.09.2012.	Director General, National Commission for Government Reforms.	15.09.2012	14.09.2014	A Summary submitted by National Commission for Government Reform to Prime Minister's Office for re-employment of the officer. Prime Minister's Office sent the Summary to Establishment Division for views / comments. Establishment Division endorsed the proposal of NCGR. Prime Minister's Office approved the proposal of the Summary for re-employment of the officer. Accordingly, Establishment Division notified the re-employment of the officer.
30.	Mr. Ejaz Ali Zaigham	Member, Directing Staff, National School of Public Policy (NSPP).	15.03.2013	14.03.2014	Establishment Division moved a Summary for the Prime Minister for re-employment of the officer. Prime Minister's Office approved the same. Accordingly, Establishment Division notified the re-employment of the officer.

36. In the instant case, an 8-Member Bench of this Court took up the issue of appointments after retirement in the light of the law, namely, section 14 *ibid* as well as the instructions contained in Esta Code, Volume-1, Edition 2007 under the heading "Re-Employment " and the judgments of the superior courts on the subject, and *vide* order dated 27.01.2011 reported as SUO MOTU CASE NO.24 OF 2010 (PLD 2011 SC 277) held that re-employment of such persons in services on their retirement must be made in public interest because re-employment against a sanctioned post is likely to affect the junior officers, who are waiting for promotion to the next higher rank as their

right of promotion is blocked. They have to wait till such re-employed officer completes his contract. In the meanwhile, they have to face difficulties in maintaining their seniority, etc. The promotion of an employee is not to be blocked to accommodate a retired officer, however, if the right of promotion is not blocked by re-employment, then such powers can be exercised, that too in an exceptional case. The Federal and Provincial Governments were also directed to ensure that if any Civil Servant or other person who has been re-employed, his case be examined in terms of the provisions of law and that take necessary steps to ensure that re-employment or employment on contract basis are not made in violation of the relevant law. Relevant para therefrom is reproduced hereinbelow: -

"5. Learned Attorney General has also placed on record summary of some of the Police Officers who are re-employed on contract basis. A perusal whereof indicates that prima facie while they were re-employed, the provisions of law i.e. section 14 of the Civil Servants Act, 1973 as well as instructions contained in Esta Code in Volume-1, Edition 2007 under the heading "Re-Employment " and the judgments of the superior courts on the subject were not considered/adhered to. It is to be noted that for establishing rule of law and Constitutionalism, it is necessary that the relevant provisions should be followed strictly in letter and spirit otherwise it would not be possible to provide an effective machinery in law particularly in Police Department to ensure law and order, so the peace in the country, at the same time to avoid violation of the relevant provisions of law noted hereinbefore, which is tantamount to blocking the promotion of the Officers who have also served in the Forces and are waiting for their promotion but they are not getting chance because of the re-employment/contract awarded to the retired Officers. This is not only in the Police Department but for the purpose of achieving good governance; the same principle should be followed and strictly applied in other Departments as well. Be that as it may, we are adjourning this case and in the meanwhile learned Attorney-General shall take up the matter with the Government/Competent Authority so it may take necessary steps to rectify if any omission has been committed, before the next date of hearing. Similarly, the learned Attorney-General shall convey this order to the Secretary, Establishment Division and the Chief Secretaries of the Provinces to ensure that if any Civil Servant or other person who has been re-employed, his case be also examined in terms of the provisions of law and both Federal and Provincial Governments should take necessary steps to ensure that re-employment or employment

on contract basis are not made in violation of the relevant law. "

37. On 01.03.2011 the Court was informed that a Committee has already been constituted to look into the cases of persons who were appointed on contract basis. The Court observed that appointments on contract basis should not be allowed to continue in terms of section 14 of the Civil Servants Act, 1973, and the Policy unless the conditions specified therein are satisfied. The Government is not interested in obeying the order of the Court because so far the contract appointments of only 9 officers have been terminated whereas there is a list of more than 100 persons serving on contract basis in different capacities, including Secretaries awaiting orders thereon. This Court has more than once observed that incumbent DG, FIA who himself is holding this post on contract basis in a disciplined force, is responsible for not allowing the investigation of the instant case to proceed in a transparent manner, however, despite these observations, no action has been taken against him.

38. The matter of re-employment of police officers after their retirement also came under consideration by this Court in the case of In Re: Suo Motu Case No.16 of 2011 (PLD 2013 SC 443) wherein on 22.03.2013 it was held that re-employment in disciplinary force like Police or for that matter in any other department has to be made subject to section 14 of the Civil Servants Act, 1973 read with instructions contained in Esta Code under the heading "Re-Employment". It was further observed that undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, prima facie, re-employment of police officers (noted

therein) was not in conformity with the law and the judgment of this Court. Consequently, with the approval of the Competent Authority i.e. Chief Minister Sindh, the contract appointments of 8 police officers were terminated, whereas, one of the re-employed employee, namely, Mr. Waseem Ahmed, Additional Chief Secretary, Home Department (BS-21), who was also a former Police Officer and on retirement has been appointed by the Government of Sindh, tendered his resignation, which was accepted by the competent authority.

39. At this stage it is to be noted that every employee who comes within the government hierarchy, is subject to the law and the instructions applicable in that regard. As far as the case of Dr. Pakizah is concerned, a post was created for making her appointment. In such a way extra burden was created on the public exchequer. It is to be noted that no one is indispensable for any institution. People may come and go but the institutions continue to function. However, if there was dire need to create such post, appointment should have been made following the procedure prescribed in law/rules, namely, through advertisement or promotion from the senior most officers next below.

40. Hajj tour operators charged Rs.5000/- extra from each Haji, which was in excess of actual amount. Such conduct on their part is tantamount to looting the Hujjaj, who were performing a sacred religious duty. Claim of operators is that no such amount was received. As this is a question of investigation/probe, therefore, Secretary Ministry of Religious Affairs is directed to refer cases of the operators who had been charging extra amount of Rs.5000/- from each pilgrim, in addition to agreed amount for security of each of them, to FIA,

which shall first of all issue notices to them to seek their explanation. If they fail to satisfy, investigation shall be carried out and all possible efforts shall be made to ensure refund of said amount of Rs.5000/- to each pilgrim, if has been charged and appropriate action shall be initiated against them under the law for Hajj of 2010 to 2013. Secretary Religious Affairs shall ensure that in future no extra amount in the name of security etc. shall be received.

41. For the foregoing reasons, it is held as under: -

- (i) Federal Investigation Agency is directed to probe into the matter in depth and determine as to whether the extra amount charged by the authorities has been reimbursed to the Hujjaj or not?
- (ii) Strict measures should be adopted in future in order to avoid such like incidents of corruption in Hajj arrangements, whereby not only the pilgrims had been looted but also it had brought a bad name to the country.
- (iii) The Government should issue the guidelines regarding the Hajj arrangements including hiring of buildings for providing accommodation to Hujjaj as well as transportation and other facilities during Hajj.
- (iv) The FIA is directed to take strict action against all those persons including politicians, officers and others in echelons of power, who interfered with and hampered the investigation.

- (v) The amount of Rs.5000/- charged by the Hajj Tour Operators from each Haji in excess of the actual amount be refunded to them.

42. In the above terms, the case is disposed of with directions to all concerned authorities to submit compliance report to Registrar of this Court for our perusal in Chambers.

Chief Justice

Judge

Judge

Announced in open Court on 06.12.2013 at Islamabad.

Chief Justice

Approved For Reporting