

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM

CIVIL APPEALS NO.654 TO 660, 330, 735, 1243 TO 1259 OF 2010

AND

CIVIL PETITION NO.305 OF 2010

AND

**CIVIL APPEALS NO. 962, 1073, 1074, 1085 TO 1087,
1135, 1139 OF 2011 & 799 OF 2012,**

AND

**CIVIL PETITIONS NO.615, 819, 971, 1361, 1708,
1762, 2229 OF 2010 & 887 OF 2011 & 44, 710,
1128, 1129, 1146 & 1147 OF 2012 &
CIVIL PETITION NO.965/2014**

AND

CIVIL APPEAL NO.23/2014.

Shafique Ahmed Khan, etc.

...Appellants/Petitioners

VERSUS

NESCOM through its Chairman, Islamabad, etc. ...Respondents

For the appellants/
Petitioners:

Raja Muhammad Asghar, ASC.
(CAs-654 to 656 of 2010)

Nemo.
(in CA-657/10, CPs-819 & 2229 /10, CPs. 971/10, 887/11,
1128,1129,1146, 1147/12)

Mr. Ahmer Bilal Soofi, ASC,
(in CAs-658-659/11, 330/10, 44/12, 23/14 & CP-965/14)

Hafiz S.A Rehman, Sr. ASC (CA-735/10)

Mr. Zaheer Bashir Ansari, ASC.
(in CA-1243-1259/10)

Mr. Abdul Rahim Bhatti, ASC
(in CAs-962, 1073, 1139/11 & 799/12)

Mr. M. Shoaib Shaheen, ASC.
(in CA-1074/11 & CP-1361/10)

Kh. Azhar Rasheed, ASC.(in CAs-1085-1087/11)

Mr. Muhammad Ilyas Mian, ASC(in CA-1135/2011)

Nemo. (in CP-615/10)

Mr. Abdur Rehman Siddiqui, ASC (in CP 1708/10)

In person.
(CPs-305 /10)

For the
respondents:

Mr. Ahmer Bilal Soofi, ASC. (CAs-654-657/10, 962, 1073, 1074, 1085-1087, 1135 &1139/11, 799/12 and CPs-971/10, 887/11, 710, 1128-1129, 1146-1147/12, 1708/10, CA 735/10 and CA 1243-1259/10)

Muhammad Ilyas Mian, ASC. (in CA-658-660/10)

Mr. Shoaib Shaheen, ASC.
(CP-615 & 819/10)

Nemo.
(in CPs-1361 & 1708/10)

Hafiz S.A Rehman, Sr. ASC (in CP-965/14)

Nemo. (in CP-887/11 & 44/12)

Nemo. (in CP-2229/10 & CA-23/14)
Mr. Abdul Raheem Bhatti, ASC (in CA 330/10)

For PAEC:

Mr. Zubair Abbas, Sr. Law Officer.
Mr. Ather Abbas JE.
Mr. Suhail Akram Malik, Sr. Law Officer.
Commander Retd. Muhammad Hussain
Shahbaz, Legal Directorate SPD.
Ms. Alvina Alvi, NCA
Mian Sami ud Din, NCA

For the Federation: Mr. Sohail Mehmood, DAG.

Date of hearing: 02.11.2015 (Reserved Judgment)

J U D G M E N T

EJAZ AFZAL KHAN, J.- The only controversy articulated at the bar by the learned ASCs for the parties is whether the Rules framed under Section 15 of the National Command Authority Act, 2010 (hereinafter referred to as the Act) are statutory or otherwise. Mr. Ahmer Bilal Soofi, learned ASC appearing on behalf of the National

Command Authority contended that the Rules framed under Section 15 of the Act cannot be treated as statutory as they have not been approved by the Federal Government. There are as many as two judgments of this Court rendered in the cases **Rector National University of Science and Technology (NUST) Islamabad and others. Vs. Driver Muhammad Akhtar** (Civil Appeal No.495 of 2010 decided on 28th April, 2011) and **Muhammad Zubair and others Vs. Federation of Pakistan thr. Secretary M/o Defence and others** (Civil Petition No.1563/2013 decided on 26.2.2013) holding them statutory but they are essentially *per incuriam* inasmuch as the judgments interpreting the provisions of other enactments which are in *pari materia* with Section 15 of the Act have not been considered. Such precedents, the learned ASC contended, are also *sub silentio* inasmuch as they have not been fully argued and the judgments interpreting the provisions of the other enactments which are in *pari materia* with Section 15 of the Act have not been cited.

2. The learned ASC by referring to the cases of **Muhammad Tariq Badr and another. Vs. National Bank of Pakistan and another** (2013 SCMR 314), **Zarai Taraqiat Bank Limited. Vs. Said Rehman** (2013 SCMR 642), **Pakistan Defence Officers Housing Authority and others. Versus. Lt. Col. Syed Jawaid Ahmed** (2013 SCMR 1707), **Shoua Junejo. Versus. PIA** (2012 SCMR 1681), **Muhammad Nawaz. Versus. Civil Aviation Authority and others** (2011 SCMR 523), **Pakistan Telecommunication Co. Ltd. through Chairman. Versus. Iqbal Nasir** (PLD 2011 SC 132), **Abdul Rashid Khan. Versus. Registrar, Bahauddin Zakaria University, Multan** (2011 SCMR 944), **Pakistan International Airline Corporation. Versus. Tanweer-ur-Rehman**, (PLD 2010 SC 676), **State Bank of Pakistan. Versus. Muhammad Shafi** (2010 SCMR 1994),

Asad Bashir. Versus. Chairman Board of Intermediate and Secondary Education, Lahore and 2 others (2006 PLC (CS) 110), Pakistan Red Crescent Society. Versus. Syed Nazir Gillani (PLD 2005 SC 806), Zia Ghafoor Pirach. Versus. Chairman, Board of Intermediate and Secondary Education, Rawalpindi (2004 SCMR 35), Muhammad Ishaq Waheed Butt. Versus. Chairman, Bank of Punjab (2003 PLC (C.S.) 963), Pakistan International Airlines Corporation (PIAC). Versus. Nasir Jamal Malik (2001 SCMR 934), Ijaz Hussain Suleri. Versus. The Registrar and another, (1999 SCMR 2381), Chairman, Pakistan Council of Scientific and Industrial Research, Islamabad. Versus. Khalida Razi (1995 SCMR 698), Chairman WAPDA. Vs. Jameel Ahmed (1993 SCMR 346), Raziuddin. Versus. Chairman, PIA CORPN. (PLD 1992 SC 531), Karachi Development Authority. Versus. Wali Ahmed Khan (1991 SCMR 2434), Abdul Ghaffar. Versus. WAPDA (1990 SCMR 1462), Sindh Road Transport Corporation Chairman. Versus. Muhammad Ali G. Khohar (1990 SCMR 1404), Principal Cadet College. Versus. Muhammad Shoaib Qureshi (PLD 1984 SC 170), Anwar Hussain. Versus. ADBP (PLD 1984 SC 194), Muhammad Yusuf Shah. Versus. Pakistan International Airlines Corporation (PLD 1981 SC 224) and R.T.H. Janjua. Versus. National Shipping Corporation (PLD 1974 SC 146); contended that jurisdiction of the High Court cannot be invoked under Article 199 of the Constitution of Islamic Republic of Pakistan where the Rules are non-statutory. Learned ASC by referring to a two-member bench judgment rendered in the case of Muhammad Nawaz. Vs. Civil Aviation Authority and others (2011 SCMR 523) contended that Rules made without the intervention and approval of the Federal Government cannot be termed as statutory, therefore, their violation is not amenable to the constitutional jurisdiction of the High Court.

The learned ASC by referring to another two-member Bench judgment rendered in the case of **State Bank of Pakistan. Vs. Muhammad Shafi (2010 SCMR 1994)** contended that where by virtue of an amendment in Section 54 of the State Bank of Pakistan Act, 1956, the words “*subject to the approval of the Federal Government were omitted*” the Rules framed after the said amendment in the Section were not treated as statutory. The learned ASC by referring to a three-member Bench judgment rendered in the case of **Pakistan Red Crescent Society. Vs. Syed Nazir Gillani (PLD 2005 SC 806)** contended that the Rules framed by the Red Crescent Society under the rulemaking powers without the intervention of the Federal Government were held to be non-statutory, therefore, their violation was not amenable to the writ jurisdiction of the High Court. The learned ASC by referring to a three-member Bench judgment rendered in the case of **Sindh Road Transport Corporation Chairman versus Muhammad Ali G. Khokhar (1990 SCMR 1404)** contended that Sindh Road Transport Corporation Service Rules 1971 were treated as non-statutory as they were not approved by the Authority delegating such power notwithstanding language used in the rulemaking provision of the Ordinance was almost similar to the language used in Section 15 of the Act, therefore, the judgments rendered in the cases of **Rector National University of Science and Technology (NUST) Islamabad and others. Vs. Driver Muhammad Akhtar and Muhammad Zubair and others Vs. Federation of Pakistan thr. Secretary M/o Defence and others (Supra)** have no binding or even persuasive force. The judgments rendered earlier on similar proposition, the learned ASC maintained, could not be ignored by subsequent benches with the same number of Judges. The learned

ASC to support his contention placed reliance on the cases of Pir Bakhsh represented by his legal heirs and others Vs. The Chairman, Allotment Committee and others (PLD 1987 SC. 145), Multiline Associates Vs. Ardeshir Cowasjee and two others (PLD 1995 SC 423) and Chaudhry Muhammad Saleem Vs. Fazal Ahmad and two others (1997 SCMR 315). The learned ASC next contended that while enacting Section 15 of the Act, the legislature was aware of the dicta and trend of the Supreme Court interpreting the provision of different enactments which are in *pari materia* with Section 15 of the Act, otherwise it would have phrased the section differently. Restraint on the part of the Government, the learned ASC argued, to gazette the Rules in terms of Section 20A of the General Clauses Act would also show as to what status the legislature intended to assign to the Rules. Approval of such Rules, the learned ASC contended, by the Federal Government to give them statutory attire in view of Rule 14 of the Rules of Business is also a must, therefore, in the absence of such approval they cannot be treated as statutory. The scheme of the Act, the learned ASC maintained, also shows that the legislature intended to make it autonomous on all accounts. Sections 9 and 21 of the Act, the learned ASC maintained, further show that the legislature wanted to make the orders of the Authority immune from justiciability. The learned ASC while giving finishing touch to his submissions contended that the purpose behind conferring full autonomy on NCA was to enable it to have effective control over its activities and maintain secrecy of its sensitive programmes in line with Pakistan's International Legal Obligation, in particular UNSC Resolution 1540, which could not have been achieved otherwise.

3. As against that learned ASCs appearing from the other side contended that when it has been held in the cases of **Rector National University of Science and Technology (NUST) Islamabad and others. Vs. Driver Muhammad Akhtar** and **Muhammad Zubair and others Vs. Federation of Pakistan thr. Secretary M/o Defence and others (supra)** that Rules framed under Section 15 of the National Command Authority Act, 2010 are statutory, the controversy has been set at rest, therefore, another exercise to determine their status is not called for. The learned ASC by referring to Section 3 of the Act contended that where the Chairman of the Authority is the Prime Minister and its other Members include, besides Minister for Foreign Affairs, Minister for Defence, Minister for Finance, Minister for Interior, Chairman Joint Chiefs of Staff Committee, Chief of Army Staff, Chief of Naval Staff and Chief of Air Staff, approval of the Rules by any other Ministry is hardly called for. The learned ASC next contended that when the provision of this Act by virtue of its provision contained in Section 21 has been given overriding effect over any other law for the time being in force in general and the Civil Servants Act, 1973, Pakistan Atomic Energy Commission Ordinance, 1965, Pakistan Space and Upper Administration Commission Ordinance, 1981, or any other law or Rules made thereunder in particular, it has to reign supreme. He then contended that when the very purpose of making Rules is to carry out the purposes of the Act it would be a contradiction in terms to shear them of statutory status. The learned ASC next contended that publication of a statutory instrument or a notification in the official gazette is not mandatory in every case, therefore, its non-compliance cannot rob the instrument or the notification of its statutory force. Reliance was placed on the cases

of Saghir Ahmed through legal heirs Vs. Province of Punjab through Secretary, Housing and Physical Planning Lahore and others (PLD 2004 SC 261). The learned ASCs lastly contended that where the Rules prescribe the terms and conditions of service and provide safeguards against their violation, they are statutory by all means and have to be treated as such.

4. We have anxiously considered the submissions of the learned ASCs for the parties, their possible import, implication and amplitude and have also gone through the statutes and the case law cited at the bar.

5. Before we appreciate the arguments of the learned ASCs for the parties and answer the questions so raised, it is worthwhile to see the object of the National Command Authority Act, 2010 which is fully enunciated in its preamble and thus reads as under :-

**“THE NATIONAL COMMAND AUTHORITY ACT, 2010
ACT NO.V OF 2010**

An Act to provide for the constitution and establishment of National Command Authority

WHEREAS, it is necessary and expedient to establish an Authority for complete command and control over research, development, production and use of nuclear and space technologies and other related applications in various fields and to provide for the safety and security of all personnel, facilities, information, installations or organizations and other activities or matters connected therewith or ancillary thereto.

It is hereby enacted as follows:-

1. Short title, commencement, application and extent.-

(1) This Act may be called the National Command Authority Act, 2010.

(2) This Act shall come into force at once and shall be deemed to have taken effect on the 13th December, 2007.

(3) It extends to the whole of Pakistan and shall apply to any person who commits any offence under this Act, wherever, he may be.

Section 2 of the Act defines the key expressions of the Act which reads as below :-

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context, -

- (a) "Authority" means the National Command Authority established under Section 3 of this Act;
- (b) "Chairman" means the Prime Minister of the Islamic Republic of Pakistan;
- (c) "employee" means any official, employee etc. whether in the service of the Authority or the Strategic Organizations, serving or retired and includes those on deputation or secondment within Pakistan or abroad, and those studying abroad;
- (d) "Strategic Organization" means such body notified by the Authority to be a Strategic Organization and includes Pakistan Atomic Energy Commission Dr. A.Q. Khan Research Laboratories (KRL) and Space and Upper Atmosphere Research Commission; and
- (e) "prescribed" means prescribed by Rules under the Act.

6. Section 3 of the Act deals with constitution and establishment of the Authority which reads as under :-

"The Chairman of the Authority shall be the Prime Minister of Pakistan.

(4) The other members of the Authority shall be the,-

- (a) Minister for Foreign Affairs
- (b) Minister for Defence
- (c) Minister for Finance
- (d) Minister for Interior
- (e) Chairman Joint Chiefs of Staff Committee;
- (f) Chief of Army Staff;
- (g) Chief of Naval Staff; and
- (h) Chief of Air Staff."

7. Section 7 deals with the powers and functions of the Authority which reads as under :-

"Powers and functions of the Authority.- The Authority shall have the powers to perform all such functions that are necessary to implement the objects and purposes of this Act which include, without being limited, to the following, namely:-

- (a) to exercise complete command and control over all nuclear and space related technologies, systems and matters;
- (b) to supervise, manage and co-ordinate the administration, management, control and audit of budget, programmes and projects etc., of the Strategic Organizations;
- (c) to authorize undertaking of specialized scientific and technological work;
- (d) to prescribe specific terms and conditions of the employees including but not limited to, appointments, removals, promotions, transfers, integrity and reliability assessment and other related matters;
- (e) to create classification amongst employees based on the sensitivity of the functions, nature of assignment, security considerations and in the interest of security of Pakistan;
- (f) to take measures regarding employees in respect of their movement, communication, privacy, assembly or association, in the public interest or in the interest of integrity, security or defence of Pakistan or friendly relations with foreign states and public order;
- (g) to place such restrictions and limitation on the employees that are necessary in the interest of the confidentiality of the functions, assignments,

jobs etc., being performed by the said employees or the class of employees;

- (h) to ensure security and safety of nuclear establishments, nuclear materials and to safeguard all information and technology relating to said matters;*
- (i) to ensure security and safety of establishments and facilities etc. of the Strategic Organizations;*
- (j) to render security and ensure safety of serving or retired employees or any other person;*
- (k) authorize possession and use of firearms to security force personnel who are in the service of the Authority;*
- (l) to take actions, issue appropriate orders and instructions as it may deem fit or in order to advance or achieve the purposes of its establishment and in order to facilitate the performance of actions or functions that are incidental and ancillary thereto;*
- (m) take implementing measures and assist the Federal Government pursuant to any obligation on Pakistan relating to non-proliferation, safety, security, accidents, terrorism and any other related matters;*
- (n) to take measures in respect of the movement, communication and interaction etc., of any employee or person who is suspected of an attempt to commit an offence under this Act;*
- (o) to carry out the functions of fact finding, inquiry, investigation prosecution etc., of offences under the Act and to that end authorize any official of the Authority or entrust any or all of the said functions to any official outside the Authority partly or fully, as the case may be;*
- (p) to declare application of any other existing law, provisions of law, Rules, Regulations etc., to its employees, procedures, establishment, sites, building, lands, assets, equipments, partly or fully, as the case may be;*
- (q) to acquire property movable or immovable in its own name or in the name of a designated official or a Strategic Organization; and*
- (r) to enter into agreements, contracts and other like transactions;*

8. Section 9 of the Act, deals with the employees of the Authority and those who shall be deemed to be its employees, their terms and conditions of services and how shall they be categorized.

It thus reads as under:-

“9. Employees of Authority.- (1) Notwithstanding anything contained in any other law, judgment of any court or tribunal for the time being in force or any procedure etc., hitherto followed by the Authority, all employees and officials working in the Strategic Organizations, upon notification of the said Organizations under Section 8, shall with immediate effect be deemed to be the employees in the service of the Authority:

Provided that no employee shall be treated on terms and conditions less favorable to the ones which he was availing as per his terms and conditions of employment.

(2) The Authority shall regulate all the matters relating to terms and conditions of the service of the employees in the service of the Authority, including their appointment and removal, promotion, transfer, integrity assessment, reliability, security clearance, and other related matters:

Provided that the employees working in the service of the Authority who are subject to the Pakistan Army Act, 1952 (XXXIX of 1952), Pakistan Air Force Act, 1953 (VI of 1953) and Pakistan Navy Ordinance 1963 (XXXV of 1963), shall also be governed by this Act and Rules made thereunder:

Provided further that the Pakistan Army Act, 1952 (XXXIX of 1952) shall be made applicable in respect of employees in the service of the Authority to whom Section 2 of the said Act applies or employees in the service of the Authority for whom a notification under Section 8 of the aforesaid Act is issued.

(3) The Authority shall categorize the nature of service of the employees the basis of the sensitivity of the functions and then shall frame Rules, criterion, assessment basis for each set of employees and no employee shall have a vested right for any post, assignment, emoluments, promotion, privileges, transfer, deputation etc.”

Section 15 of the Act deals with making Rules for carrying out the purposes of the Act which reads as under :-

“15. Power to make Rules.- The Authority may make Rules for carrying out the objectives of this Act.”

9. A glance at the preamble shows that the Act has been passed to provide for the constitution and establishment of the National Command Authority for complete command and control over research, development, production and use of nuclear and space technologies and other related obligations in various fields and to provide for the safety and security of all personnel, facilities, information, installations or Organizations and other activities or matters connected therewith or ancillary thereto. Section 2 of the Act besides defining Authority etc., also defines the expression ‘prescribed’ which means prescribed by Rules under the Act. Section 3 deals with the Constitution and establishment of the Authority. Section 7 deals with the powers and functions of the Authority, Section 9 deals with the terms and conditions of the employees of the Authority and those who shall be deemed to be its employees, while Section 15 of the Act deals with the power to make Rules. The Rules are made for carrying out the objectives of the Act. The legislature in its wisdom conferred rule making power on the Authority. There is not even a single syllable in the Section alluding to the intervention or the approval of the Federal Government and rightly so because here in this case the legislature did not provide for two sets of Rules; one for external and the other for internal management. The legislature in its wisdom provided for one set of Rules encompassing all the ins and outs of the Authority as are outlined by Sections 7, 8, 9 and 15 of the Act. Since all the matters

they deal with are of crucial importance, no division or distinction of external or internal management has been made. The rule making power in this case is exercised by the Authority consisting of Chairman and 8 other Members enumerated in Section 3 of the Act. It is the Authority which prescribes specific terms and conditions of the employees including but not limited to, appointments, removal, promotions, transfers, integrity and reliability and other related matters under Section 8 of the Act. It is also the Authority that creates classification among the employees based on the sensitivity of the functions, nature of assignments, security consideration and in the interest of security of Pakistan and takes measures regarding employees in respect of their movement, communication, privacy, assembly or association in the public interest or in the interest of integrity, security or defence of Pakistan or friendly relations with foreign States and public order. All these functions being envisioned by Sections 7 and 9 are essentially statutory. The Rules prescribing these functions cannot be short of statutory. They thus do not need intervention or approval of the Federal Government as the Authority itself is the Federal Government incarnate if we see it in the context of the personages adorning it. Not only that the Authority also regulates the matters relating to the terms and conditions of service of the employees in the service of the Authority including their appointment and removal, promotion, transfer, integrity assessment, reliability, security clearance and other related matters under sub-Section 1 and 2 of Section 9 of the Act. The framework for doing all this is provided by the Rules. The Rules partaking so much of the statute cannot be non-statutory by any interpretation of the word. It

was against this background that this Court in the case of **Muhammad Zubair and others Vs. Federation of Pakistan thr. Secretary M/o Defence and others (supra)** while dealing with the Rules framed under Sections 7, 9 and 15 of the Act held as under :-

"5. We do not find ourselves in agreement with the ground on which the petitioners were non-suited namely, that their constitution petition was not maintainable as the Authority did not have statutory Rules. The petitioners were not seeking violation of their terms and conditions of service. Their petition was in the nature of quo warranto questioning reemployment of the respondents. Be that as it may, we have noted that the National Command Authority Employees Service Rules 2011 are statutory in nature as they have been framed by the Authority in exercise of its powers conferred upon it under Section 7 read with Section 9 (2) and further read with Section 15 of the National Command Authority Act, 2010. Such Rules making powers have been exclusively conferred upon the Authority and are not subject to approval of the Federal Government or any other authority. The Rules expressly make provision for reemployment of its retired officers in exceptional circumstances. Such power was conferred on the Authority in view of the nature of the work that is carried out by the different Organizations under the Authority, involving research by scientists, the utilization of whose expertise or experience may be useful or vital for any project or task on which they were working prior to retirement. Neither we are called upon nor shall we endeavor to examine the work that the respondents are engaged in. Additionally the direction given by this Court in Suo Motu No. 24 of 2010 essentially related to civil servants and the same also did not completely prohibit reemployment."

In the case of **Rector National University of Science and Technology (NUST) Islamabad and others Vs. Driver Muhammad Akhtar** rendered in Civil Appeal No.495 of 2010 decided on 28.04.2011, this Court held as under:-

"4. The learned counsel produced a copy of the statutes called the National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005, made by the board of Governors in exercise of the powers conferred upon it by sub-section 2 of section 21 of the University of Sciences and Technology Act, 1997, in order to "regulate the creations of institutes and faculties etc and for enforcement of academic, service, appointment, discipline and financial matters". Section 21 of the Act provides for making of statutes to regulate, inter alia, service, pension and fringe benefits and other terms and conditions of services of the employees of the University. Sub-section 2 provides the procedure that "Draft of the statutes shall be proposed by the Executive Committee for approval by the Board which may approve them or refer them back for reconsideration". Sub-section 3 further mandates that "no statute shall be valid until it has been approved by the Board/Chancellor." Section 21 neither requires approval of the Government of the proposed statutes or its notification. It prescribes its own procedure. The draft statutes become enforceable upon its approval by the Board of Governors. The case of Chairman, State Life Insurance Corporation v Hamayun Irfan (ibid) is clearly distinguishable as there the Regulation making power conferred by the statute on the Corporation required the

previous approval of the Central Government, followed by notification of the Regulation in the official gazette. The Court was, therefore, interpreting the particular rule making power, while holding and as a matter of fact such requirements were fulfilled and that the Regulations were statutory. We have no doubt in our minds that the National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005, are statutory in nature as they were framed in accordance with the procedure prescribed in the statute. Since this was the only ground on which leave was granted, the appeal is dismissed”.

10. A parallel was drawn between the Rules framed under Section 5 of the Pakistan Red Crescent Society Act, 1920 and the Rules framed under Section 15 of the Act on the strength of the judgment rendered in the case of **Pakistan Red Crescent Society (supra)** but this parallel, to say the least, is misconceived on the face of it. The reason is that Pakistan Red Crescent Society has its genesis in Geneva Convention which was initially held on October 26th 1863 followed by the Hague Convention. The Society was universally recognized for taking care of the sick and wounded without any hindrance. Power was given to the managing body under Section 5 of the Red Crescent Society Act to make Rules for the management, control and procedure of the society but what was the status of the society and how far could it be treated as a person performing functions, in connection with the affairs of the Federation was elaborately dealt with in the case of **Ziaullah Khan Niazi. Vs.**

Chairman Pakistan Red Crescent Society (2004 SCMR 189) in the

words reading as follows :-

“6(5). We have heard the learned counsel for the parties at length. We find that the respondent-Society was constituted by the provisions of Section 2 of the Pakistan Red Crescent Society Act (XV of 1920) (hereinafter referred to as the Act). Its operational area covers the whole of Pakistan. The President of Islamic Republic of Pakistan is the President of the Society as provided by Section 3 of the Act. By Section 4 of the Act it is a body corporate having perpetual succession and a common seal with power to hold and acquire property, movable and immovable and may sue or be sued by the name of the Society. As enumerated in the General Principles of Society. Its object and principal aims include the prevention and alleviation of the suffering with complete impartiality both at national and international level and to render voluntary aid to the sick and wounded of the armed forces in times of war in accordance with spirit and conditions of the Geneva Conference and the Treaties and Red Cross to which Pakistan has given its adhesion. The Act, being an existing law was amended by the Central Legislature/Parliament from time to time. The Society cannot be treated as person performing functions in connection with the affairs of the Province. Therefore, the employees of the Society cannot be treated as civil servants of the Province of Punjab, by any stretch of imagination. They cannot invoke the jurisdiction of the Punjab Service Tribunal merely on the ground that they are employed in the provincial

branch of the society. The impugned judgment of the Tribunal suffers from defect of jurisdiction. "

11. In the case of **Pakistan Red Crescent Society. Vs. Nazir Gillani (supra)**, this Court after examining the status of the society and the managing body constituted thereunder, held as under :-

"9. A careful perusal of the said Rule would indicate that the "Managing Body" is competent to frame Rules for the management, control and procedure of the Society. The rulemaking power has been conferred upon the Managing Body in an unambiguous manner and from whatever angle it is interpreted no role for framing of Rules has been assigned to the Government and moreso no such role has been reserved by the Government for itself. It is worth mentioning that no sanction or approval from any quarter including the government is required for framing of such Rules, which shall be framed by the Managing Body alone. It can thus safely be inferred that the powers qua rulemaking exclusively fall within the jurisdictional domain of Managing Body and the ultimate conclusion would be that the Rules or Regulations framed by the Managing Body are non-statutory. It is well settled by now that " where the Government while setting up a corporation does not reserve to itself the power to regulate the terms of service of the Corporation's employees under the relevant statute and does not prescribe any condition, but leaves it to the discretion of the corporation by empowering it to frame Rules or Regulations in respect thereof without the Government's intervention, then the Corporation will be the sole arbiter in the matter of prescribing the terms and conditions of its employees and will be competent to deal with them in accordance

with the terms and conditions prescribed by it. In such case neither a suit nor a writ petition for the relief of reinstatement will be competent and the remedy of an employee, for wrongful dismissal from or of termination of service will be a suit for damages as the principle of master and servant will be applicable. However, where the terms and conditions of service of an employee of a statutory Corporation is regulated by a statute or statutory Rules, any action prejudicial taken against him in derogation or in violation of the statute and/or the statutory Rules will give him a cause of action to file a suit or a writ petition for the relief of reinstatement, as the power of the Corporation will be fettered with the statutory provisions and the principle of master and servant will not be applicable. For the purpose of deciding the factum, whether the Rules or the Regulations of a Corporation have the statutory force, the determining factor will not be their form or name, but the source under which they have been framed.” (Emphasis provided) Chairman WAPDA v. Jamil Ahmed (1993 SCMR 346), Muhammad Yousuf Shah v. Pakistan International Airlines Corporation (PLD 1981 SC 224)”

The above quoted paragraph draws a line of distinction between the rules which are statutory and those which are otherwise. In the former case, the legislature while empowering the rule making body to make rules, prescribed the terms and conditions in the parent statute. In the latter case, the Government while setting up the corporation does not reserve for itself the power to regulate the terms of service of the Corporation’s employees under the relevant statute nor does it prescribe any condition but leaves it to the discretion of the corporation by empowering it to frame rules and

regulations in respect thereof without the Government's intervention. In that case the Corporation is the sole arbiter in the matter of prescribing the terms and conditions of its employees and is competent to deal with them in accordance with the terms and conditions prescribed by it. It is in this state of things that neither a suit nor writ petition for the relief of reinstatement will be competent and the remedy of an employee for wrongful dismissal or termination of service will be a suit for damages. The case of the Authority falls in the first category as the legislature while empowering the Authority to prescribe terms and conditions, laid down certain parameters regulating and even restricting the power of the Authority as can be gathered from the provisions contained in Sections 7 and 9 of the Act. We, thus, don't see any similarity between the rules made under the provisions of the Pakistan Red Crescent Society Act and those of the National Command Authority nor do we find any relevance of the judgment cited above to the case in hand.

12. An equation was also sought to be established between the Rules framed under Section 27 of the Civil Aviation Authority Ordinance, 1982 and the Rules framed under Section 15 of the Act on the strength of the judgment rendered in the case of **Muhammad Nawaz. Vs. Civil Aviation Authority and others** (supra) without appreciating the import of the language used in Sections 26 and 27 of the Ordinance and Sections 9 and 15 of the Act. Under Section 26 of the Ordinance, the Federal Government was empowered to make Rules for carrying out the purposes of the Ordinance, while under Section 27 of the Ordinance, the Authority was empowered to make Regulations to provide for the matters for which provision is necessary or expedient for carrying out the purposes of the

Ordinance. The scope of the Rules and the Regulations was distinctly defined and delineated in the relevant provision of the Act. The Rules made under Section 26, in view of their nature, were given statutory status while the Regulations made under Section 27 of the Act, in view of their nature, were treated as non-statutory. The question requiring determination in that case was whether service Regulations framed by the Authority in excess of powers conferred by the Authority under Section 27 of the Ordinance are statutory in nature or otherwise, but the Bench answered the questions by referring to the ratio of the dicta rendered in the cases of **National Bank of Pakistan Vs. Manzoorul Hassan** (1989 SCMR 832), **Principal Cadet College, Kohat Vs. Muhammad Shoab Qureshi**, **Chairman WAPDA. Vs. Jameel Ahmed** (1993 SCMR 346) and **Pakistan Red Crescent Society Vs. Nazir Gillani**, (supra) and dismissed the appeal. In the case of **National Bank of Pakistan Vs. Manzoorul Hassan** (supra) this Court having examined the nature of the Rules made under Section 32 of the National Bank of Pakistan Ordinance XIX held as under :-

“4. It has been contended on behalf of the appellant that the Staff Service Rules not having been framed by virtue of the delegated rulemaking power vesting in the Central Board under Section 32 of the Ordinance, these Rules do not have effect as statutory Rules but are only instructions for the guidance of the Officers of the Bank in regard to the internal management of the Bank administration. There is no doubt that as previously observed, the National Bank of Pakistan (Staff) Service Rules purport to be Rules made by the Central Board under Bye-law 18 of the National Bank of Pakistan Bye-laws. However, in our view this fact makes no material difference

as to the effect of these Rules. The vires of the legal effect of the Rules cannot be judged by the mere form in which the Rules are framed or the title by which they are called. In substance and in legal effect the said service Rules for all intents and purposes are Bye-laws framed under Section 32 of the Ordinance. The legal requirements for giving effect to the subordinate legislation contemplated under Section 32 have been complied with in framing the Service Rules, inasmuch as, the Rules have been framed by the Central Board and it is not denied that the prior approval of the Central Government was accorded."

In the case of **Principal Cadet College, Kohat Vs. Muhammad Shoab Qureshi (supra)** this Court after drawing a comparison between Rules made under Section 17 and Regulations made under Section 18 of the West Pakistan Government Educational and Training Institutions Ordinance, 1960 held that Rules made under Section 17, in view of their nature, and area of efficacy are statutory while Regulations made under Section 18 of the Ordinance being in the nature of instructions for internal management are non-statutory. The same exercise was undertaken by this Court in the case of **Chairman WAPDA. Vs. Jameel Ahmed (supra)** by drawing a comparison between the Rules framed under Section 18 and the Regulations framed under Section 29 of the West Pakistan Water and Power Development Authority Act, 1958. What their comparison leads to is that Rules framed under Section 18 being in the nature of instructions for internal management are held to be non-statutory while the Regulations made under Section 29 of the Act with the approval of the Federal Government are held to be statutory. Reference was

also made by the learned ASC for the Authority to the case of **Chief Manager State Bank of Pakistan Vs. Muhammad Shafi (2010 SCMR 1994)** to project the proposition that any Rules or Regulations framed without the approval of the Federal Government could not have statutory status, notwithstanding the language used in Section 54 of the State Bank of Pakistan Act or any other Act or Ordinance is different from that of Sections 7, 9 and 15 of the National Command Authority Act which is sought to be termed as being in *pari materia* with the latter. But a survey of all these judgments would reveal that it is not the sole criterion which makes them statutory or otherwise. It is indeed their nature and area of efficacy which are determinative of their status. Rules dealing with instructions for internal control or management are treated as non-statutory while those whose area of efficacy is broader and are complementary to the parent statute in the matters of crucial importance are statutory. The Rules framed under Sections 7, 9 and 15 of the Act are of that genus or genera as they are not only broader in their area of efficacy but are also complementary to the parent statute in the matters of crucial importance. Yes, these Rules have not been framed with the intervention and approval of the Federal Government, but that would not prevent them from being statutory. Firstly because, approval of the Federal Government was not required either under Section 9 or Section 15 of the Act; secondly because, all those who call the shots were already on the board while framing the Rules and thirdly because, the scope and area of their efficacy not only stretch beyond the employees of the Authority but overarch many other strategic Organizations including nuclear and space related technologies systems and matters, as are mentioned in Section 8 and

9 of the Act. Had the Rules been framed for internal management and guidance of the officers of the Authority, the argument of the learned ASC for the Authority would have been tenable and the judgments cited at the bar would have been relevant. But when it is otherwise, as is illustrated above, we don't think any of the arguments addressed and any of the judgments cited at the bar would support the proposition canvassed at the bar. The Rules so enacted and approved by the Authority with such personages on the board do not require another approval of yet another personage.

13. Granted that the legislature in its wisdom wanted to make the Authority autonomous on all accounts, but we don't understand how does the statutory status of the Rules affect and undermine its autonomy. The argument that the scheme of Sections 9 and 21 of the Act shows that the legislature wanted to make the orders of the Authority immune from justiciability is vacuous both legally and logically as immunity of the orders of the Authority from justiciability would not only erode its autonomy, but tend to establish a reign of arbitrariness, which is a recipe for chaos and confusion. An Authority which has been established for higher objectives as is provided in the preamble and other provisions of the Act, cannot thrive and flourish, if its rules are not abided by or enforced on being violated. What good would they bring to the Authority when they are ornamental rather than statutory? What purpose would they serve when whim of anybody at the higher pedestal could replace them with impunity? Unaccounted exercise of unfettered powers is dangerous and even devastating for an institution of this type. Whether it is exercise of powers or exercise of discretion, better and

more uniform results in long term could only be achieved when it is structured and streamlined. Autonomy, independence and efficacy of the Authority are better attained with statutory rather non-statutory Rules. Effective control of Authority over its activities for maintaining secrecy of its sensitive programmes in line with Pakistan International Legal Obligation in particular UNSC Resolution cannot be affected by the statutory status of its rules. Employees whose terms and conditions of service are regulated by non-statutory rules are more exposed to mischief than those whose terms and conditions of service are regulated by statutory rules. It would rather be naïve and even myopic to equate the rules dealing with the matters of crucial importance having so wide a scope and area of efficacy with the instructions meant for internal management and thereby deprive them of their statutory status. We, thus, hold that the Rules made by the Authority under Sections 7, 9 and 15 of the Act cannot be confused or even compared with the Rules and Regulations framed under other enactments without the approval of the Federal Government. The argument that the judgments rendered earlier on the similar proposition could not be ignored by subsequent benches with the same number of Judges is no doubt correct but we don't think any of the judgments cited at the bar decided similar questions. The argument that approval of such rules by the Federal Government to give them statutory attire in view of Rule 14 of the Rules of Business is also a must, is misconceived because when the statute itself did not provide for the approval of the rules by the Federal Government, we cannot supply omission in the Act on the basis of Rule 14 of the Rules of Business. The argument that the judgments rendered in the cases of Rector National

University of Science and Technology (NUST) Islamabad and others.
Vs. Driver Muhammad Akhtar and Muhammad Zubair and others Vs.
Federation of Pakistan thr. Secretary M/o Defence and others (supra)
 holding the rules statutory are *per incuriam* or *sub silentio* is not
 correct as they have been rendered after due consideration of the
 statute and the case law. The judgments rendered in the cases of
Muhammad Tariq Badr and another. Vs. National Bank of Pakistan
and another (2013 SCMR 314), Zarai Taraqiati Bank Limited. Vs. Said
Rehman (2013 SCMR 642), Pakistan Defence Officers Housing
Authority and others. Versus. Lt. Col. Syed Jawaid Ahmed (2013 SCMR
1707), Shoua Junejo. Versus. PIA (2012 SCMR 1681), Muhammad
Nawaz. Versus. Civil Aviation Authority and others (2011 SCMR 523),
Pakistan Telecommunication Co. Ltd. through Chairman. Versus.
Iqbal Nasir (PLD 2011 SC 132), Abdul Rashid Khan. Versus. Registrar,
Bahauddin Zakaria University, Multan (2011 SCMR 944), Pakistan
International Airline Corporation. Versus. Tanweer-ur-Rehman, (PLD
2010 SC 676), State Bank of Pakistan. Versus. Muhammad Shafi (2010
SCMR 1994), Asad Bashir. Versus. Chairman Board of Intermediate
and Secondary Education, Lahore and 2 others (2006 PLC (CS) 110),
Pakistan Red Crescent Society. Versus. Syed Nazir Gillani (PLD 2005
SC 806), Zia Ghafoor Pirach. Versus. Chairman, Board of Intermediate
and Secondary Education, Rawalpindi (2004 SCMR 35), Muhammad
Ishaq Waheed Butt. Versus. Chairman, Bank of Punjab (2003 PLC
(C.S.) 963), Pakistan International Airlines Corporation (PIAC). Versus.
Nasir Jamal Malik (2001 SCMR 934), Ijaz Hussain Suleri. Versus. The
Registrar and another, (1999 SCMR 2381), Chairman, Pakistan Council
of Scientific and Industrial Research, Islamabad. Versus. Khalida Razi
(1995 SCMR 698), Chairman WAPDA. Vs. Jameel Ahmed (1993 SCMR

346), Raziuddin. Versus. Chairman, PIA CORPN. (PLD 1992 SC 531), Karachi Development Authority. Versus. Wali Ahmed Khan (1991 SCMR 2434), Abdul Ghaffar. Versus. WAPDA (1990 SCMR 1462), Sindh Road Transport Corporation Chairman. Versus. Muhammad Ali G. Khohar (1990 SCMR 1404), Principal Cadet College. Versus. Muhammad Shoaib Qureshi (PLD 1984 SC 170), Anwar Hussain. Versus. ADBP (PLD 1984 SC 194), Muhammad Yusuf Shah. Versus. Pakistan International Airlines Corporation (PLD 1981 SC 224) and R.T.H. Janjua. Versus. National Shipping Corporation (PLD 1974 SC 146) being distinguishable are not germane to the case in hand. It thus follows that the rules framed under Sections 7, 9 and 15 of the Act are statutory on all accounts and by every attribute. They are thus declared as such. Let the appeals and petitions filed in the Court be listed before the Benches for decision in the light of this judgment.

Chief Justice

Judge

Judge

Announced in open Court at Islamabad on 21.01.2016.

Judge

'Not Approved For Reporting'

M. Azhar Malik