

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No.2934/2016

Habib Bank Limited

**Versus**

Abdul Sattar Siddiqui and others

**Date of Hearing:** 14.02.2019

**Petitioner by:** Mr. Shahid Anwar Bajwa and Ms. Faiza Naseer Chaudhry, Advocates,

**Respondents by:** M/s Abdur Rahim Bhatti, Yasser Rahim Bhatti and Hassan Rashid Qamar, Advocates for respondent No.1, Mr. Rashid Hafeez, learned Deputy Attorney-General.  
Ms. Sitwat Jahangir, learned Assistant Attorney-General.  
Mr. Abid Afridi, Assistant, Finance Division, Ms. Mehraj Tareen, Advocate for the applicant in C.M.No.2047/2017

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Habib Bank Limited ("H.B.L."), impugns:-

- i. Findings/recommendations dated 07.07.2014, of respondent No.3/Wafaqi Mohtasib, on complaint No. HRQ/0006044/13 filed by Abdul Sattar Siddiqui (respondent No.1);
- ii. Order dated 30.05.2016 of respondent No.5/President of Pakistan on the petitioner's representation under Article 32 of the Establishment of office of Wafaqi Mohtasib (Ombudsman) Order, 1983, against respondent No.3's findings dated 07.07.2014.

2. The facts essential for the disposal of the instant petition are that on 14.07.1996, respondent No.1 (Abdul Sattar Siddiqui) retired from the employment of H.B.L. upon attaining the age of superannuation. H.B.L. had increased the pension payable to its pensioners/retired employees but not at the same rate as the one paid by the Federal Government to retired civil servants. On 17.07.2013, respondent No.1 filed a complaint before the *Wafaqi Mohtasib*/Ombudsman under the provisions of the Establishment of the Office of *Wafaqi Mohtasib* (Ombudsman) Order, 1983 ("P.O.No.1 of 1983") seeking an increase in his pension at the

same rate as allowed and paid by the Federal Government to the civil servants. After obtaining a response from the Finance Division and conducting a hearing, the *Wafaqi Mohtasib*, on 07.07.2014, gave findings in respondent No.1's favour and adverse to H.B.L.'s interests. The recommendations given by the *Wafaqi Mohtasib* were as follows:-

- "a) *The Agency should revisit the case of non-increase in pension of the complainant since December, 2000 for redressing his grievance.*
- b) *The Agency should revisit all similar cases of HBL pensioners, addressing the systemic issues to see as to what went wrong during transition that led to such a grave deprivation of people for so long and take necessary corrective measures.*
- c) *Compliance should be submitted within 60 days of the receipt of these Findings or reasons for non-implementation intimated in terms of Article 11(2) of P.O. No.1 of 1983 within the said period."*

3. Aggrieved by the said findings/recommendations, H.B.L. filed a representation before the President of Pakistan ("President") under Article 32 of P.O. No.1 of 1983. On 30.05.2016, the President accepted H.B.L.'s representation and set-aside the findings of the *Wafaqi Mohtasib* primarily on the ground that the latter lacked jurisdiction in the matter. However, the President converted respondent No.1's complaint before the *Wafaqi Mohtasib* into a petition before the President of Pakistan and directed the Finance Division and H.B.L. to consider respondent No.1's case as well as similarly placed pensioners who had opted for retirement "*when they were eligible for increase in pension on the analogy of other Civil Servants*".

4. Vide letter dated 27.06.2016, the Finance Division forwarded a copy of the President's order dated 30.05.2016 to the State Bank of Pakistan so as to consider the complaints of the pensioners of H.B.L. and other banks and resolve the matter in light of the said order. After deliberation with H.B.L. and other banks, the State Bank of Pakistan, vide letter dated 12.07.2016, advised H.B.L. and other banks to raise the pension and pay arrears to the old pensioners who retired prior to the privatization

of H.B.L. in light of the directions issued by the President in the said order dated 30.05.2016.

5. The *Wafaqi Mohtasib's* findings dated 07.07.2014 and the President's order dated 30.05.2016 have been impugned by H.B.L. in the instant writ petition.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER/H.B.L.:-**

6. Mr. Shahid Anwar Bajwa, Advocate Supreme Court, learned counsel for H.B.L., after narrating the facts leading to the filing of the instant petition, submitted that H.B.L. was a company incorporated under the provisions of erstwhile Companies Ordinance, 1984, and was operating as a banking company under the provisions of the Banking Companies Ordinance, 1962; that H.B.L. had been nationalized under the provisions of the Banks (Nationalization) Act, 1974; that subsequently, H.B.L. was privatized and in this regard, share purchase agreement dated 26.02.2004 was executed by and between the Privatization Commission, the State Bank of Pakistan and the Aga Khan Fund for Economic Development S.A.; that presently, the Government of Pakistan does not have any shareholding in H.B.L.; and that after the enactment of the Banks (Nationalization) (Amendment) Act, 1997 ("the 1997 Act"), the Federal Government has been divested of the power to issue directions to H.B.L.

7. Learned counsel for H.B.L. further submitted that by virtue of the circular dated 30.11.1977 issued by the Finance Division, pension was payable to the employees of banks, including H.B.L.; that after the enactment of the 1997 Act, H.B.L. had financial and administrative autonomy; that vide circular dated 22.01.1998 issued by H.B.L., increases in emoluments ranging from 90% to 130% were allowed to all employees of H.B.L.; that the said circular was issued with the approval of the Board of Directors of H.B.L. and not that of the Federal Government; that vide circular dated 30.12.1998, H.B.L. restructured the pay scales, pensionary benefits, etc. of its employees; and that several circulars

regarding the restructuring of the terms and conditions of H.B.L.'s employees have been issued from time to time.

8. Furthermore, it was submitted that respondent No.1 had chosen not to make H.B.L. as a party to his complaint before the *Wafaqi Mohtasib*; that at no material stage, was any notice issued by the *Wafaqi Mohtasib* to H.B.L.; that the *Wafaqi Mohtasib* gave its findings on respondent No.1's complaint on 07.07.2014; that the said findings were communicated by the Office of the *Wafaqi Mohtasib* to the Secretary, Finance Division, vide letter dated 05.08.2014; that the said findings were not sent by the *Wafaqi Mohtasib* to H.B.L.; that H.B.L. came to know about the said findings on 18.09.2014 when it received letter dated 15.10.2014 from the Internal Finance Wing of the Finance Division; that soon after gaining knowledge of the *Wafaqi Mohtasib's* said findings, H.B.L. filed a representation before the President under Article 32 of P.O.No.1 of 1983; that the said representation was decided on 30.05.2016; and that vide letter dated 12.07.2016, the State Bank of Pakistan advised H.B.L. to *"give rise in pension and pay arrears to the old pensioners retired prior to the privatization of [the] Bank, in the light of [the] Order of the President as well as the directions of the Ministry, in letter and spirit."*

9. Learned counsel for H.B.L. further submitted that the President's order dated 30.05.2016 is without jurisdiction; that after holding that the *Wafaqi Mohtasib* did not have the jurisdiction to give findings against H.B.L., that the President did not have the jurisdiction to convert respondent No.1's complaint before the *Wafaqi Mohtasib* into a petition before the President of Pakistan; that the provisions of P.O.No.1 of 1983 do not authorize the President to convert such a complaint into a petition and issue directions thereon; that since the dispute between H.B.L. and respondent No.1 pertained to the latter's service, the jurisdiction of the *Wafaqi Mohtasib* was barred under Article 9(2) of the P.O.No.1 of 1983; and that since the issue regarding whether the retired employees of H.B.L. were entitled to increases in pension is the subject matter of civil suit No.344/2008, which is still

pending adjudication before the Hon'ble High Court of Sindh, the jurisdiction of the *Wafaqi Mohtasib* in the matter was also barred by Article 9(1)(a) of P.O.No.1 of 1983. Learned counsel for H.B.L. prayed for the writ petition to be allowed in terms of the relief sought therein.

**CONTENTIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.1:-**

10. On the other hand, Messrs Abdur Rahim Bhatti, Advocate Supreme Court and Hassan Rashid Qamar, Advocate, submitted that at the time of respondent No.1's retirement in the year 1996, H.B.L. was owned and controlled by the Government of Pakistan; that vide circular dated 30.11.1977, the Finance Division had informed the Chairman, Pakistan Banking Council, that for providing better social security, it had been decided to introduce pension and retirement benefits for the officers/executives of banks, including the State Bank of Pakistan and financial institutions as had been introduced by the Federal Government for civil servants; that in the said circular, it was also mentioned that the changes or revisions in the rates or scales of pension or gratuity that may be made by the Federal Government shall also apply to the officers/executives of banks; that the said circular was circulated by H.B.L. on 27.02.1978 giving a choice to its employees to opt for the pension scheme or gratuity and provident fund; that respondent No.1 had opted for the pension scheme; that after respondent No.1's retirement, he was given pension based on the recommendations of the Pay Commission constituted by the Federal Government; that as per the said recommendations, respondent No.1 was to be paid pension in the same manner and at the same rate as payable by the Federal Government to the retired civil servants; and that up to December 2000, respondent No.1's pension was increased.

11. Learned counsel for respondent No.1 further submitted that H.B.L. was privatized in the year 2004; that since the Finance Division's circular dated 30.11.1977 has till date not been superseded or withdrawn, H.B.L. is bound to pay pension to its old pensioners with the same increase as paid by the Federal

Government to civil servants; that the policies made by the management of H.B.L. cannot override the provisions of the said circular; that it was respondent No.1's fundamental right to be granted an increase in pension; and that the refusal on H.B.L.'s part in granting an increase in pension is a violation of respondent No.1's fundamental rights as well as the Principles of Policies enshrined in the Constitution.

12. Furthermore, it was submitted that the President had erred by holding that the findings of the *Wafaqi Mohtasib* in respondent No.1's favour were without jurisdiction; that respondent No.1 did not assail the President's order dated 30.05.2016 since a direction had been issued therein to the Finance Division and H.B.L. to redress respondent No.1's grievances; that the said direction contained in the President's order dated 30.05.2016 does not suffer from any jurisdictional infirmity; and that under the Constitution, the President has inherent power to issue directions to the Government. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed. In making their submissions, learned counsel for respondent No.1 placed reliance on the cases of Abdur Rehman Vs. Federation of Pakistan (2010 PLC (C.S.) 619), Hafiz Muhammad Arif Dar Vs. Income Tax Officer (PLD 1989 SC 109), and Nawab Syed Raunaq Ali Vs. Chief Settlement Commissioner (PLD 1973 SC 236), etc.

13. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

14. The facts leading to the filing of the instant writ petition are set out in sufficient detail in paragraphs No.2 to 5 above, and need not be recapitulated.

15. H.B.L. was established in 1942 with the efforts of Mr. Muhammad Ali Habib. In the year 1974, H.B.L. was nationalized under the provisions of the Banks (Nationalization) Act, 1974. On 26.02.2004, H.B.L. was privatized. 51% of H.B.L.'s shares were sold through the Privatization Commission to the Aga Khan Fund for Economic Development S.A. The share purchase agreement,

whereby the Aga Khan Fund for Economic Development S.A. purchased the said shareholding, was executed on 26.02.2004. 12.5% of H.B.L.'s shares are traded on the stock market. The remaining 36.5% of H.B.L.'s shares were sold by the Government of Pakistan to a group of private investors through the Privatization Commission. Vide letter dated 11.05.2015, the Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization, the disinvestment of the residual shareholding of the Government of Pakistan in H.B.L. was confirmed. It is an admitted fact that after April 2015, the Government of Pakistan did not own any shareholding in H.B.L. It may be mentioned that the decision to privatize the Government of Pakistan's shareholding was upheld by the Hon'ble Supreme Court, in its judgment, in the case of Dr. Akthar Hassan Khan Vs. Federation of Pakistan (2012 SCMR 455).

16. Respondent No.1 asserts that his pension has not been increased since December, 2000. One's heart goes out to the old pensioners of H.B.L., who upon their retirement, expected that their pension would be increased at the same rate and proportion as granted to civil servants in terms of circular dated 30.11.1977 issued by the Finance Division. Little did they know that the Banks (Nationalization) Act, 1974, would be amended in 1997, H.B.L. would be privatized in 2004 and its new management would give them an increase in their pension but not at the same rate as allowed by the Government to the civil servants. Emotions aside, while adjudicating upon this case, I am only concerned with the question as to whether a writ of *certiorari* is to be issued with respect to the President's order dated 30.05.2016 wherein he, in exercise of the powers under Article 32 of P.O.No.1 of 1983, has held that the *Wafaqi Mohtasib* had no jurisdiction to issue findings dated 07.07.2014 on respondent No.1's complaint but thereafter, converted the said complaint into a petition to the President of Pakistan and issued directions to the Finance Division and H.B.L. in the said order. In other words, this Court is to determine whether or not to declare the directions to the Finance Division

and H.B.L. contained in the President's order dated 30.05.2016 to have been issued without lawful authority and are of no legal effect.

17. As mentioned above, the *Wafaqi Mohtasib*, on 07.07.2014, decided respondent No.1's complaint and recommended *inter-alia* that the Finance Division should revisit the case of non-increase in respondent No.1's pension since December 2000. H.B.L.'s representation against the said findings before the President was successful inasmuch as vide order dated 30.05.2016, the latter accepted the said representation and set-aside the findings of the *Wafaqi Mohtasib* on the ground that the *Wafaqi Mohtasib* did not have jurisdiction in the matter. The President did so because respondent No.1 in his complaint before the *Wafaqi Mohtasib* had agitated a matter regarding his service with H.B.L. Article 9(2) of P.O. No.1 of 1983 provides that "*the Wafaqi Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter related to the Agency in which he is, or has been working in respect of any personal grievances relating to his service therein.*" The Superior Courts, in several cases, have interfered with the decisions made by the *Wafaqi Mohtasib* and/or by the President of Pakistan, where jurisdiction had been assumed in violation of Article 9(2) of P.O.No.1 of 1983. Reference in this regard may be made to the judgments in the cases of *Pakistan International Airlines Corporation Vs. Wafaqi Mohtasib* (1998 SCMR 841), *Muslim Commercial Bank Ltd. Vs. Momin Khan* (2002 SCMR 958), *Pakistan International Airlines Corporation Vs. Caption M.S.K. Lodhi* (2002 SCMR 1004) and *Civil Aviation Authority Vs. Wafaqi Mohtasib (Ombudsman)* (PLD 2001 Karachi 304).

18. After holding that the *Wafaqi Mohtasib* had no jurisdiction to entertain the complaints of the old pensioners of H.B.L. involving issues relating to their service in H.B.L., the President converted the complaints of the complainants before the *Wafaqi Mohtasib* into "*petitions to the President of Pakistan*" and directed the



Finance Division and H.B.L. to consider the cases of the complainants and other old pensioners of H.B.L. who opted for retirement when they were eligible for increase in pension on the analogy of other civil servants. For the purposes of clarity, paragraphs 15 and 16 of the President's said order dated 30.05.2016 are reproduced herein below:-

*"15. In the circumstances, it will be expedient that the President while accepting the representations of HBL on technical grounds for want of jurisdiction of the Wafaqi Mohtasib in the matter, may be pleased to convert the complaints of the complainants into the petitions to the President of Pakistan and direct the Finance Division as well as HBL to consider the cases of the complainants and other old pensioners of the bank who opted for retirement when they were eligible for increase in pension on the analogy of other Civil Servants.*

*16. Accordingly, the President has been pleased to accept the representation of the Habib Bank Limited and set aside the recommendations of the Wafaqi Mohtasib while converting the complaints into the petitions, with the directions to the Finance Division and HBL to consider the cases of the complainants as well as other similarly placed pensioners in the above terms."*

19. The vital question that needs to be determined is whether the President, after holding that the *Wafaqi Mohtasib* did not have the jurisdiction to decide respondent No.1's complaint, could convert respondent No.1's complaint into a petition before the President of Pakistan and issue directions to the Finance Division and H.B.L. It is an admitted position that P.O.No.1 of 1983 has no provision empowering the President to convert a complaint filed before the *Wafaqi Mohtasib* into a petition before the President of Pakistan while deciding a representation against the findings of the *Wafaqi Mohtasib* under Article 32 of P.O. No.1 of 1983. While deciding such a representation, the President is to remain within the four corners of the jurisdiction conferred upon him by the provisions of P.O.No.1 of 1983. Article 32 of P.O.No.1 of 1983 provides that any person aggrieved by any decision or order of the *Wafaqi Mohtasib* may, within thirty days of the decision or order, make a representation to the President, who may pass such order thereon as he may deem fit. Since P.O.No.1 of 1983 is a special law specifically providing for the jurisdiction, functions and powers which the *Wafaqi Mohtasib* can exercise, the

President while deciding a representation against the findings or recommendations of the *Wafaqi Mohtasib*, cannot exercise jurisdiction, functions and powers not specifically conferred upon him by the said Order. Since in the case of *Federation of Pakistan Vs. Muhammad Tariq Pirzada (1999 SCMR 2189)*, it has been held that the jurisdiction vested in the President under Article 32 of P.O.No.1 of 1983 partakes of appellate jurisdiction, and since appellate proceedings are in continuation of original proceedings, the President while deciding a representation against the findings of the *Wafaqi Mohtasib* could not give findings which were beyond the jurisdiction of the *Wafaqi Mohtasib*. In the said case, it was also held that under the scheme of P.O. No.1 of 1983, the President exercises the same nature of functions as are performed by the *Wafaqi Mohtasib*. In other words, the jurisdiction, functions and powers that the President can exercise cannot be *dehors* or beyond the jurisdiction, functions and powers that the *Wafaqi Mohtasib* can exercise under Article 9 of P.O.No.1 of 1983. The only additional power that has been conferred on the President by Article 31 of P.O. No.1 of 1983 is to refer any matter, report or complaint for investigation and independent recommendation by the *Wafaqi Mohtasib*. It may also be mentioned that the provisions of the Federal Ombudsman Institutional Reforms Act, 2013, do not confer any additional powers on the President while deciding a representation against a decision or order of the *Wafaqi Mohtasib*.

20. The President, while hearing and deciding a representation against an order or decision of the *Wafaqi Mohtasib*, does so not in his capacity as the President of Pakistan but as a *persona designata* under Article 32 of P.O. No.1 of 1983. A *persona designata*, while conducting or presiding over proceedings under a special law, cannot exercise powers not vested in him by such special law. The President acting in exercise of jurisdiction under Article 32 of P.O.No.1 of 1983 could not arrogate to himself powers under the Constitution or some other law and issue directions in purported exercise of such power. After holding in no

uncertain terms that *“the complainants have chosen the forum of the Wafaqi Mohtasib who has no jurisdiction to accept the complaints for investigation as the matter involves personal grievances of the complainants relating to their service in the bank”*, and setting aside the recommendations of the *Wafaqi Mohtasib*, the President ought not to have converted the complaints into petitions to the President of Pakistan and issued directions to the Finance Division and H.B.L. If such directions were issued by the President while exercising jurisdiction under Article 32 of P.O. No.1 of 1983, they (i.e. his directions) would be as bereft of jurisdiction as the President had declared the findings of the *Wafaqi Mohtasib* to be.

21. The President’s order dated 30.05.2016 is silent as to the provision of law or the Constitution in exercise of which the said directions were issued by him after converting respondent No.1’s complaint before the *Wafaqi Mohtasib* into a petition before the President of Pakistan. Article 48(1) of the Constitution provides that in exercise of his functions, the President shall act on and in accordance with the advice of the Cabinet or the Prime Minister. In the case at hand, it is an admitted position that no advice was given by the Cabinet or the Prime Minister for the issuance of the directions given by the President to the Finance Division and H.B.L. in the order dated 30.05.2016. Even otherwise, the President can only act in his discretion in matters in respect of which he has been empowered by the Constitution to do so. The Constitution generally, and Chapter 1, Part-III thereof in particular, does not empower the President to issue directions of the nature issued by him in the said order dated 30.05.2016. The learned counsel for respondent No.1 also could not cite any provision of the Constitution or any statute under which the President had issued the said directions. Even if it is assumed that the Constitution or some law (other than P.O. No.1 of 1983) conferred on the President of Pakistan the power or authority to issue directions like the ones issued by him in his order dated 30.05.2016, he could not have issued such directions while

deciding a representation under Article 32 of P.O. No.1 of 1983 against the findings of the *Wafaqi Mohtasib*. Therefore, it is safe to hold that the directions issued by the President while deciding H.B.L.'s representations against the findings of the *Wafaqi Mohtasib* are without lawful authority and of no legal effect. In holding so, I derive guidance from the law laid down in the following cases:-

- (i) In the case of *Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhary (PLD 2016 SC 637)*, a decision made by the Syndicate of the University of Punjab was challenged in a petition under section 11-A of the University of the Punjab Act, 1973 ("the 1973 Act"), before the Chancellor. The order passed by the Chancellor allowing the petition was challenged in a writ petition before the Hon'ble Lahore High Court. The judgment of the Hon'ble Lahore High Court allowing the writ petition was assailed before the Hon'ble Supreme Court. Section 11(1) of the 1973 Act provided that the Governor of the Punjab shall be the Chancellor of the University. The crucial issue that needed to be determined was whether the Governor of the Punjab, while exercising revisional powers in his capacity as the Chancellor of the University of the Punjab under section 11(8) of the 1973 Act was bound to act and/or to seek advice of the Cabinet/Chief Minister in terms of Article 105(1) of the Constitution, which provides *inter-alia* that the Governor, in the performance of his functions, shall act on and in accordance with the advice of the Cabinet or the Chief Minister. It was held, by majority, that the Chancellor of the said University is a *persona designata* under the 1973 Act and is conferred power in a different capacity which cannot be termed identical to that of the office of the Governor. Accordingly, it was held that the Chancellor of the said University while exercising revisional

powers under section 11-A of the 1973 Act was not required to seek advice of the Cabinet or the Chief Minister.

- (ii) In the case of University of the Punjab, Lahore Vs. Ch. Sardar Ali (1992 SCMR 1093), the Hon'ble Supreme Court quoted with approval the law laid down in the case of Dr. S. C. Barat Vs. Hari Vinayak Pataskar (AIR 1962 Madhya Pradesh 73), wherein it was held as follows:-

*“When an Act confers powers on the Governor not qua Governor but in a different capacity held by him by virtue of his office as Governor, the powers and duties so conferred are not the powers and duties of the office of the Governor. They are the powers and duties of a different office which the Governor holds by virtue of his office as Governor. It is altogether erroneous to say that as the other office is held by the person who is the Governor of the State by virtue of his office as Governor, therefore the powers and duties he exercises or performs of that other office under the relevant Act are the powers and duties of his office as Governor .... Thus the powers and duties that the Chancellor exercises or performs under the Act are not any powers or duties conferred on the Governor qua Governor or of a capacity which he occupies by virtue of his office as Governor. They are the powers and duties of a public capacity held by the personage who is also the Governor. The Chancellor's powers under the Jabalpur University Act are thus not the powers and duties of the office of the Governor and consequently the protection provided by Article 361(1) cannot be invoked by the Chancellor in respect of the exercise and performance of the powers and duties of his office as Chancellor under the Jabalpur University Act.”*

- (iii) In the case of Federation of Pakistan Vs. Muhammad Tariq Pirzada (1999 SCMR 2744), it has been held that the President under P.O. No.1 of 1983 is a statutory body and has to function as such under the provisions and the scheme envisaged by the said Order. Furthermore, it was held that where the President's decision under Article 32 of P.O. No.1 of 1983 is in violation of the law, the High Court, in exercise of its Constitutional jurisdiction, could interfere in the same.

- (iv) In the case of *Federation of Pakistan Vs. Muhammad Tariq Pirzada (1999 SCMR 2189)*, the Hon'ble Supreme Court while deciding a review petition held that under the scheme of P.O. No.1 of 1983, the President exercises the same nature of functions as are performed by the Ombudsman. Furthermore, it was held that the President while performing his functions under Article 32 of P.O. No.1 of 1983, acts in a *quasi-judicial* and not in an administrative capacity, which is totally distinguishable from administrative actions; and that the adjudicatory/*quasi-judicial* powers vesting in the President under Article 32 of P.O. No.1 of 1983 are to be exercised by him in his individual judgment by recording reasons in writing and not on the advice of the Cabinet or Prime Minister.
- (v) In the case of *Muhammad Khalid Vs. Muhammad Naeem (PLD 2012 Lahore 492)*, an application was filed before the Court of the learned Rent Controller for the consolidation of the ejectment petition with proceedings under the Arbitration Act, 1940, which were pending before the Civil Court. Incidentally, both the said proceedings were pending before the same Presiding Officer. The Hon'ble Lahore High Court upheld the order whereby the application for the consolidation of the said proceedings was dismissed. Paragraphs 10 and 11 of the said report are reproduced herein below:-

*“10. The proceedings under Arbitration Act, 1940 are to be taken up by Civil Court while ejectment petition is to be decided by the Rent Controller a persona designata under the provisions of West Pakistan Urban Rent Restriction Ordinance, 1959. These two jurisdictions are entirely different. Pleadings, issues, evidence, and other material in both the matters being different ought to be decided independently and separately.*

*11. In our judicial system, a Civil Judge has been assigned different jurisdictions e.g. the power of Rent Controller under the Rent Laws, to act as a*

*Family Judge under the Family Laws, to act as Guardian Judge under the Guardians, and Wards Act, to exercise powers as Magistrate under the provisions of Cr.P.C. etc. but that does not mean that while he is exercising different jurisdictions, all the proceedings before him can t be amalgamated. In the case in hand, although the Presiding Officer was the same who was acting as Rent Controller, as also the Civil Judge but in one he is a persona designata and exercising quasi judicial jurisdiction whereas with regard to other one he was acting as a Civil Judge under the Code of Civil Procedure. Neither two jurisdictions nor the proceedings under two entirely different laws can be consolidated or amalgamated.”*

22. It is well settled that in cases of absence or excess of jurisdiction, *certiorari* may be granted by this Court in exercise of jurisdiction under Article 199(1)(a)(ii) of the Constitution. Consequently, the said order dated 30.05.2016, only to the extent of the issuance of directions by the President to the Finance Division and H.B.L., is declared to be without lawful authority and of no legal effect. Consequently, the directions contained in the said order are set aside.

23. Since the letter dated 12.07.2006 issued by the State Bank of Pakistan advising H.B.L. to give rise in pension and pay arrears to old pensioners who retired prior to the privatization of the said Bank is based on the President’s order dated 30.05.2016, the advice in the said letter will have the same legal status as the directions given by the President in the said order. In the case of *Yousaf Ali Vs. Muhammad Aslam Zia (PLD 1958 SC 104)*, it has been held *inter-alia* that if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them must, unless some statute or principle of law recognizing as legal the changed position of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded. The law laid down in the said case has consistently been followed by the Superior Courts of this country in several cases including but not limited to Muhammad

Tariq Khan Vs. Khawaja Muhammad Jawad (2007 SCMR 818), Rehmatullah etc Vs. Saleh Khan (2007 SCMR 729), Talib Hussain Vs. Member Board of Revenue (2003 SCMR 549), Pakistan Industrial Promoter Vs. Nawazish Ali Jafri (2003 YLR 1277), and Crescent Sugar Mills and Distally Limited Vs. Central Board of Revenue (PLD 1982 Lahore 1).

24. Since the President, in his order dated 30.05.2016, has set-aside the *Wafaqi Mohtasib's* findings dated 07.07.2014, the petitioner's prayer in this petition that the said findings be declared unlawful has been rendered infructuous.

25. In view of the above, this petition is allowed in the above terms with no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2019.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan\**

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