

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 3391 OF 2018

Khalid Mehmood and 128 others

Vs

Federation of Pakistan through its Secretary, Ministry of Information,
Technology and Telecom, etc.

PETITIONERS BY: Mr. Khalil ur Rehman Abbasi, ASC.

RESPONDENTS BY: Mr. Shahid Anwar Bajwa, ASC for
respondent No.2 in W.P No. 4394/2018
and W.P No. 104/2021.
Mr. Abdullah Alim Qureshi, Advocate for
respondent No. 2 in W.P No. 3391/2018.
Barrister Atif Rahim Burki and
Muhammad Latif Saeedi, Advocates for
respondent No.2 in Writ Petitions No.
1214, 1331, 1422, 1849, 1992, 1993
and 2421 of 2020.

DATE OF DECUSION: 27.05.2021.

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BABAR SATTAR, J.- Through this consolidated judgment, I
intend to decide the instant petition and all the connected petitions
listed in ***Annexure "A"*** attached hereto.

2. In brief, the controversy in the instant petitions relates to
the entitlement of the petitioners to pensionary benefits in terms of
their terms and conditions of service as protected under section 9 of
the Pakistan Telecommunication Corporation Act, 1991 ("**PTC Act**")
and section 36 of the Pakistan Telecommunication (Re-organization)
Act, 1996 ("**Telecom Act**"). The petitioners were originally
employees of the Telegraph and Telephone Department ("**T&T**")

Department") and their services were transferred to Pakistan Telecommunication Corporation **(P.T.C)** subject to protection afforded by section 9 of the PTC Act and were subsequently transferred to Pakistan Telecommunication Company Limited **(P.T.C.L)** subject to protection afforded under sections 35 & 36 of the Telecom Act. The claim of the petitioners is that the terms and conditions of service protected under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act are the terms and conditions of service provided for by sections 3 to 22 of the Civil Servants Act, 1973 **("1973 Act")** and consequently they are entitled to pensionary benefits and increases in such benefits over time as declared by the Federal Government in exercise of authority under the aforementioned provisions of the 1973 Act and respondent No.2/Pakistan Telecommunication Employees Trust **("PTET")** has no authority or discretion to vary the pensionary benefits affixed by the Federal Government in exercise of its authority under the 1973 Act and rules and regulations framed thereunder to the disadvantage of the petitioners.

3. Mr. Khalil ur Rehman Abbasi, ASC appeared on behalf of the petitioners and contended that subject matter of the instant petitions has been decided all the way up to the august Supreme Court and there have been multiple rounds of litigation between the "transferred employee" as defined under section 35 of the Telecom Act and PTET and notwithstanding the unambiguous and unequivocal law laid down by the august Supreme Court in Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others (2012

SCMR 152), P.T.C.L and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), Pakistan Telecommunication Employees Trust (PTET) through M.D., Islamabad and others v. Muhammad Arif and others (2015 SCMR 1472), Muhammad Riaz v. Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others (2015 SCMR 1783) and followed by this Court in ICA No. 34/2017 (Pakistan Telecommunication Company Limited v. Noor Wali Khan, etc.) and Rasool Khan and 29 others v. Federation of Pakistan through Secretary Ministry of Information and Technology and 2 others (2021 PLC (C.S) 14), PTET refuses to abide by the law that has now been settled and the petitioners have been coerced into approaching this Court due to obduracy being exhibited by PTET in not abiding by the law as settled by the august Supreme Court.

4. Mr. Abbasi took this Court through the history of litigation before this Court and the august Supreme Court on the subject-matter as explained above. He also took this Court through the record which reflects that the pensionary benefits being afforded to the petitioners are not at par with the pensionary benefits declared by the Government of Pakistan. He lastly submitted that it is now settled law as reiterated by the august Supreme Court in Board of Intermediate and Secondary Education, Multan through Chairman and another v. Muhmmad Sajid and others [2019 PLC (C.S) 539] that entitlements under the law as recognized and upheld by the august Supreme Court are to be afforded not only to the parties to the legal proceedings but also to parties who are similarly placed but

not parties in the proceedings in which such rights have been acknowledged and affirmed.

5. Mr. Shahid Anwar Bajwa, ASC who appeared on behalf of PTET in Writ Petitions No. 4394/2018 and 104/2021 stated at the outset that P.T.C.L, who was the principal contributory to PTET has not been impleaded as party in the instant petitions and wanted to flag this issue for the attention of the Court.

6. The main contentions of Mr. Bajwa were threefold. The first contention was that not all petitioners, as erstwhile employees of the T&T Department, were civil servants. In view of section 2(1)(b) of the 1973 Act read with section 2(n) of Workmen's Compensation Act, 1923, he contended that the status of the transferred employees as not being civil servants was acknowledged by the august Supreme Court in P.T.C.L and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), which declared the contrary view in Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others (PLD 1996 SC 222) and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (1999 SCMR 1526) to be per incuriam. Mr. Bajwa further contended that from 1996 till 2016, when the judgment in P.T.C.L v. Masood Ahmed Bhatti was delivered, the courts continued to decide matters related to rights of transferred employees under the assumption that they were civil servants and that all cases for determination of entitlements of transferred employees that the petitioners relied on, including Masood Ahmed Bhatti, Muhammad Arif and Muhammad Riaz predate the decision of the august Supreme Court in P.T.C.L v. Masood Ahmed Bhatti (2016 SCMR

1362), wherein the apex Court finally clarified that the transferred employees were not civil servants. And that consequently there is no judgment of the august Supreme Court in the field that has determined the entitlements and pensionary benefits of the transferred employees in view of sections 35 & 36 of the Telecom Act since P.T.C.L v. Masood Ahmed Bhatti (2016 SCMR 1362) declared that they were not civil servants. His contention in this regard was that as the petitioners are now understood as not being civil servants, they are not entitled to the benefits afforded to civil servants by the Federal Government in exercise of its authority and discretion under the Civil Servants Act.

7. The second contention of Mr. Bajwa was that the august Supreme Court has not thus far interpreted the relevant language in section 9 of the PTC Act, which states that the terms and conditions protected under the said section were those to which transferred employees "were entitled immediately before such transfer". Mr. Bajwa submitted that the language of the statutory provisions has neither been considered by the august Supreme Court in the judgments that have been relied upon by the petitioners nor by this Court in ICA No. 34/2017 titled (Pakistan Telecommunication Company Limited v. Noor Wali Khan, etc.) and Rasool Khan and 29 others v. Federation of Pakistan through Secretary Ministry of Information and Technology and 2 others (2021 PLC (C.S) 14). He submitted that the relevant language in section 9 of the PTC Act (i.e. "to which they were entitled immediately before such transfer") has been considered by the learned Peshawar High Court in W.P No. 2973-P/2012 (Pakistan Telecommunication employees Union (CBA)

v. Pakistan Telecommunication Company Ltd. through its President),
which held the following:

*"The underlining is by us in order to show emphasis in reference to the claim of the petitioners. There is no dispute or claim regarding any of the term and condition so guaranteed at that time vide Acts of 1991 & 1996, therefore, the phrase used in a statue may in circumstances have a direct effect on interpretation of a particular provision of law and as such it's the duty of the Court interpreting a law to ensure that every word used is given due weight, consideration and importance. In the instance case, the words used in Act 1991 ibid in section-9 i.e. **"to which they were entitled immediately before such transfer"** and in section-36 of Act, 1996 ibid, **"the existing terms and conditions"** are clearly indicating the terms and conditions, which the employees were having at the time of transfer, to which protection has been given. Indeed, the pensionary benefits of the transferred employees are protected; they are getting their pensionary benefits as well as the increases so given by the company. Admittedly, the subsequent increase/revision in pay scale are of the Federal Government and nowhere in both the Acts, i.e. 1991 & 1996 employees were allowed all the perks and privileges of the Federal Government, Mutatis Mutandis, because after the transfer from T&T Department to Corporation and then to Company they never remained civil servants except the protection given in section-9 of Act, 1991 & section 36 of Act 1996, to the existing terms and conditions. When the term existing is interpreted in all its senses it reflects "at that time".*

Mr. Bajwa also informed the Court that the decisions by the learned Peshawar High Court in Writ Petition No. 2973-P/2012 and by the Divisional Bench of this Court in ICA No. 34/2017 have been appealed and the august Supreme Court has granted leave to hear the appeals. Relying on the judgment of the learned Peshawar High Court and excerpts from Maxwell on Interpretation of Statutes, he contended that the tense used in a statutory provision may have a decisive effect and given that the tense in section 9 of the PTC Act was the past tense and the legislative had used the word "were entitled" where it afforded protection to the terms and conditions of the transferred employees, what was being protected was the terms and conditions of service as they existed at the time of promulgation of the PTC Act and not the benefits and entitlements that would continue to be afforded to civil servants for all times to come. In summary, Mr. Bajwa contended that what was protected by section 9 of the PTC Act and subsequently by sections 35 & 36 of the Telecom Act were the benefits and entitlements as had been declared by the Federal Government in exercise of its jurisdiction under sections 3 to 22 of the 1973 Act as of the date of promulgation of PTC Act, and that subsequent declaration of benefits by the Federal Government in relation to civil servants were not applicable to the petitioners and that this aspect of the controversy had not been considered thus far by the august Supreme Court.

8. The third contention of Mr. Bajwa was that where in a judicial precedent a particular provision of law that was relevant to the outcome of the case had not been considered, such decision of the august Supreme Court was not binding on the High Court and he

relied on National Bank of Pakistan v. Sindh Labour Appellate Tribunal, Karachi and another (1994 PLC 301) and Sh. Muhammad Rafique Goreja and others v. Islamic Republic of Pakistan (2006 SCMR 1317). He stated that in view of his previous contention that there was no judgment of the august Supreme Court that settled the question before this Court for purposes of Article 89 of the Constitution. And that this Court had erred in law in deciding Rasool Khan when it misconceived the judgments of the august Supreme Court in Masood Ahmed Bhatti, Muhammad Arif and Muhammad Riaz as binding precedents determining the controversy that formed the subject matter of the grievance decided in Rasool Khan, which is the same controversy that is now pending before this Court in the instant petitions, the judgment in Rasool Khan does not bind this Court. He further contended that in Rasool Khan, while referring to the judgment passed in W.P No. 2973-P/2012, this Court expressed its disagreement with the findings of the learned Peshawar High Court but did not give its reasoning for disagreeing with such persuasive authority. His submission was that in view of the fact that (i) there was no judgment of the august Supreme Court that determines the controversy pending before this Court in the instant petitions, (ii) the judgment in Rasool Khan had been passed while not appreciating the fact that the judgments of the august Supreme Court never interpreted section 9 of the PTC Act, and (iii) in another judgment passed by a learned Judge-in-Chambers of this Court in W.P No. 3435/2017 (Muhammad Ishaq, etc. v. Federation of Pakistan and another), which decision was subsequent in time to that of Rasool Khan, it was held that any change made by the Federal Government in terms and conditions of civil servants would

not be ipso facto applicable to the transferred employees, this Court is not bound by the decision in Rasool Khan for purposes of the principle of consistency laid down in Multiline Associates Vs. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423)

9. Mr. Abdullah Alim Qureshi, Mr. Atif Rahim Burki and Mr. Muhammad Latif Saeedi, Advocates appeared as counsel for PTET (i.e. respondent No.2) in connected Writ Petitions No. 3391/2018, 1214, 1331, 1422, 1849, 1992, 1993 and 2421 of 2020, and adopted the arguments of Mr. Shahid Anwar Bajwa.

10. In rebuttal, the learned counsel for the petitioners stated that PTCL was not a necessary party in the instant petitions as the petitioners were already retired employees and had filed the instant petitions in their capacity as pensioners whose pensionary benefits were to be released by PTET in accordance with the provisions of the PTC Act and the Telecom Act and the law as laid down and clarified by the august Supreme Court. And that as PTET was a separate statutory body established under the Telecom Act, P.T.C.L had nothing to do with the subject-matter of the instant petitions.

11. The question of entitlement of transferred employees to pensionary benefits as protected under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act has an arduous litigation history. The history of litigation between the transferred employees and PTET as well as the arguments raised by the counsel of the transferred employee and PTET have been recorded in detail in the judgment of this Court in Rasool Khan and need not be rehashed. This Court agrees with the ratio in Rasool Khan and ICA No. 34/2017

and finds that it is bound by these precedents in line with the principles of law laid down in Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423). In C.R.P No. 104-L/2019 etc. (Farooq Hussain v. Sheikh Aftab Ahmed), the august Supreme Court has held that where a court is satisfied with the reasoning and conclusions of the judgment challenged before it and it does not find any cause for interference, the court can simply endorse the impugned judgment and adopt the reasoning of the Court below with re-tracing the path travelled by such court in interest of saving public time which can be allocated to other cases. The same principle of brevity and efficiency would apply to a case in which the High Court is to follow a binding precedent of the same court wherein all issues impinging on the controversy before it have already been addressed at length in such binding precedent. The judgment in Rasool Khan has dealt with the history of relevant provisions of the statute in question, the history of litigation in relation to the subject-matter in the instant petitions and the relevant case law cited at the bar. This Court, therefore, does not feel obliged to rehash the legal analysis carefully undertaken in Rasool Khan and adopts the reasoning and conclusions drawn in Rasool Khan. It does, however, feel the need to redress the contentions raised by Mr. Bajwa on behalf of PTET. Notwithstanding that the decision of this Court in W.P No. 3435/2017 was announced later in time than that in Rasool Khan, the ratio and dicta in Rasool Khan is in consonance with the decision of the learned Division Bench of this Court in ICA No. 34/2017 and is the correct enunciation of law laid down by the august Supreme court in Masood Ahmed Bhatti, P.T.C.L v. Masood Ahmed Bhatti, Muhammad Arif and

Muhammad Riaz. The first contention of Mr. Bajwa that all decisions in relation to the entitlements of the transferred employees including, *inter alia*, their pensionary benefits, between 1996 and 2016, when the august Supreme Court clarified in P.T.C.L v. Masood Ahmed Bhatti that the transferred employees were no longer civil servants, were rendered pursuant to misapprehension that the transferred employees were civil servants, is misconceived. The ratio in Masood Ahmed Bhatti is not that the transferred employees are entitled to emoluments and benefits as guaranteed under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act because such transferred employees retained their status as civil servants. The ratio in Masood Ahmed Bhatti was that the terms and conditions of service of the transferred employees were protected by section 9 of the PTC Act and sections 35 & 36 of the Telecom Act and given that the statute itself afforded protection to their terms and conditions of service, a grievance of such transferred employees that their terms and conditions of service were being varied to their disadvantage could be agitated before a High Court in its constitutional jurisdiction and there was no need to undertake any further inquiry to determine whether rules and regulations pursuant to which their emoluments and benefits were being guaranteed were instruments of a statutory nature or not. In other words, the august Supreme Court held that notwithstanding the employment status of transferred employees and whether or not they were civil servants their terms and conditions of service had been protected by the PTC Act and the Telecom Act and any breach of terms and conditions so guaranteed would tantamount to a breach of law amenable to the writ jurisdiction of the High Court. The entire debate in relation to

the employment status of transferred employees has been in the context of maintainability of petitions and determination of the forum vested with jurisdiction to adjudicate the grievances of transferred employees. Whether or not transferred employees had the status of civil servants had to do with the forum that could adjudicate their grievances. And in none of the precedents cited at the bar has it been held that what is protected as part of terms and conditions of service under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act is contingent on the employment status of the transferred employees. The august Supreme Court in Masood Ahmed Bhatti observed the following:

"11. We have already observed that between 1991 and 1996 when the Corporation was in existence, the rules of employment applicable to the appellants were statutory rules having been given such status by virtue of section 9 of the PTC Act. What now needs to be seen is the effect of the Reorganization Act on the rules of employment applicable to the appellants and to determine if such rules underwent any change so as to relegate their status to that of non-statutory rules."

12. It is evident from reading of Masood Ahmed Bhatti that what was held by the august Supreme Court was that the statutory nature of the terms and conditions of service of the transferred employees was due to section 9 of the PTC Act affording protection to erstwhile terms and conditions of service and not due to continuing employment status of the transferred employees as a civil servant. The entitlement of transferred employees was further declared and clarified in Masood Ahmed Bhatti in the following terms:

"14. We may now consider the effect of this transfer of the appellants to PTCL along with the assets and liabilities of the Corporation and the implications of such transfer on the nature of the rules of employment applicable to the appellants from the date (i.e. 1-1-1996) they became employees of PTCL. The proviso to section 35(2) of the Reorganization Act provides a clear answer to this controversy. It specifies that even after the transfer of the appellants to PTCL their terms and conditions of service which existed on 1-1-1996, would be the base and bare minimum in matters of their employment with PTCL. These terms and conditions were imposed on PTCL by the Reorganization Act, as a legal obligation and the Vesting Order was issued by the Federal Government "in exercise of powers conferred by section 35" of the Reorganization Act. The Federal Government, it will be noted, had been granted limited powers only; the constraint on it was that the terms and conditions of service of employees of the Corporation could not be varied to their disadvantage. PTCL, as the recipient of the properties and rights of the Corporation, also assumed the liabilities of the Corporation. Such liabilities necessarily included the liabilities owed to the employees, arising from the terms and conditions of their service as these could not be varied to their disadvantage.

*15. Thus it is evident that at the moment of transition when the appellants ceased to remain the employees of the Corporation and became the employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore, by definition were statutory rules as has been discussed above. PTCL, no doubt, could make beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1-1-1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation, "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 *ibid*, from varying such terms and conditions of service to the disadvantage of the appellants.*

16. An easy and uncomplicated test becomes available to us to help determine the status of the employment rules governing the appellants. If the current employer of the appellants viz. PTCL is constrained by legislation such as section 35(2) of the Reorganization Act, and as a consequence, cannot vary the existing rules to the disadvantage of the appellants, because of such legislation, it must follow that such law has the effect of saving the rules which existed when the appellants became employees of PTCL. Such existing rules, having been protected by section 35(2), therefore, can only be categorized as statutory rules."

13. It is obvious from the above that the entitlement of the transferred employees was never found by the august Supreme Court to have been rooted in the employment status of the transferred employees. To the contrary, the court in unambiguous terms had held that in view of the provisions of the Telecom Act, the rules and regulations governing the terms and conditions of service of the transferred employees had automatically been given a statutory guarantee. The august Supreme Court had further held that the terms and conditions of service of the appellants "*which existed on 11.01.1996 would be the base and bare minimum in matters of their employment with PTCL.*"

14. The decision of the august Supreme Court in P.T.C.L v. Masood Ahmed Bhatti (2016 SCMR 1362) while exercising review jurisdiction also does not support the arguments of Mr. Bajwa for the following reasons. At the time when the review judgment was rendered the judgment in Muhammad Arif was already in the field and was cited before the Larger Bench of the august Supreme Court, as recorded in its judgment. Consequently, the august Supreme Court in P.T.C.L v. Masood Ahmed Bhatti had the occasion to

consider the ratio and dicta of Masood Ahmed Bhatti, which was under review, and also the ratio and dicta in Muhammad Arif. In the event that the august Supreme Court came to the conclusion that Masood Ahmed Bhatti was wrongly decided or was decided in view of misapprehension that the transferred employees had retained their status as civil servants, it would have accepted the review petition as opposed to dismissing it. Further, as it had the benefit of considering the ratio and dicta in Muhammad Arif, which was a judgment of three-member bench, a five-member bench of the august Supreme Court in P.T.C.L v. Masood Ahmed Bhatti had the occasion to declare that the enunciation of law in Muhamad Arif was not correct, as it did in relation to Riaz Ahmed and Muhammad Shahid. But it did not do so. In view of the above, the overruling of Riaz Ahmed and Muhammad Shahid and clarification that the transferred employees would not continue to be civil servants has no bearing on the ratio and dicta in Masood Ahmed Bhatti and Muhammad Arif.

15. Having clarified that the protection afforded to the terms and conditions of service of the transferred employees is rooted in the statutory protection afforded to such terms and conditions under section 9 of PTC Act and sections 35 & 36 of the Telecom Act and not in the employment status of the transferred employees, let us now consider the dicta of the august Supreme Court as to what is protected by the aforementioned statutory provisions. Mr. Bajwa is also mistaken when he argues that the question of continuing entitlement of the transferred employees to the benefits afforded by the Federal Government to civil servants after the promulgation of the Telecom Act was never raised before the august Supreme Court.

That the transferred employees had no continuing entitlement to the benefits afforded to civil servants was precisely the argument of PTET before the august Supreme Court in Muhammad Arif, which is recorded in the judgment in the following terms.

"4. Mr. Khalid Javed Khan, learned Advocate Supreme Court appearing for the petitioner-Pakistan Telecommunication Employees Trust, after extensively going through various enactments and rules etc., has contended that there is no provision in the Civil Servants Act, 1973 for increase of pension and that whatever increase in pension is granted by the Federal Government is on the basis of its own policy. He also contended that the provision of Civil Servants Act being not applicable to employees of the Company consequently any increase in pension granted by the government to the civil servants will not extend to the employees of the Company. He further contended that though pension is granted as a part of terms and conditions of service but its increase is not the part of terms and conditions as the increase in pension is basically a matter of policy which has to be decided by the Trustees of the Trust."

16. The august Supreme Court in Muhammad Arif did not misapprehend that the transferred employees continued to retain their status as civil servants or their entitlements under the terms and conditions of service were rooted in their status as civil servants, as is obvious for the following:

"It is clear from the reading of provision of the Act of 1991 so also that of the Act of 1996 that the terms and conditions of service of the Transferred Employees from T&T Department to the Corporation and then to the Company remain unaltered and they continued to be paid the benefits as were admissible to them as employees of T&T Department. There seems to be no dispute until 2009 regarding the entitlement of pension to the employees of erstwhile T&T Department inasmuch as they have been paid pension at the same rate of increase as has been provided by the Federal Government to its employees."

17. The Court then reaffirmed the ratio and dicta in Masood Ahmed Bhatti despite the fact that review against the judgment was pending at the time and such fact was brought to the attention of the Court by Mr. Bajwa himself, who in the said matter was representing PTET. The ruling in Muhammad Arif is unequivocal as is evident from the following excerpts:

"19. Adverting to the submission of Mr. Shahid Anwar Bajwa, learned Advocate Supreme Court, we may note that while the Company may be entitled to fix the terms and conditions of service of its employees so also the provision of pension by the Board of Trustees of the Trust but as discussed above, as regards the employees of T&T Department transferred to the Corporation and then to the Company, their terms and conditions of service stand protected by the provision of section 9 of the Act of 1991 and sections 35, 36 and 46 of the Act of 1996 and thus they will be entitled to payment of increase in pension as is announced by the Government of Pakistan. The contribution of the Company to the Pension Fund determined by the Actuary and its payment by the Company does not appear to be of much relevance because the question before us is of entitlement of the respondents to the increase in pension. In the case of Secretary, Government of the Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others [2014 SCMR 1336], this Court has held that while on completion to commutation period the civil servant is entitled to payment of full pension. It was noted, and such has been done time and again by this Court that pension is a part of a civil servant's retirement benefit and is not bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation. The right to pension is conferred by law which could not be arbitrarily abridged or reduced except in accordance with law. The aspect of the statutory rules has already been dealt with above and we tend to agree with the rule laid down in the case of Masood Ahmed Bhatti (supra).

20. For the foregoing reasons, we have come to conclusion that the respondents, who were the employees of T&T Department having retired after their transfer to the Corporation and the Company, will be entitled to the same pension as is announced by the Government of Pakistan and that the Board of Trustees of the Trust is bound to follow such announcement of the Government in respect of such employees. Consequently, these petitions are dismissed.

18. In view of the ratio and dicta in Muhammad Arif, it is patent that the argument that section 9 of the PTC Act and sections 35 & 36 of the Telecom Act ought to be read such that they guarantee the terms and conditions of service and the benefits declared by the Government of Pakistan as of the date of promulgation of the said statutes was considered and rejected by the august Supreme Court. Once Masood Ahmed Bhatti had dealt with terms and conditions of service of the transferred employees and held that they had been afforded a statutory protection, the basic question before the august Supreme Court in Muhammad Arif was regarding the scope of the protection so afforded. Section 9 of the PTC Act and sections 35 & 36 of the Telecom Act could possibly be interpreted in two ways: (i) that the legislature had protected such benefits that had already been announced by the Federal Government as of date of transfer of employees from T&T Department to PTC and subsequently from PTC to PTCL, and not any benefits declared and entitlement afforded by the Federal Government to the civil servants thereafter; and (ii) that the terms and conditions of service, that were protected under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act, afforded a continuing protection to the transferred employees notwithstanding their transfer to PTC and PTCL respectively, and consequently the legislative intent under such provisions was not to

protect the entitlements declared for the benefit of the transferred employees in a particular moment in time such that they were frozen in time or left at the discretion of the new employers of the transferred employees, but to ensure and guarantee that the entitlements and benefits of the transferred employees would at all times remain at par with those of civil servants notwithstanding that the transferred employees were handed over to entities by legislation fiat created by the PTC Act and the Telecom Act. Having considered the possible interpretations, the august Supreme Court held in Masood Ahmed Bhatti read together with Muhammad Arif that the correct interpretation of relevant statutory provisions was the latter. Not that any ambiguity remained after the decision of the august Supreme Court in Masood Ahmed Bhatti and Muhammad Arif, but Muhammad Riaz once again reiterated that ratio and dicta in Masood Ahmed Bhatti and Muhammad Arif.

19. In view of the above, the contention of Mr. Bajwa that the employment status of transferred employees as clarified by the august Supreme Court in PTCL v. Masood Ahmed Bhatti has a bearing on ratio and dicta in Masood Ahmed, Muhammad Arif and Muhammad Riaz is without merit. The questions of law that are germane to the controversy that formed the subject matter of the petitions have been considered by the august Supreme Court and addressed as has been held by this Court in Rasool Khan. It appears that in view of the copious litigation on the issue of entitlements of the transferred employees protected under provisions of the PTC Act and the Telecom Act, there is no confusion as to the law as settled by the august Supreme Court on the matter. And that the cause of

incessant litigation is the recalcitrance of respondent No.2 to give effect to the law as has already been settled by the august Supreme Court.

20. For the aforesaid reasons, these petitions are **accepted** in terms of the ratio and dicta in Rasool Khan, and the direction issued in Rasool Khan as recorded in para 64 of the said judgment, to the extent of PTET, which, *inter alia*, includes the following:

"The petitions filed by the petitioners who are departmental employees (i.e. the employees of T&T Department who were transferred to P.T.C and further transferred to P.T.C.L by virtue of the provisions of the 1991 Act and 1996 Act) praying for the payment of pension with increase at the same rates paid by the Federal Government to the retired civil servants from time to time are allowed. P.T.E.T is directed to calculate the arrears in pension payable to such petitioners, and pay the same to them within a period of sixty days from the date of the receipt of this judgment."

There is no order as to costs.

(BABAR SATTAR)
JUDGE

Saeed.

ANNEXURE-A

Sr. No.	Case No.	Case Title
1.	W.P No. 4394/2018	Raja Muhammad Saeed, etc. vs. Federation of Pakistan, etc.
2.	W.P No. 1214/2020	Mumtaz Ali Shah, etc. vs. Federation of Pakistan, etc.
3.	W.P No. 1331/2020	Muhammad Ghous, etc. vs. Federation of Pakistan, etc.
4.	W.P No. 1422/2020	Muhammad Yaoob, etc. vs. Federation of Pakistan, etc.
5.	W.P No. 1849/2020	Muhammad Ismail, etc. vs. Federation of Pakistan, etc.
6.	W.P No. 1992/2002	Israr Ahmed Khan, etc. vs. Federation of Pakistan, etc.
7.	W.P No. 1993/2020	Muhammad Shah, etc. vs. Federation of Pakistan, etc.
8.	W.P No. 2421/2020	Bagh Ali Shah, etc. vs. Federation of Pakistan, etc.
9.	W.P No. 104/2021	Muhammad Naeem, etc. vs. Federation of Pakistan, etc.
10.	1580/2021	Khurshid Ahmed, etc. vs. Federation of Pakistan, etc.