

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.523 of 2012
Rasool Khan and others

Versus

Federation of Pakistan through its Secretary, Ministry of Information
and Technology and others

Dates of Hearing: 20.06.2019, 20.02.2020, 25.02.2020 & 27.02.2020

Petitioners by: Mr. Khalil-ur-Rehman Abbasi, Advocate in writ petitions No.2587, 3287, 3559, 3851, 3854, 4081 of 2017, writ petitions No.523 & 653 of 2012, writ petitions No.1177, 1178, 1256, 1263, 1268, 1419 and 1638 of 2018, writ petitions No.2215 & 3513 of 2019.
Mr. Khizar Hayat Khan, Advocate in writ petition No.932/2018
Mr. Muhammad Sarwar Malik, Advocate in W.P.No.1330/2018
Mr. Mushtaq Hussain, Advocate in writ petitions No.1603/2018 and 3696/2018
M/s Muhammad Tariq Asad and Muhammad Anwar Dar Advocate in W.P.No.2146/2018
Mr. Manzoor Hussain, Advocate in W.P.No.2229/2018
Hafiz Farman Ullah Advocate in writ petitions No.746/2019 and 1598/2019
Mr. Jameel Hussain Qureshi Advocate in W.P.No.4588/2018
Mr. G.M. Chaudhry, Advocate in W.P.No.1226/2017

Respondents by: Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General
Mr. Nadeem Khan Khakwani, learned Assistant Attorney-General
Barrister Junaid Zamurd Khan in W.P.No.1256/2018
Mr. Shahid Anwar Bajwa, Advocate for P.T.C.L. Sheikh Junaid Nadeem, Advocate in W.P.No.1603/2018
Mr. Saad Hasan Advocate in W.P.No.2146/2018
Barrister Mustafa Munir Ahmad and Malik Omair Saleem, Advocate in W.P.No.2229/2018
Mr. Rashid Anwar, Advocate in W.P.3559/2017
Mr. Shafique ur Rehman Dab in writ petitions No.1220/2018 and 932/2018
M/s Muhammad Matee ur Rehman Manager (Legal) P.T.E.T. and Raheel Zafar, S.M.L. P.T.C.L.
Mr. Akhlaq Ahmad Bhatti, Advocate for P.T.C.L. in W.P.No.1226/2017
M/s Muhammad Munir Paracha and Nauman Munir Paracha, Advocates for P.T.C.L. in W.P.No.523/12

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide the writ petitions listed in "**Schedule-A**" hereto.

2. The petitioners, who have all retired from service, seek a direction to the Pakistan Telecommunication Company Limited ("P.T.C.L.") and the Pakistan Telecommunication Employees Trust to pay them pension with periodic increases commensurate to the ones announced by the Federal Government for civil servants from time to time. Some of the petitioners also seek the payment of medical allowance, special additional pension (at the rate of the orderly allowance announced by the Government for in service government servants in BPS-20 and above), family pension, and the restoration of the commuted portion of their pension in the same manner as permissible to civil servants.

3. The Pakistan Telecommunication Corporation Act, 1991 ("the 1991 Act") was enacted on 25.11.1991. By operation of Section 9(1) of the said Act, the employees of the Pakistan Telegraph and Telephone Department, Government of Pakistan ("T&T Department") were transferred to the Pakistan Telecommunication Corporation ("P.T.C.") on the same terms and conditions to which they were entitled immediately before such transfer. Section 9(2) of the 1991 Act provided that the terms and conditions of service of the departmental employees transferred to P.T.C. shall not be varied to their disadvantage. The terms and conditions of service to which such employees were entitled before their transfer were to continue to be applicable to them notwithstanding their transfer to P.T.C.

4. The Pakistan Telecommunication (Re-organization) Act, 1996 ("the 1996 Act") was enacted on 13.10.1996. Section 34 of the said Act provided *inter alia* that the Federal Government shall establish a company to be known as Pakistan Telecommunication Company, limited by shares, and cause it to be incorporated under the erstwhile Companies Ordinance, 1984. The principal object of this company was to be the provision of the domestic and international telecommunication and related services consistent with the provisions of the 1996 Act.

5. Section 35(2) of the 1996 Act provided *inter alia* that the employees of P.T.C., specified in an order issued by the Federal Government pursuant to Section 35(1) of the said Act, shall be transferred to and become the employees of either Pakistan Telecommunication Company

Limited (“P.T.C.L.”), the National Telecommunication Corporation, the Pakistan Telecommunication Authority, the Pakistan Telecommunication Employees Trust, or the Frequency Allocation Board referred to in such order. It is an admitted position that the petitioners stood transferred to P.T.C.L. by virtue of the said provisions in the 1996 Act.

6. Section 36(1) of the 1996 Act provided *inter alia* that no person transferred to P.T.C.L. pursuant to Section 35(2) of the said Act shall be entitled to any compensation as a consequence of such transfer. Under the *proviso* to Section 36(1) of the said Act, the Federal Government was under an obligation to guarantee the existing terms and conditions of service and rights including pensionary benefits of the employees transferred to P.T.C.L. Under Section 36(2) of the said Act, the terms and conditions of service of any such transferred employees could not be altered adversely by P.T.C.L. except in accordance with the laws of Pakistan or with the consent of such transferred employees and the award of appropriate compensation. Section 36(5) of the 1996 Act provided as follows:-

"36(5) Under the order vesting property of the Corporation in the Company, the Federal Government shall require the Company to assume the responsibility of pensionary benefits of the telecommunication employees and the Company shall not alter such pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation."

7. In this judgment, the petitioners who were employed in T&T Department and transferred to P.T.C. by operation of Section 9 of the 1991 Act and further transferred to P.T.C.L. by operation of Sections 35 and 36 of the 1996 Act, and who retired while in service of P.T.C. or P.T.C.L. shall be referred to as “**departmental employees**”.

8. At this stage, it may be mentioned that the Pakistan Telecommunication Corporation Employees Pension Fund (“P.T.C.E. Pension Fund”) was created by a trust deed dated 02.04.1994. It is a matter of record that clause 2 of the trust deed provided that *“all departmental employees transferred to the Corporation as defined in Section 9 of the Pakistan Telecommunication Corporation Act, 1991 shall be entitled to benefits as defined under the Federal Government Pension Rules as applicable to such employees before the formation of P.T.C.”* Section 45(1) of the 1996 Act provided *inter alia* that the Federal Government shall, by notification in the official Gazette, order that all

assets of the P.T.C.E. Pension Fund and such liabilities as are specified in the notification, shall vest in and shall become the assets and liabilities of the Pakistan Telecommunication Employees Trust (“P.T.E.T”) established by the Federal Government pursuant to Section 44(1) of the said Act. P.T.E.T. was to be a body corporate managed by a board of six trustees, three of whom were to be appointed by the Federal Government and three by P.T.C.L.

9. Under Section 45(2) of the 1996 Act, P.T.C.L. was to contribute to the Pension Fund the amount determined by the Actuary (appointed by the trustees) representing the unfunded portion of the accrued pension liabilities which was to be assumed by P.T.C.L. The Pension Fund administered by P.T.E.T. was to consist of (a) amounts received from the P.T.C.E. Pension Fund; (b) contributions to be paid by P.T.C.L.; (c) annual contribution to be paid by P.T.C.L. at the commencement of each financial year; (d) investments and profits, gains and other returns accrued on such investments; and (e) donations and other contributions by individuals or any aid-giving agencies.

10. One of the functions and powers of P.T.E.T. was to make provision for the payment of pension to the telecommunication employees to the extent of their entitlement. In the performance of its functions, the Board of Trustees had *inter alia* the exclusive right to determine the amounts, if any, payable in respect of pensionary benefits to the telecommunication employees. P.T.E.T. was created through notification No.5(3)/93-PTET, dated 03.01.1996 after which all assets and liabilities of P.T.C.E. Pension Fund became vested in P.T.E.T.

11. Having discussed the statutory scheme regarding the transfer of the employees of T&T Department/departmental employees to the P.T.C. and then to the P.T.C.L. by operation of the above-mentioned provisions of the 1991 Act and the 1996 Act, and their entitlement to the payment of pension after their retirement, it is pertinent to mention that the retired departmental employees who had pensionable service had been paid their pension as well as the periodic increases in pension in the same proportion as paid by the Federal Government to retired civil servants up to 30.06.2010. The decisions to increase pension for the retired employees of P.T.C.L. at the same rate as was increased by the Federal

Government for retired civil servants were made from time to time by the Board of Trustees of P.T.E.T.

12. It is not disputed that until 30.06.2010, the increases in the rate of pension made by P.T.E.T. for its pensioners was commensurate with the increases in such rates made by the Federal Government for retired civil servants from time to time. For instance, the Federal Government, vide Office Memorandum (“O.M.”), dated 13.07.2009 had increased the pension for civil servants. Vide letter dated 17.07.2009, the Board of Trustees of P.T.E.T., after making reference to the said O.M., approved the increases in pension for the retired employees of P.T.C.L. at the same rate as had been increased by the Federal Government through the said O.M. The disparity in the rate of increase of such pension by P.T.E.T. and the Federal Government arose after 30.06.2010. For the purposes of clarity, such disparity is set out in the table below:-

| Office Memoranda issued by the Finance Division (Regulations Wing) regarding increases in pension to the pensioners of the Federal Government | Rate at which pension was increased | Letters issued by P.T.E.T. regarding increases in pension to the P.T.C.L.’s pensioners | Rate at which pension was increased by P.T.E.T. |
|--|--|---|--|
| No.F.4(1)-Reg.6/2010/721, dated 05.07.2010 | 15% | PTET/LHR/110, dated 27.01.2011 | 8% |
| No.F.1(5)-Imp/2011-419, dated 04.07.2011 | 15% | PTET/LHR/9842, dated 25.10.2011 | 8% |
| No.F.4(1)-Reg.6/2012-1144, dated 02.07.2012 | 20% | PTET/LHR/MISC/5940, dated 22.10.2012 | 8% |
| No.F.4(1)-Reg.6/2013-1375, dated 16.07.2013 | 10% | PTET/LHR/4541, dated 08.10.2013 | 8% |
| No.F.4(1)-Reg.6/2014, dated 07.07.2014 | 10% | PTET/LHR/3090, dated 12.11.2014 | 8% |
| No.F.4(1)-Reg.6/2015-697, dated 07.07.2015 | 7.5% | PTET/LHR/15968, dated 16.10.2016 | 8% |
| No.F.4(1)-Reg.6/2016-870, dated 01.07.2016 | 10% | PTET/LHR/21695, dated 22.11.2016 | 8% |
| No.F.4(1)-Reg.6/2017-831, dated 03.07.2017 | 10% | PTET/LHR/29085, dated 20.12.2017 | 7.5% |

13. On 11.08.2010, the General Manager (C&A), P.T.E.T. asked the Post Masters not to pay the increases in pension and medical allowance to the pensioners of P.T.C.L. until such increases were approved by P.T.C.L.

14. The retired employees of P.T.C.L. filed writ petitions (including writ petition No.148/2011) before this Court assailing the said letter dated 11.08.2010 and praying for the increases in the pension and medical

allowance announced by the Federal Government to be paid to them. Vide judgment dated 21.12.2011, the learned Judge-in-Chambers allowed the writ petitions, and P.T.E.T. was “*directed to pay pension etc. to the petitioners according to the increase made by the Government along with arrears if any.*” In the said judgment, after making reference to Section 9 of the 1991 Act and Sections 35, 36, 44 and 46 of the 1996 Act, it was *inter alia* held as follows:-

“28. The situation which crystallizes from the above quoted provisions of law is that the terms and conditions of service of employees could not be varied to their disadvantage, the same could not be altered adversely by the Company without consent of the employees and subsection-5 of Section 36 further stresses that the Company could not alter pensionary benefits without the consent of the individuals. It also manifests from the above provisions that the Federal Government has guaranteed that existing terms and conditions of service and rights including pensionary benefits of the employees and the Federal Government has also assumed the responsibility of pensionary benefits of employees. It is not the case of the respondents that before taking the impugned action, they had ever consulted the pensioners. The same can be termed as disadvantage. It is crystal clear that the impugned action is illegal and flagrant violation of provisions of Act, 1996. It is also against the principle of “A communi observantia non est recedendum” (where a thing provided to be done in a particular manner that must be done in that manner and not other than that). The Hon’ble Supreme Court of Pakistan in the matter of: HUMAN RIGHTS CASES NOS.4668 OF 2006, 1111 OF 2007 AND 15283-G of 2010 has held that “Things are required to be done strictly according to law, or it should not be done at all”.

15. The said judgment dated 21.12.2011 was assailed by P.T.C.L. etc. in Intra Court Appeals (including I.C.A.No.8/2012) before the Division Bench of this Court. Vide judgment dated 17.03.2014, the said appeals were dismissed with costs. On the question whether the retired departmental employees were also entitled to the increases in pension at the same rate as announced by the Federal Government for the retired civil servants, the view of the Division Bench of this Court was as follows:-

“17. The contention that the company had accepted the liability to the extent of payment of pension fixed at the time of retirement and not for the future increases, again is not correct, for the simple reason that the pension is part of pay and any increase extended to the similarly placed employees can not be refused to the respondents, as they can not be discriminated against others. Denial of increases, made by the Government, to the respondents is violative of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.”

16. P.T.C.L. etc. filed petitions against the said judgment dated 17.03.2014 before the Hon’ble Supreme Court. Vide judgment dated 12.06.2015 reported as Pakistan Telecommunication Employees Trust

(PTET) Vs. Muhammad Arif (2015 SCMR 1472), the said petitions were dismissed and it was held *inter alia* that *“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.”*

17. The said judgment dated 12.06.2015 was sought to be reviewed by P.T.C.L. etc. in several review petitions, which were all disposed of vide order dated 17.05.2017 passed by the Hon’ble Supreme Court. The primary ground taken by P.T.C.L. in the said review petitions was that some of the ex-employees of P.T.C.L. in whose favour the judgment under review had been passed, had availed the benefit of Voluntary Separation Scheme (“V.S.S.”), and having done so, they were not entitled to the benefit of pension in terms of what was announced by the Federal Government, and that the High Court could not have exercised its jurisdiction under Article 199 of the Constitution in such cases since the V.S.S. had converted their employment to be governed by contract as contained in the V.S.S.

18. The Hon’ble Supreme Court also recorded the contention of the learned counsel for the review petitioners that P.T.C.L. will approach the High Court by filing an application under Section 12(2) C.P.C. for resolving the said issue in accordance with the law. The Hon’ble Supreme Court, after observing that the submissions made by the learned counsel for the review petitioners seemed to be fair and reasonable, disposed of the review petitions without giving findings on any of the grounds agitated in such petitions. For the purposes of clarity, paragraphs 5 and 6 of the said order dated 17.05.2017 are reproduced herein below:-

“5. In the circumstances, submission made by Mr. Khalid Anwar, learned Sr. ASC for the Review Petitioners and adopted by counsel for other review petitioners, as noted above, prima facie seem to be fair and reasonable and without expressing ourselves on any of the points involved in the matter, we feel that cause of justice will be met if all these Review Petitions are disposed of accordingly.

6. Consequently, the listed Review Petitions are disposed of and the PTCL/Review Petitioners to the extent as noted above may avail remedy under Section 12(2), CPC which shall be decided by the concerned Court in accordance with law. At the same time, the PTCL/Review Petitioners

may urge all points available to them in other cases pending before the High Courts in accordance with law. Disposed of.”

19. P.T.C.L. filed several applications under Section 12(2) C.P.C. against the judgment dated 17.03.2014 passed by the Division Bench of this Court in Intra Court Appeal No.08/2012 and connected matters, whereby appeals against the judgment dated 21.12.2011 passed by this Court in writ petition No.148/2011 and connected matters had been dismissed. As mentioned above, vide the said judgment dated 21.12.2011, the learned Judge-in-Chambers had allowed several writ petitions filed by the retired employees of P.T.C.L., who had been transferred from T&T Department, and held that they were entitled to be paid the increases in pension announced by the Government of Pakistan, and directed P.T.C.L. to pay pension etc. to them according to the increase made by the government along with arrears, if any.

20. A preliminary objection to the maintainability of said application under Section 12(2) C.P.C. was taken by the respondents in the said application that since the judgment dated 17.03.2014 passed by the Division Bench of this Court had been upheld by the Hon'ble Supreme Court in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra), P.T.C.L. could only file the application under Section 12(2) C.P.C. before the Hon'ble Supreme Court in view of the law laid down in the case of Sahibzadi Maharunisa Vs. Mst. Ghulam Sughran (PLD 2016 SC 358). The said preliminary objection found favour with the Division Bench of this Court, and vide order dated 22.01.2018, the said applications were dismissed as not maintainable.

21. The said order dated 22.01.2018 has been assailed by P.T.C.L. before the Hon'ble Supreme Court. I am told that P.T.C.L. has also made an alternative prayer for its petitions for leave to appeal against the said order to be treated as applications under Section 12(2) C.P.C. against the judgment dated 12.06.2015, reported as Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra). The said petitions are pending adjudication before the Hon'ble Supreme Court. It was in these circumstances that the writ petitions proposed to be decided through this judgment were filed.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

22. Learned counsel for the petitioners drew the attention of the Court to the law laid down by the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*), and Muhammad Riaz Vs. Federation of Pakistan (2015 SCMR 1783), and submitted that the petitioners seek the grant of the same relief as was granted to the retired employees of P.T.C.L. in the said cases; that it is the petitioners' fundamental right to be granted all pensionary and retirement benefits as were payable by the Federal Government to retired civil servants; that such retirement benefits are not just restricted to pension or increases in pension but also include medical allowance, special additional pension (at the rate of the orderly allowance announced by the Government for in-service government servants in BPS-20 and above), family pension, and the restoration of the commuted portion; that upon the transfer of the departmental employees to P.T.C. and thereafter to P.T.C.L., the terms and conditions of their service were protected under Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act; that it is well settled that pension is not a bounty but a right and the same cannot be reduced arbitrarily; that when the departmental employees were transferred to P.T.C., they were not told that they would not be given the same benefits as would have accrued to civil servants in the future; that it is an admitted position that prior to the transfer of the departmental employees from T&T Department to P.T.C. they were civil servants; that after the transfer of such departmental employees, they were no longer civil servants but by virtue of the protection afforded to them under Section 9 of the 1991 Act, they were entitled to be given the same retirement benefits as were granted by the Federal Government to retired civil servants; that since up to 2010, the rate of increases in pension payable to the retired employees of P.T.C.L. was exactly the same as the rate of increases in pension announced by the Federal Government for retired civil servants, this was the correct interpretation of the protection afforded to the departmental employees as well as employees transferred from P.T.C. to P.T.C.L. enshrined in Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act; and that the Hon'ble Supreme Court has already held that the disparity in the rate of the increases in pension between the one allowed by P.T.E.T. to the retired

employees of P.T.C.L. and the one allowed by the Federal Government to retired civil servants was unlawful. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

CONTENTIONS OF THE LEARNED COUNSEL FOR P.T.C.L.:-

23. Learned counsel for P.T.C.L. contended that in the case of Pakistan Telecommunications Corporation Vs. Riaz Ahmad (PLD 1996 SC 222), it has been held *inter alia* that the employees of P.T.C. who had been transferred en bloc from T&T Department under Section 9 of the 1991 Act were civil servants within the meaning of the Civil Servants Act, 1973 and could approach the Service Tribunal to enforce a service rule related to a condition of their eligibility for promotion to a higher post; that similarly in the case of Divisional Engineer Phones, Phones Division, Sukkur Vs. Muhammad Shahid (1999 SCMR 1526), it was held *inter alia* that if an employee transferred to P.T.C. was a civil servant before such transfer, he continues to be a civil servant; that the law laid down in the above referred two judgments was still holding the field when the Hon'ble Supreme Court passed the judgment in the case of Masood Ahmed Bhatti Vs. Federation of Pakistan (2012 SCMR 152), which begins with the sentence: *"These appeals have been filed by three individual appellants who admittedly were civil servants employed in the Telephone and Telegraph ('T&T') Department prior to the enactment of the Pakistan Telecommunication Corporation Act, 1991 (the 'PTC Act')"*; that although the review petitions against the judgment in the case of Masood Ahmed Bhatti Vs. Federation of Pakistan (supra) were dismissed by the Hon'ble Supreme Court vide judgment reported as P.T.C.L. Vs. Masood Ahmed Bhatti (2016 SCMR 1362), it was held *inter alia* that the employees of T&T Department on their transfer to P.T.C. and further transfer to P.T.C.L. *"did not remain civil servants anymore"*; that the said judgment was passed on 19.02.2016, i.e. after the judgment dated 21.02.2011 passed by the learned Single Bench of this Court in writ petition No.148/2011 etc., judgment dated 17.03.2014 passed by the Division Bench of this Court in I.C.A.No.8/2012 etc., and judgment dated 12.06.2015 passed by the Hon'ble Supreme Court in civil petitions No.565-568 and 582-584/2014 etc reported as Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (2015 SCMR 1472); that since the latest

dictum of the Hon'ble Supreme Court is that the departmental employees are not civil servants after their transfer to P.T.C., the law laid down in the above-mentioned judgments dated 21.12.2011, 17.03.2014 and 12.06.2015 no longer holds good; that the increases in pension announced by the Federal Government from time to time are not for the benefit of non-civil servants, and therefore the benefit of such increases cannot be given to the departmental employees; that P.T.C.L. has also increased the pension payable to its retired employees with pensionable service, however such increases are not at the same rate of increases in pension announced by the Federal Government for retired civil servants from time to time; that since the departmental employees, after their transfer to P.T.C. were no longer civil servants, they were not entitled to any of the retirement benefits to which retired civil servants had been made entitled by the Government; and that the petitions filed by the petitioners who were employed in P.T.C. after the enactment of the 1991 Act are not maintainable since the terms and conditions of their service were not governed by statutory rules. Learned counsel for P.T.C.L. prayed for the petitions to be dismissed.

24. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 2 to 21 above, and need not be recapitulated.

25. As mentioned above, the Hon'ble Supreme Court in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) held *inter alia* that the retired departmental employees "*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.*" Against the said judgment, P.T.C.L. has filed an application under Section 12(2) C.P.C. which is still pending adjudication. It remains to be seen what the fate of the said application would be and whether or not the law laid down in said case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) is interfered with. Be that as it may, the mere pendency of such an application before the Hon'ble Supreme Court does not in any manner dilute the mandate in Article 189

of the Constitution which makes a decision of the Hon'ble Supreme Court to the extent that it decides a question of law or is based upon or enunciates a principle of law, binding on all other Courts in Pakistan.

26. As can be gathered from the discussion in paragraphs 14 to 21 above, this is not the first time when retired departmental employees have invoked the Constitutional jurisdiction of this Court to seek a direction to P.T.C.L. and P.T.E.T. to pay them pension along with the periodic increases at the same rate as announced by the Federal Government for civil servants from time to time.

27. As mentioned above, in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra), the Hon'ble Supreme Court held in unequivocal terms that the employees of T&T Department having retired after their transfer to P.T.C. and P.T.C.L. are entitled to pension at the same rate as announced by the Government for civil servants, and that the Board of Trustees of P.T.E.T. was bound to follow such announcements of the Government of Pakistan. In the said case, the Hon'ble Supreme Court dealt with the departmental employees *"who were employed in T&T Department and transferred to the Corporation and then to the Company and not any other employees"*. Paragraphs 18 and 19 of the said judgment is most instructive, the relevant portions whereof are reproduced herein below:-

"18. ...Thus, it becomes clear that the employees of T&T Department who were transferred to the Corporation and then to the Company having retired, they will as per the terms and conditions of service will be entitled to payment of pension also according to the one announced by the Government of Pakistan. Thus if any increase in pension is announced by the Government of Pakistan for its employees, the same will also apply and will be paid to the employees of T&T Department transferred to the Corporation and then to the Company. ..."

"19. Adverting to the submission of Mr. Shahid Anwar Bajwa, learned ASC, 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. ..."

28. Additionally, in the case of Muhammad Riaz Vs. Federation of Pakistan (supra), the Hon'ble Supreme Court, consistent with the law laid down in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) held that the petitioner in the said case, who had been transferred from T&T Department to P.T.C. by operation of Section 9 of the 1991 Act, and subsequently to P.T.C.L. by operation of Sections 35 and 36 of the 1996 Act, was *"entitled to payment of increase in pay and pension as announced by the Government from time to time"*. As P.T.C.L. has not filed a review petition against the judgment in the case of Muhammad Riaz Vs. Federation of Pakistan (supra), it has attained finality for all intents and purposes.

29. The main thrust of the arguments of the learned counsel for P.T.C.L. was that the retired departmental employees cannot be held to be entitled to the increases in pension at the same rate as announced by the Government for retired civil servants on the basis of the law laid down in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) and Muhammad Riaz Vs. Federation of Pakistan (supra), since subsequently, it had been held in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) that the departmental employees, after their transfer to P.T.C., were no longer civil servants.

30. True, the judgment of the Hon'ble Supreme Court in the case of Masood Ahmed Bhatti Vs. Federation of Pakistan (supra) proceeds on the assumption that the departmental employees transferred to P.T.C. and further transferred to P.T.C.L. under the provisions of the 1991 Act and the 1996 Act were civil servants. By dint of the law laid down in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra), the departmental employees, after their transfer to P.T.C. and further transfer to P.T.C.L., were no longer civil servants but since the terms and conditions of their service prior to their transfer were admittedly those of civil servants, and since such terms and conditions of their service stood protected by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, they would be entitled to all those service benefits to which a civil servant would be entitled. In other words, notwithstanding their transfer to P.T.C. and subsequently to P.T.C.L., the departmental employees were entitled to be given all those service benefits as were payable to retired civil servants. To hold otherwise would not just be placing the departmental

employees in a disadvantageous financial position on account of their transfer but also meting out a treatment to them in violation of Section 9(2) of the 1991 Act which provides *inter alia* that the terms and conditions of service of the departmental employees shall not be varied to their disadvantage, and Section 36(2) of the 1996 Act which provides *inter alia* that the terms and conditions of the transferred employees shall not be altered adversely by P.T.C.L. The Hon'ble Supreme Court in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*) has also observed, after making reference to the said statutory provisions, that none of the terms and conditions of their service could be varied to their disadvantage.

31. The law laid down in the above referred two judgments in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*) and Muhammad Riaz Vs. Federation of Pakistan (*supra*) cannot be held to have been displaced by the judgment of the Hon'ble Supreme Court in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*) wherein it was held that the employees of T&T Department upon their transfer to P.T.C. and further transfer to P.T.C.L. were no longer civil servants. In the latter case, the terms and conditions of service of such departmental employees provided in Sections 3 to 22 of the Civil Servants Act, 1973 were held to have been protected by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act.

32. Proceeding on hypothesis, even if the law laid down by the Hon'ble Supreme Court in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*), as well as the judgments dated 21.12.2011 and 17.03.2014 passed by the learned Single Bench and the learned Division Bench of this Court, respectively, is to be ignored, the latest authority on the subject as to whether the departmental employees (i.e. the employees transferred from T&T Department to P.T.C. and further transferred to P.T.C.L. by operation of statute) are entitled to all the service and retirement benefits that could be derived by civil servants or retired civil servants is the case of P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*). In the said judgment, the Hon'ble Supreme Court, after holding that the employees of T&T Department after their transfer to P.T.C. and further transfer to P.T.C.L. by operation of statute, "*did not remain Civil Servants any more*", held that the terms and conditions of

service of such employees provided by Sections 3 to 22 of the Civil Servants Act, 1973 were protected by Section 9(2) of the 1991 Act and Sections 35(2), 36(a) and (b) of the 1996 Act. Therefore, the mere fact that the Hon'ble Supreme Court in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) held that such departmental employees, after their transfer did not retain their status as civil servants would not, in my view, disentitle such departmental employees from being given all the retirement benefits including the increases in pension etc. as a retired civil servant was entitled to receive. For the purposes of clarity, the relevant portion of the said report is reproduced herein below:-

“A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court. Though in the cases of Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be Civil Servants, but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Retention of their status as civil servants is thus not supported by the words used in the aforesaid provisions.”

33. Since the departmental employees after their transfer to P.T.C. lost their status of being civil servants, they cannot invoke the jurisdiction of the Service Tribunal to agitate a matter regarding the terms and conditions of their service. There is nothing precluding such employees to seek relief in the Constitutional jurisdiction of this Court regarding a matter concerning the terms and conditions of their service. This has been explicitly held in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra). It ought to be borne in mind that the Hon'ble Supreme Court in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) dismissed the

review petitions filed against the judgment of the Hon'ble Supreme Court in the case of Masood Ahmed Bhatti Vs. Federation of Pakistan (*supra*) wherein the contention of the learned counsel for P.T.C.L., that P.T.C.L. was left free to deal with its employees regardless of any constraints specified in Sections 35 and 36 of the 1996 Act, was held to be with no force. Furthermore, after referring to the protection given to the terms and conditions of the departmental employees/T&T employees under Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, it was also held that P.T.C.L. as well as the Federal Government had no power to vary the terms and conditions of service of such departmental employees.

34. It also ought to be borne in mind that the judgment in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*) was announced on 19.02.2016, i.e. prior in time to the disposal of the review petitions filed by P.T.C.L. against the judgment in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*). Yet the Hon'ble Supreme Court did not feel the need to displace the law laid down in the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*) on the basis of the observations in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*).

35. It may be mentioned that some departmental employees who had successfully litigated against P.T.C.L. and P.T.E.T. for the increases in pension to be paid to them at the same rate as the increases in pension were being paid by the Federal Government to retired civil servants had filed contempt petitions against P.T.E.T. etc. before the Hon'ble Supreme Court. These contempt petitions were disposed of vide order dated 15.02.2018 in the following terms:-

“At the very outset Mr. Shahid Anwar Bajwa, learned ASC for the alleged contemnors/PTCL/PTET has made a categorical statement before the Court that all petitioners besides VSS optees will be given pension by the alleged contemnors/PTCL/PTET along with incentive pay and that PTCL/PTET will not make any sort of recovery/deduction from the pension of the petitioners, which they were already receiving and the present status would be that the petitioners will be granted increases in pension as is announced by the Federal Government from time to time. It is further stated by the learned ASC for the alleged contemnors/PTCL/PTET that the alleged contemnors/PTCL/PTET shall make payments of pension with incentive pay to the petitioners besides VSS optees within a period of fifteen days from today directly to the petitioners and will submit a compliance report in this regard with the Registrar of this Court. The question of refund of the amount deposited by the alleged contemnors/PTCL/PTET in this Court will be considered

after submission of such compliance report. The above terms are also agreed by all the learned ASCs for the petitioners-Criminal Original Petition No.53 of 2015 and Criminal Original Petition No.54 of 2015 are therefore disposed of."

36. If the argument of the learned counsel for P.T.C.L., that since the departmental employees upon their transfer to P.T.C. and further transfer to P.T.C.L. had ceased to be civil servants and were therefore not entitled to the same benefits as were payable to civil servants, is to be accepted, there would have been no occasion for the Hon'ble Supreme Court to have disposed of the contempt petitions in the manner that it did vide the said order dated 15.02.2018. This order was subsequent in time to the judgment of the Hon'ble Supreme Court in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) wherein it had been held that the departmental employees after their transfer to P.T.C. were no longer civil servants. This dictum did not take away the entitlement of such departmental employees to be paid pension with increases at the same rate as announced by the Federal Government for retired civil servants from time to time. This is the reason why P.T.C.L. made a statement before the Hon'ble Supreme Court that the petitioners who had filed the contempt petitions would be paid pension along with *"increases in pension as is announced by the Federal Government from time to time"*. Therefore, it is safe to hold that the law laid by the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) and Muhammad Riaz Vs. Federation of Pakistan (supra) had not been displaced by the judgment in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) to the extent of the ratio that the departmental employees retiring after their transfer to P.T.C. and further transfer to P.T.C.L. were entitled to be paid pension with periodic increases at the same rate as announced by the Federal Government for retired civil servants from time to time.

37. Since the law laid down by the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra), Muhammad Riaz Vs. Federation of Pakistan (supra), and P.T.C.L. Vs. Masood Ahmed Bhatti (supra) is binding not just on this Court but also on P.T.C.L. and P.T.E.T. in terms of Articles 189 and 190 of the Constitution, P.T.C.L. and P.T.E.T. were bound to give all the departmental employees the very same benefit as had been given to the similarly placed departmental employees who were parties to the

litigation in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*) and Muhammad Riaz Vs. Federation of Pakistan (*supra*). The petitioners who are similarly placed and similarly circumstanced as the departmental employees to whom the same relief had been given by the Courts as the one sought in these petitions have a right to be given the same relief. This relief should have been given to them by P.T.E.T. and P.T.C.L. and they should not have been made to go through the acrimony of litigation. It is well settled that “*equal protection of law*” and “*equality before law*” means that all persons similarly placed should be treated alike. A party who does not litigate ought to be given the same relief/benefit as a similar party who had litigated. Reference in this regard may be made to the following case law:-

- (i) In the case of WAPDA Vs. Abdul Ghaffar (2018 SCMR 380), the Hon’ble Supreme Court held the respondents in the said case to be entitled to the same relief as had been granted to a number of similarly placed respondents by the Hon’ble Supreme Court a few years earlier.
- (ii) In the case of Federation of Pakistan Vs. Ghulam Mustafa (2012 SCMR 1914), it was observed *inter alia* that the pensioners before the Court had to be treated at par with the pensioners in whose favour decisions had been given by the Hon’ble Supreme Court.
- (iii) In the case of Hameed Akhtar Niazi Vs. Secretary, Establishment Division (1996 SCMR 1185), the following observations were made by the Hon’ble Supreme Court:-

“We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the Civil Servants who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.”

Law to the said effect has also been laid down in the cases of Tara Chand Vs. Karachi Water and Sewerage Board (2005 SCMR 499), Abdul Hameed Nasir Vs. National Bank of Pakistan (2003 SCMR 1030), and Government of Punjab Vs. Samina Parveen (2009 SCMR 1).

38. In support of his argument that the departmental employees were not entitled to the increases in pension at the same rate as announced by

the Federal Government for the retired civil servants, much stress was laid by the learned counsel for P.T.C.L. on the judgment dated 29.11.2017 passed by the Division Bench of the Hon'ble Peshawar High Court in writ petition No.2973-P/2012 titled "Pakistan Telecommunication Employees Union Vs. Pakistan Telecommunication Company Ltd." I have gone through the said judgment with great interest and keenness. In the said judgment, it was held *inter alia* that since after the transfer the employees of T&T Department to P.T.C. and thereafter to P.T.C.L. they had not remained civil servants, the increases in pension and revision in pay scales etc. announced by the Federal Government for civil servants were not applicable *mutatis mutandis* to such employees. With utmost respect and reverence to the Hon'ble Peshawar High Court, I cannot bring myself to agree with the ratio in the said judgment since I feel bound to follow the law laid down by the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra), and Muhammad Riaz Vs. Federation of Pakistan (supra). It may be reiterated that in the case of P.T.C.L. Vs. Masood Ahmed Bhatti (supra) it was held *inter alia* that the departmental employees, after their transfer to P.T.C., had not remained civil servants but the terms and conditions of their service were provided in Sections 3 to 22 of the Civil Servants Act, 1973 and the same had been protected by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act.

39. Consistent with the law laid in the judgments of the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (supra) and Muhammad Riaz Vs. Federation of Pakistan (supra), I hold that those petitioners who are departmental employees are entitled to the payment of pension with periodic increases at exactly the same rate as announced by the Federal Government for retired civil servants from time to time. Since the pension at the same rate of increase as announced by the Federal Government from time to time after 2010 has not been paid to the retired departmental employees, P.T.C.L. and P.T.E.T. ought to calculate the arrears in pension payable to the petitioners, who are departmental employees, and pay the same to them.

40. In addition to the relief of the increases in pension at the same rate as announced by the Government for retired civil servants, some of the

petitioners also seek a declaration to the effect that they are also entitled to other retirement benefits that have been granted by the Government to retired civil servants. I shall deal with each of such retirement benefits herein below:-

Special additional pension (at the rate of the orderly allowance announced by the Government for in-service government servants in BPS-20 and above)

41. Vide office memorandum No.F.1(8)-R.4/89, dated 04.12.1991, Regulation Wing of the Finance Division conveyed the Government's decision to approve *inter alia* retirement benefits for superannuating civil servants. Included in such benefits was "*additional pension*". Paragraph (iii) of the said office memorandum provided that retiring government officer in BPS-20, 21 and 22 will be allowed a special additional pension equal to the admissible pre-retirement orderly allowance. The available record shows that the orderly allowance for government officers in BPS-20 and above was increased through the following office memoranda issued by the Finance Division:-

| Serial No. | Office memorandum of Finance Division | Increased rate of orderly allowance | Effective date of the increase in orderly allowance |
|------------|---------------------------------------|-------------------------------------|---|
| 1 | No.F.1(3)Imp/89-Vol.III, 03.07.1995 | Rs.1,600/- per month | 01.07.1995 |
| 2 | No.F.1(13)Imp/96, dated 06.10.2003 | Rs.2,375/- per month | 01.07.2003 |
| 3 | No.F.No.1(3)Imp/2012, 16.07.2012 | Rs.7,000/- per month | 01.07.2012 |
| 4 | No.1(3)Imp/2015-630, 07.07.2015 | Rs.12,000/- per month | 01.07.2015 |
| 5 | F.No.1(3)Imp/2017-500, 03.07.2017 | Rs.14,000/- per month | 01.07.2017 |

42. As per the Finance Division's office memorandum No.F.1(2)-Reg.6/91-Vol-IX, dated 24.12.2012, by virtue of Finance Division's office memorandum No.F(1)(2)-Reg.6/91, dated 29.09.1991, officers in BPS-20 and above on retirement were entitled to special additional pension equal to the admissible pre-retirement orderly allowance. This facility was further extended to all officers in BPS-20 and above who retired prior to 19.02.1991 on the orders of the Hon'ble Supreme Court. The rate of special additional pension remained fixed at the rate prevailing at the time of the officers' retirement and was not enhanced with subsequent increases in the rate of orderly allowance. On the basis of the principle of equity and fairness, it was decided to approve that the retired officers in

BPS-20 and above shall be paid special additional pension equal to the orderly allowance admissible to serving officers with effect from 01.01.2013, and that whenever the government revises the rate of orderly allowance in the future, the same increase shall be made applicable to the special additional pension of the retired officers. This is explicitly stated in the above-mentioned Finance Division's O.M. dated 24.12.2012.

43. Now, P.T.E.T. approved the enhancement of the orderly allowance to Rs.3,000/- per month from 01.10.2007 in light of the Finance Division's O.M. dated 29.10.2007. Subsequently, the P.T.E.T. Board of Trustees, in its 63rd meeting held on 27.03.2013, increased the orderly allowance from Rs.3,000/- per month to Rs.7,000/- per month with effect from 01.03.2013 for those pensioners who retired before 01.01.1996 in BPS-20 and above. After this, P.T.E.T. has not increased the rate of orderly allowance.

44. The principle under which the retired departmental employees have been held to be entitled to the increase in the rate of pension commensurate to the increases in the pension announced by the Federal Government for civil servants from time to time would also be applicable to the entitlement of the departmental employees to the payment of special additional pension at the same rate as the orderly allowance announced and increased by the Government for retired civil servants in BPS-20 and above. Since there is a disparity in the rate of the orderly allowance announced by the Federal Government and the one announced by P.T.E.T., this disparity must be eliminated so that the retired departmental employees of the same grade as the civil servants retiring in BPS-20 and above are also made entitled to the payment of special additional pension at the same rate as the orderly allowance announced by the Federal Government for civil servants in BPS-20 and above.

Medical allowance

45. Vide O.M. dated 05.07.2010, the Finance Division conveyed to all Ministries/Divisions the sanction of the President of Pakistan to the introduction of medical allowance with effect from 01.07.2010 to all civil pensioners of the Federal Government including civilians paid from Defence Estimates and Civil Armed Forces at the following rates:-

- (i) Pensioners who retired in BPS 1 - 15 @ 25% of pension drawn.
- (ii) Pensioners who retired/will retire in BPS 16 - 22 @ 20 % of pension drawn.

46. Vide O.M. dated 07.07.2015, the Finance Division conveyed the sanction of the President of Pakistan with effect from 01.07.2015 for 25% increase in the amount of medical allowance being drawn by civil pensioners of the Federal Government including civilians paid from Defence Estimates and Civil Armed Forces and to the future retirees on the medical allowance admissible to them at the time of retirement.

47. Had the departmental employees retired prior to the enactment of the 1991 Act, their status as a civil servant at that stage would have entitled them to the payment of medical allowance on the basis of the above-referred office memoranda. Since the departmental employees had not lost their entitlement to be given all the service benefits as are entitled to civil servants by virtue of the protection afforded to them by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, they are held to be entitled to the payment of medical allowance with effect from 01.07.2010 at the same rates as mentioned in the Office Memoranda dated 05.07.2010 and 07.07.2015.

Restoration of the Commuted Portion of the pension of the departmental employees in the same manner as permissible to civil servants

48. Mr. A.A. Zuberi, a retired Member of the Income Tax Appellate Tribunal, had filed writ petition No.2147/2009 before the Hon'ble Lahore High Court praying for the 50% of his commuted pension to be restored on expiry of fifteen years with the increases allowed by the Federal Government. Vide judgment dated 11.02.2009 reported as A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (2010 PLC (C.S.) 1211), the said writ petition was allowed and the respondents in the said writ petition were directed to *inter alia* "calculate the petitioner's revived pension amount reflecting the total increases from the date of expiry of period of 15 years... and pay the arrears of the said period to the petitioner". It was also held that the petitioner was not entitled to any increase prior to the expiry of the fifteen-year commutation period.

49. Intra Court Appeal No.118/2009 filed by the Additional Accountant-General, Pakistan Revenue, Lahore against the said judgment was dismissed by the Hon'ble Lahore High Court vide judgment dated 16.06.2010 reported as Additional Accountant General, Pakistan

Revenue, Lahore Vs. A.A. Zuberi (2011 PLC (C.S.) 580). In the said judgment, the Division Bench of the Hon'ble Lahore High Court, after making reference to and interpreting Rule 3.29 of the Pension Rules, held in paragraphs 20 to 22 of the said report as follows:-

“20. Under the Rules the pension stands RESTORED at the end of the commutation period. This means that the respondents are once again entitled to 100% pension as it stands on that day. The best index to gauge the pension due on the said date is the amount of 50% pension being received monthly by the respondents on the said date. The pension due will be double the said amount. It is preposterous to imagine that a civil servant be given pension in the year 2008 which he was entitled to draw in 1993 (15 years ago). Such action offends the right to livelihood of the respondents guaranteed under Article 9 of the Constitution. It also fails to meet the test of economic justice which is also an integral part of right to life as provided in the preamble and the Objectives Resolution to the Constitution. Depriving a civil servant of his lawful pension is also discriminatory when compared to equally placed retired civil servants who are drawing the current rate of pension. This offends Article 25 of the Constitution. No civilized system can provide for such an unreasonable and uneconomic post retirement benefit to their employees who have given their golden years for the public service of this country.

21. The interpretation of the appellant on the accounting side also appears to be unreasonable. It will be odd for a civil servant to draw two different slabs of pensions i.e., 50% at the rate prevalent in the year 1993 and the remaining on the current rate inclusive of increments.

22. We, therefore, hold that under Rule 3.29 of the Pension Rules (supra) the restoration of pension means the pension due to a retired civil servant in that year inclusive of all the increments till that time (i.e. accumulated over the last 15 years in this case). In other words it would simply be double the amount of 50% pension the respondents are already drawing. These appeals are, therefore, dismissed. The order of the learned Single Judge is modified/clarified in the above terms.”

50. It is an admitted position that appeals against the above- mentioned judgment of the Hon'ble Lahore High Court were dismissed as time barred. The fact that the appeals were dismissed has also been mentioned in the order dated 24.04.2012 passed by the Hon'ble Supreme Court in civil petition No.549/2012.

51. A number of civil servants filed appeals before the Federal Service Tribunal, Islamabad (“F.S.T.”) seeking the benefit of periodic increases on the surrendered portion of the commuted value of their pension after its restoration. The F.S.T., after taking into consideration the law laid down by the Hon'ble Lahore High Court in the case of A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (supra), allowed the said appeals vide judgment dated 05.01.2012. The appellants before the F.S.T. were held to be entitled to the increase in their commuted pension at the same rate at which they were drawing the

remaining 50% pension. The Federation of Pakistan assailed the said judgment by filing civil petitions before the Hon'ble Supreme Court. Vide order dated 24.04.2012, the said petitions were dismissed.

52. The above-mentioned litigation history was referred to in the Finance Division's O.M. dated 21.01.2013. The said O.M. conveys the Government's decision to implement the judgment dated 05.01.2012 passed by the F.S.T. and upheld by the Hon'ble Supreme Court vide order dated 24.04.2012 to the extent of the parties to the said litigation. This decision was stated to be subject to the outcome of a petition under Article 184(3) of the Constitution which the Government was intending to file so that the said order dated 24.04.2012 could be revisited. Till date, the said order dated 24.04.2012 still holds the field.

53. Subsequently, vide letter No.F.5(2)-Reg.6/2015-1210, dated 09.02.2016, the Finance Division conveyed the decision of the competent authority to allow the benefit of periodic increases on the surrendered portion of the commuted value of pension after restoration to those pensioners who retired on or after 01.12.2001 as had already been allowed to the pensioners who retired prior to 01.12.2001 in accordance with the Finance Division's office memoranda dated 21.01.2013 and 11.03.2013.

54. Since the benefit of the restoration of the commuted portion of the pension along with increases therein has been allowed to civil servants, the retired departmental employees would also be entitled to the same benefit. Just as the restoration of the commuted portion of the pension along with increases therein constitutes a part of the terms and conditions of a civil servant's service, and such benefit has been bestowed on retired civil servants pursuant to the provisions of the Civil Servants Act, 1973, the retired departmental employees, a portion of whose pension has been commuted, cannot be deprived of its restoration with the increases in pension at the same rate as announced by the Government for retired civil servants.

Family pension

55. Vide Finance Division's O.M. No.F.2(3)/Reg.6/2010/786, dated 05.07.2010, the rate of the family pension was increased from 50% to 75% of the gross net pension with effect from 01.07.2010. Family pension is being paid to the families of retired civil servants. Hence, the families

of the retired departmental employees would also be entitled to such pension.

56. The sheet anchor of the plea raised by the petitioners who were retired departmental employees was that they should be given the same pensionary benefits as were payable by the Federal Government to the retired civil servants regardless of whether such benefits were in existence prior to or after the enactment of the 1991 Act. Indeed, it is after the enactment of the 1991 Act that the Federal Government had announced increases in pension for retired civil servants. Until 2010, P.T.E.T. also announced increases in pension at the same rate as announced by the Federal Government. In the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (*supra*), the Hon'ble Supreme Court, after observing that the departmental employees having retired after their transfer to P.T.C. and P.T.C.L. were entitled to the same pension as announced by the Government of Pakistan, held that the Board of Trustees of P.T.E.T. *"is bound to follow such announcements of the Government in respect of such employees"*. The departmental employees being successful in their challenge to the disparity created by the decisions of P.T.E.T. and P.T.C.L. in the increase in pension for such employees with the increase in pension announced by the Federal Government for retired civil servants, implies that such employees were entitled to all those retirement or pensionary benefits to which a retired civil servant was entitled. The protection as to the terms and conditions of the service given to the departmental employees by Section 9 of the 1991 Act is not confined to pensionary benefits. There is no denying the fact that the departmental employees prior to their transfer to P.T.C. were civil servants. Had there been no such transfer, they would have been entitled to be paid not just the increases in pension at the same rate as announced by the Federal Government for retired civil servants but also all other retirement and pensionary benefits as were being given or introduced by the Federal Government for retired civil servants of the same category, and on such terms as they were made payable.

57. The increase in the rate of pension has no distinguishing feature as a retirement benefit from other retirement benefits. The periodic increases in the rate of pension announced by the Federal Government is

as much a retirement benefit as medical allowance, special additional pension (at the rate of the orderly allowance announced by the Government for in-service government servants in BPS-20 and above), family pension, and the restoration of the commuted portion of the pension of the departmental employees in the same manner as permissible to civil servants. Of course, the conditions fixed by the Government for making such payments have to be satisfied. To hold that the departmental employees are entitled to the increases in pension at the same rate as announced by the Federal Government for retired civil servants but not to the other retirement or pensionary benefits introduced or made payable to retired civil servants, would in my opinion, be most unjust.

58. It is not P.T.E.T. or P.T.C.L.'s case that the increases in pension or the other retirement benefits referred to herein above are not granted to the retired civil servants under the provisions of the Civil Servants Act, 1973. The Hon'ble Supreme Court has held in no uncertain terms that the terms and conditions of the departmental employees would be governed by Sections 3 to 22 of the Civil Servants Act, 1973 by virtue of the protection afforded to them by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act. Therefore, such departmental employees would be entitled to all those retirement benefits which are granted by the Government to retired civil servants pursuant to the said provisions of the Civil Servants Act, 1973 and on such terms as they are allowed to civil servants of an equivalent grade. As mentioned above, Section 9(2) of the 1991 Act provides that the terms and conditions of service of the departmental employees upon their transfer to P.T.C. *"shall not be varied"* to their disadvantage. To give the retired departmental employees lesser retirement benefits than those made admissible by the Government to retired civil servants would be placing such retired departmental employees in a disadvantageous position, which is not countenanced by the mandate of Section 9(2) *ibid*. Just as P.T.C. was prohibited by Section 9(2) of the 1991 Act from varying the terms and conditions of service of the departmental employees to their disadvantage, in the same way Section 36(2) of the 1996 Act also prohibited P.T.C.L. from altering adversely the terms and conditions of service of such employees. The adoption of the words *"shall not be*

altered adversely” in Section 36(2) conveys a prohibition unless of course it is with the consent of such employees and on award of appropriate compensation.

59. Since by reason of the transfer of the departmental employees they had lost the status of civil servants, but had certainly not lost their entitlement to be given all the service/retirement benefits by virtue of the protection afforded to them by Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, they are held to be entitled to the payment of other retirement benefits including medical allowance, special additional pension (at the rate of the orderly allowance announced by the Government for in-service government servants in BPS-20 and above), family pension, and the restoration of the commuted portion as paid by the Government to retired civil servants of an equivalent category.

60. There are several petitioners who do not come within the category of “*departmental employees*”. These petitioners were not transferred to P.T.C. by operation of Section 9 of the 1991 Act but were employed in P.T.C. after the enactment of the said Act.

61. It needs to be determined whether those petitioners who were employed in P.T.C. after the enactment of the 1991 Act could agitate a grievance regarding the terms and conditions of their service before this Court in its Constitutional jurisdiction. The answer to this question would depend on whether the terms and conditions of such an employee of P.T.C. are governed by statutory rules or regulations. If such rules or regulations are not statutory, the principle of 'master and servant' would govern the relationship between the employee and the employer organization. In the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir and others (PLD 2011 S.C. 132), it has explicitly been held that the Pakistan Telecommunication Corporation Service Regulations, 1996 framed pursuant to Section 20 of the 1991 Act, had not been notified in the official Gazette. Since the said Regulations did not have a statutory status, the employees of P.T.C. employed after the enactment of the 1991 Act and governed by the said Regulations could not agitate a dispute regarding the terms and conditions of their service (including their right to receive pension) by filing a petition under Article 199 of the Constitution. Therefore, the writ petitions filed by such petitioners are liable to be dismissed on that score alone.

62. One of the petitioners in writ petition No.1419/2018 (Mst. Mukhtar Begum Sheikh widow of Sheikh Ghulam Mohiuddin), and one of the petitioners in writ petition No.1638/2018 (Mst. Farzand Begum widow of Tikka Khan) are the widows of employees of the T&T Department who retired on 01.04.1979 and 01.12.1979, respectively. They are seeking for the increase in the rate of the family pension at the same rate as was increased by the Federal Government for retired civil servants. The husbands of the said petitioners had retired as civil servants prior to the enactment of the 1991 Act. Since the liability of pension as regards the retired employees of T&T Department had shifted onto P.T.C.E. Pension Fund and subsequently to P.T.E.T., I hold that P.T.E.T. was under an obligation to increase the family pension for the families of the retired employees of T&T Department at the same rate as increased by the Federal Government for retired civil servants.

63. This Court cannot grant relief to the retired employees of P.T.C.L. who have not invoked the jurisdiction of this Court. This judgment would operate *in personam*. The relief not expressly prayed for by the petitioners, who are departmental employees, in their petitions cannot be granted to them.

64. In view of the above, the writ petitions listed in "**Schedule-A**" hereto are disposed of in the following terms:-

- i. The petitions to the extent of the petitioners who were departmental employees i.e. employees who were employed in P.T.C. after the enactment of the 1991 Act, and who retired from service prior to or after the enactment of the 1996 Act, are dismissed as not maintainable.
- ii. The petitions filed by the petitioners who opted for V.S.S. and received benefits thereunder were dismissed as withdrawn vide orders dated 20.02.2020 and 25.02.2020. The petitions to the extent of the petitioners who have availed the benefits of V.S.S. are dismissed as not maintainable.
- iii. 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 increases at the same rates paid by the

Federal Government to the retired civil servants from time to time are allowed. P.T.C.L. and P.T.E.T. are 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.

- iv. The petitions filed by the petitioners who are departmental employees praying for the payment of medical allowance, special additional pension (at the rate of the orderly allowance announced by the Government for government servants in BPS-20 and above) family pension and the restoration of the commuted portion of their pension in the same manner as permissible to civil servants, are allowed. P.T.C.L. and P.T.E.T. are directed to calculate the arrears in such retirement benefits to such petitioners, and pay the same to them within a period of sixty days from the date of the receipt of this judgment.
- v. The relief granted herein above shall not be applicable to those petitioners who opted for and obtained benefits under any of the Voluntary Separation Schemes announced by P.T.C.L. Writ petition No.1675/2019, wherein the petitioners having opted for the V.S.S. were being paid pension but were seeking an increase in their pension at the same rate as announced by the government for the civil servants, has been de-clubbed from the petitions listed in "Schedule-A" hereto and shall be decided on its own merits. Writ petitions No.1419/2018, 1638/2018, 4588/2018, 2587/2017, and 1066/2019 were dismissed as withdrawn vide orders dated 20.02.2020 and 25.02.2020 to the extent of the petitioners who had opted for and received benefits under the V.S.S.
- vi. No costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

Uploaded By : Engr. Umer Rasheed Dar

"SCHEDULE-A"

| S.No. | Case No. and title | Date of hearing |
|--------------|--|------------------------|
| 1 | W.P.No.653/2012 "Syed Obaid Hussain Shah Vs. Federation of Pakistan etc." | 20.02.2020 |
| 2. | W.P.No.2587/2017 "Muhammad Ilyas Ch. Vs. Federation of Pakistan etc." | 25.02.2020 |
| 3. | W.P.No.3287/2017 "Fazal Karim Vs. Federation of Pakistan" | 20.02.2020 |
| 4. | W.P.No.3559/2017 "Zahid Hussain Vs. Federation of Pakistan etc." | 20.02.2020 |
| 5. | W.P.No.3851/2017 "Ghulam Qadir Vs. Federation of Pakistan etc." | 20.02.2020 |
| 6. | W.P.No.3854/2017 "Abdul Hameed Vs. Federation of Pakistan etc." | 20.02.2020 |
| 7. | W.P.No.4081/2017 "Mst. Naeema Khatoon Vs. Federation of Pakistan etc." | 20.02.2020 |
| 8. | W.P.No.932/2018 "Sana Ullah Baloch Vs. Federation of Pakistan etc." | 20.02.2020 |
| 9. | W.P.No.1177/2018 "Syed Qudrat Shah Vs. Federation of Pakistan etc." | 20.02.2020 |
| 10. | W.P.No.1178/2018 "Ijaz Ahmed Mirza Vs. Federation of Pakistan etc." | 20.02.2020 |
| 11. | W.P.No.1220/2018 "Ghufran Ullah Vs. PTCL etc." | 20.02.2020 |
| 12. | W.P.No.1256/2018 "Muhammad Suleman Vs. Federation of Pakistan etc." | 20.02.2020 |
| 13. | W.P.No.1263/2018 "Muhammad Ghafoor Ahmad Vs. Federation of Pakistan etc." | 20.02.2020 |
| 14. | W.P.No.1268/2018 "Muhammad Yousaf Vs. Federation of Pakistan etc." | 20.02.2020 |
| 15. | W.P.No.1330/2018 "Muhammad Nazir Vs. Federation of Pakistan etc." | 20.02.2020 |
| 16. | W.P.No.1419/2018 "Naveed Iqbal Vs. Federation of Pakistan etc." | 20.02.2020 |
| 17. | W.P.No.1603/2018 "Mehmood Mehdi Vs. Federation of Pakistan etc." | 20.02.2020 |
| 18. | W.P.No.1638/2018 "Muhammad Jaffar Khan Vs. Federation of Pakistan etc." | 20.02.2020 |
| 19. | W.P.No.2146/2018 "Rehmat Bibi Vs. Federation of Pakistan etc." | 20.02.2020 |
| 20. | W.P.No.2229/2018 "Muhammad Yar Tahir Vs. Federation of Pakistan etc." | 20.02.2020 |
| 21. | W.P.No.3696/2018 "Muhammad Azam Vs. Federation of Pakistan" | 20.02.2020 |
| 22. | W.P.No.4588/2018 "Muhammad Tariq Vs. Federation of Pakistan etc." | 20.02.2020 |
| 23 | W.P.No.746/2019 "Gul Dad Khan Vs. Federation of Pakistan etc." | 20.02.2020 |
| 24. | W.P.No.1066/2019 "Muhammad Ismail Javed Vs. Federation of Pakistan etc." | 25.02.2020 |
| 25. | W.P.No.1598/2019 "Mst. Hadia Iqbal Vs. Federation of Pakistan etc." | 20.02.2020 |

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| 26. | W.P.No.2215/2019 “Muhammad Arif Vs. Federation of Pakistan etc.” | 20.02.2020 |
| 27. | W.P.No.3513/2019 “Shahid ul Haq Vs. Federation of Pakistan etc.” | 20.02.2020 |
| 28 | W.P.No.1226/2017 “Muhammad Jahangir Vs. Federation of Pakistan etc.” | 27.02.2020 |