

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4394 of 2016

Wasiullah Khan

Versus.

Secretary, Aviation Division, Islamabad and others

Date of Hearing: 20.11.2017

Petitioner by: Mr. Muhammad Bashir Khan, Advocate.

Respondents by: Mr. Ahsan Mehmood Satti, learned
Assistant Attorney-General.
Mr. Muhammad Khan Lakho, Section
Officer, Establishment Division.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Wasiullah Khan, who was compulsorily retired from the Airport Security Force ("A.S.F.") under the provisions of the Pakistan Army Act, 1952, seeks a direction to be issued to respondent No.1 (Secretary, Aviation Division) to hear the petitioner and redress his grievance by extending him the same benefit as was extended to Ch. Sikandar Ali, vide judgment dated 07.03.2012, passed by the Hon'ble Supreme Court in civil petition No.2056-L/2011 titled "Ch. Sikandar Ali Vs. Chief Security Officer, ASF etc" (hereinafter referred to as "Ch. Sikandar Ali's case").

2. Learned counsel for the petitioner submitted that while the petitioner was serving as Assistant Security Officer, he was compulsorily retired; that no explanation letter or show cause notice or charge sheet was ever issued to the petitioner; that no inquiry was conducted before compulsorily retiring the petitioner; that Ch. Sikandar Ali, an Inspector in A.S.F. was compulsorily retired in the same manner as the petitioner; that Ch. Sikandar Ali challenged the order against him upto the Hon'ble Supreme Court; that vide order dated 07.03.2012, the Hon'ble Supreme Court allowed his petition; that as Ch. Sikandar Ali was not an officer of the Pakistan Army, the Pakistan Army Act, and the Rules made thereunder were held to be of no relevance to him; that the order against the petitioner was also passed under the provisions of the Pakistan Army Act, 1952; and

that since the petitioner's case is identical to that of Ch. Sikandar Ali, the petitioner is entitled to be extended the same benefit as the one extended to Ch. Sikandar Ali by the Hon'ble Supreme Court.

3. Learned counsel for the petitioner further submitted that on 26.10.2014, the petitioner submitted a representation to respondent No.1 for the extension of the benefit of the said judgment dated 07.03.2012 to the petitioner; that the petitioner's representation was referred to the Law, Justice and Human Rights Division for an opinion; that vide letter dated 20.05.2015, the Law Division opined that respondent No.1 could consider the petitioner's appeal in the light of the judgment of the Hon'ble Supreme Court reported as 2009 SCMR 1; that it was also opined that the Establishment Division may be approached for an opinion; that the Establishment Division, vide O.M. dated 20.08.2015, advised respondent No.1 to seek advice of the Law Division; that vide letter dated 10.12.2015, the petitioner was informed that he had been heard by the Secretary, Defence, on 07.07.2009, and that his request for reinstatement had been rejected; that in fact the petitioner was never summoned or afforded a personal hearing by the Secretary, Defence; that on 22.12.2015, the petitioner applied to respondent No.1 for the provision of documents pertaining to the personal hearing; and that no response to the said application has been given so far. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for respondent No.1 to be directed to extend to petitioner the same benefit as was given by the Hon'ble Supreme Court to Ch. Sikandar Ali, vide order dated 07.03.2012.

4. On the other hand, the learned Assistant Attorney-General submitted that on 07.08.1983, the petitioner was appointed as an Inspector in the A.S.F.; that the petitioner's behaviour towards his superiors was hostile, rude and aggressive; that on account of ill discipline, the petitioner, during his career had been issued warnings on sixteen different occasions; that despite the said warnings, the petitioner's attitude did not show any improvement; that on account of petitioner's ill discipline, he was

compulsorily retired with all pensionary benefits with effect from 26.08.2000 under the provisions of Pakistan Army Act, 1952; that on 15.11.2000, the petitioner's appeal to the Secretary, Ministry of Defence was dismissed; that vide judgment dated 05.06.2002, the petitioner's appeal to the Federal Services Tribunal was also dismissed for want of jurisdiction; that vide judgment dated 28.12.2004 (reported as 2005 SCMR 886), the petitioner's appeal to the Hon'ble Supreme Court was also dismissed.

5. Learned Assistant Attorney-General further submitted that the petitioner initiated another round of litigation by filing writ petition No.1825/2015 before the Hon'ble Lahore High Court praying for the setting aside of the order of compulsorily retirement; that the said writ petition was dismissed, vide order dated 22.04.2008; that the said order dated 22.04.2008 was challenged by the petitioner in a petition before the Hon'ble Supreme Court; that vide order dated 14.11.2008, the said petition was dismissed as withdrawn; that on 10.08.2009, the petitioner's appeal to the President of Pakistan was also dismissed; that subsequently, the petitioner filed writ petition No.900/2010 before the Hon'ble Peshawar High Court seeking his reinstatement in service; that vide order dated 30.09.2010, the said writ petition was dismissed; that the petitioner's appeal to the Hon'ble Supreme Court was dismissed by the Hon'ble Supreme Court on 24.10.2012; that another petition (i.e. writ petition No.3618-P/2014) filed by the petitioner was also dismissed by the Hon'ble Peshawar High Court on 04.12.2014; and that the petitioner had concealed material facts with respect to the litigation between the petitioner and respondent No.1 before various *fora*. Learned Assistant Attorney-General prayed for the writ petition to be dismissed on the grounds of res judicata and that this Court does not have the jurisdiction to adjudicate upon the matter.

6. I have heard the contentions of the learned counsel for the petitioner and the learned Assistant Attorney-General, and have perused the record with their able assistance.

7. It is not denied that vide order dated 26.08.2000, the petitioner, who at that relevant time was serving as Assistant Security Officer in the Airport Security Force, was compulsorily retired with all pensionary benefits. It is also not denied that the said order was passed under the provisions of Pakistan Army Act, 1952. This order was passed because of the petitioner's ill discipline and inefficiency. During his service with the Airport Security Force, the petitioner had been issued warnings on sixteen occasions on account of his negligence, disobedience of lawful command, misbehavior etc. The petitioner's appeal against his compulsorily retirement was rejected on 15.11.2000. The petitioner assailed his compulsorily retirement before the Federal Services Tribunal. Vide judgment dated 05.06.2002, the Federal Services Tribunal dismissed the petitioner's appeal for want of jurisdiction. The petitioner assailed the said judgment dated 05.06.2002 before the Hon'ble Supreme Court. Vide consolidated judgment reported as 2005 SCMR 866, the Hon'ble Supreme Court dismissed the petitioner's appeal.

8. The learned counsel for the petitioner, who was accompanied by the petitioner, submitted that the said judgment reported as 2005 SCMR 866, did not relate to the petitioner. The learned Assistant Attorney-General took strong exception to this contention and drew the attention of the Court to paragraphs 10 to 12 of the said judgment, perusal whereof shows that the petitioner's appeal against the judgment of the Federal Services Tribunal had been decided, vide the said judgment of the Hon'ble Supreme Court. In this regard, paragraphs 10 to 12 of the said judgment of the Hon'ble Supreme Court are reproduced herein below:-

"10. The case of Mr. Wasiullah Khan is identical who was also compulsory retired by means of order dated 26-8-2000 passed by the Chief Security Officer on account of his misbehaviour with the Senior Command and generally undesirable attitude towards senior officer of the force. The appellant being aggrieved approached the Secretary Defence on 13-9-2000 for redressal of his grievance by means of review petition which was not responded and subsequently, the learned Service Tribunal was approached by means of appeal which has been rejected vide judgment, dated 5-6-2002. As

mentioned hereinabove, the case of Mrs. Wasiullah Khan is similar to that of Mrs. Musther Jahan which has been discussed at length in the preceding paragraphs. The appeal of Mr. Wasiullah Khan has been dismissed by the learned Federal Service Tribunal, due to want of jurisdiction and as a result of addition of section 7-A(4) of the Airports Security Force Act, 1975. Mr. Wasiullah Khan has argued his case by raising various questions of law and fact which cannot be dilated upon and decided as leave has been granted only to consider the question as to whether in view of provisions of section 7-A(4) of the Airports Security Force Act, 1975, the Federal Service Tribunal is completely barred from hearing of appeals of the Airport Security Force Personnel or otherwise?

11. The above-mentioned question has been discussed at length in the preceding paragraphs repetition whereof would be of no use but suffice it to say that the learned Federal Service Tribunal had no jurisdiction to dilate upon such appeals after addition of section 7-A(4) of the Airports Security Force Act, 1975 whereby the appeals preferred on behalf of employees of the Airport Security Force could not be heard by the Federal Service Tribunal as a result of bar of jurisdiction imposed by means of newly-added section 7-A(4) of the Airports Security Force Act, 1975. It would not be out of place of mention here that various contentions agitated by him regarding implication of Efficiency and Disciplinary Rules, 1973 and status being a civil servant were never mentioned in the review petition. The above mentioned contentions that he could not have been proceeded under the Pakistan Army Act, 1952, the Airports Security Force Act, 1975 and the rules made thereunder were made in oblivion of clause "h" of the appointment letter whereby a complete answer for all such arguments is available which is reproduced hereinbelow for ready reference:--

"(h) Governing Rules.--- After joining the A.S.F. you will be governed by the provisions of A.S.F. Act, 1975, A.S.F. Officers and Members (Service) Rules, 1978 and A.S.C. (Discipline) Rule, 1977 and of the Rules and Regulations in Force or as may be made from time to time by the Federal Government."

A bare perusal of clause (h) of the appointment letter issued in 1983 would show that it has been made abundant clear that after joining the Airport Security Force Mr. Wasiullah Khan was to be governed by the provisions of Airports Security Force Act, 1975, Airports Security Force Officers and Members (Service) Rules, 1978 and Airports Security Force (Discipline) Rules, 1977 and all other rules and regulations which may be made applicable from time to time. Mr. Wasiullah Khan was fully aware that he was subject to Airports Security Force Act, 1975 for all practical purposes and it is too late in the day to argue that he is a civil servant and the provisions as contained in the Airports Security Force Act, 1975, the Pakistan Army Act, 1952 and the rules made thereunder are not applicable to him. Mr. Wasiullah Khan remained mum for more than two decades regarding governing rules and accepted the terms and conditions as enumerated in the appointment letter.

12. The judgments passed by the learned Federal Service Tribunal in the above captioned appeals does not appear to be open to exception and being well based hardly warrant any interference. The controversy qua the provisions as enumerated in section 7-A(4) of the Airports Security Force Act, 1975 has been set at naught by various judgments pronounced by this Court as mentioned above. It hardly needs any elaboration that the judgments delivered latter would be applicable.”

9. The judgment reported as 2005 SCMR 866 shall hereinafter referred to as “Mushter Jahan’s case”. After the said judgment of the Hon’ble Supreme Court, the petitioner re-agitated the matter by challenging his compulsorily retirement before the Hon’ble Lahore High Court, Rawalpindi Bench, through a writ petition. Vide judgment dated 22.04.2008, the Hon’ble Lahore High Court, Rawalpindi Bench dismissed the petitioner’s writ petition. In the said judgment, it was observed that the petitioner’s plea that he should have been dealt with under the Civil Servants (Efficiency & Discipline) Rules, 1973, had been already answered in the negative by the Hon’ble Supreme Court in Mushter Jahan’s case.

10. The petitioner assailed the said judgment dated 22.04.2008 before the Hon’ble Supreme Court in civil petition No.1411/2008. On 14.11.2008, the petitioner withdrew the petition so as to avail departmental remedies. The petitioner was afforded an opportunity of personal hearing on 07.07.2009 by the Ministry of Defence. Vide order dated 10.08.2009, the petitioner’s application for reinstatement was turned down due to the petitioner’s unsatisfactory service record.

11. The petitioner filed writ petition No.900/2010 before the Hon’ble Peshawar High Court assailing his compulsorily retirement and the turning down of his representation. Vide order dated 30.09.2010, the said writ petition was dismissed in *limine*. The Hon’ble Peshawar High Court held that it did not have jurisdiction to adjudicate upon the matter since the petitioner had been compulsorily retired under the provisions of the Pakistan Army Act, 1952.

12. The said judgment dated 30.09.2010 was assailed by the petitioner before the Hon’ble Supreme Court in civil petition

No.715-P/2010. Vide judgment dated 24.10.2012, the said petition was dismissed. Perusal of the said judgment shows that the Hon'ble Supreme Court while dismissing the petitioner's petition was cognizant of the fact that the Hon'ble Supreme Court in the Ch. Sikandar Ali's case had exercised jurisdiction and given relief to an employee of the Airport Security Force against whom an order was passed under the provisions of the Pakistan Army Act, 1952. Paragraph 6 of the said judgment is reproduced herein below:-

"6. No doubt that two Hon'ble Members' Bench of this Court has extended relief to an employee of ASF but it appears that the judgment in the case of Musthar Jahan (supra) was not brought to the notice of the Bench deciding the said matter, whereas in the case of Mushtar Jahan (supra) particularly the case of the petitioner was dealt with and findings as to the status of the petitioner has been recorded by the Hon'ble three Members' Bench; the subsequent judgment of two Members' Bench is in contravention of the judgment of the three Members' Bench, which cannot be given preference particularly when the said two Members' Bench was not apprised of the judgment passed in Mushtar Jahan's case and was in respect of status of the petitioner before us."

13. After the said judgment of the Hon'ble Supreme Court of Pakistan, the petitioner instituted writ petition No.3618-P/2014 before the Hon'ble Peshawar High Court assailing the order dated 26.08.2000 (whereby he was compulsorily retired under the provisions of the Pakistan Army Act, 1952), and the order dated 13.10.2014 (whereby the petitioner's application for reinstatement in service, on the strength of the judgment of the Hon'ble Supreme Court in Ch. Sikandar Ali's case was turned down). Vide order dated 04.12.2014, the petitioner's said writ petition was dismissed by the Hon'ble Peshawar High Court. Paragraph 5 of the said judgment is reproduced herein below:-

"5. Perusal of the case record would show that the petitioner has exhausted all the available remedies even upto the Hon'ble Supreme Court and that too so many times. Contention of learned counsel for the petitioner that reinstatement of one Ch. Sikandar Ali has given him a fresh cause of action, cannot be looked into by this Court in its constitutional jurisdiction as not only dismissal of the petitioner is a past and closed chapter but under what circumstances, terms and conditions. Ch. Sikandar Ali was reinstated is a question which cannot be viewed by this Court while exercising a writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973."

14. After the dismissal of the petitioner's writ petition No.3618-P/2014, the petitioner has again tried his luck by instituting the instant petition before this Court taking the same very argument which has already been spurned by the Hon'ble Peshawar High Court and the Hon'ble Supreme Court of Pakistan. The argument being that the petitioner should be extended the same relief as was extended to the petitioner by the Hon'ble Supreme Court of Pakistan in Ch. Sikandar Ali's case.

15. The Airport Security Force was established under the provisions of the Airport Security Force Act, 1975. It extends to all aerodromes and airports, all Civil Aviation stations, centers or offices in Pakistan, all Pakistan Air Services and activities relating to Civil Aviation. Section 7-A of the Airport Security Force Act, 1975 is reproduced herein below:-

"7A. Officers and members to be subject to the Pakistan Army Act, 1952 –

(1) Every officer and member of the Force shall unless he is already so subject, be subject to the Pakistan Army Act, 1952 (XXXIX of 1952) hereafter in this Chapter referred to as the Act.

(2) The Force Commander shall, in respect of all officers and members of the Force, have all the powers conferred by or under the Act on an officer empowered to convene a general court martial.

(3) Subject to sub-section (2), the Federal Government may, by general or special order, direct by what authority any jurisdiction, powers or duties incidental to the operation of the provisions of the Act shall be exercised or performed in respect of the Force.

(4) Notwithstanding anything contained in any other law for the time being in force, except the authorities specified in sub-sections (1) and (2) of section 7F, no other authority; Tribunal or Court shall have jurisdiction to vary, modify, alter, annul, set aside, revise or review any order passed by any officer of the Force, authorized under the Pakistan Army Act, 1952 (XXXIX of 1952).
(Emphasis added)

16. Admittedly, the petitioner was compulsorily retired under the provisions of the Pakistan Army Act, 1952. This Court cannot exercise jurisdiction with respect to a decision regarding the terms and conditions of service of a person who for the time being is subject to any law relating to any of the armed forces of

Pakistan. In this regard, Article 199 (3) of the Constitution is reproduced herein below:-

(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.” (Emphasis added)

17. Recently, the Hon’ble Supreme Court, vide judgment dated 29.06.2016, passed in civil petition No.1708/2015, titled “Dil Aram Khan Vs. Chief Security Officer, Airport Security Force, Peshawar Airport etc.” dismissed a petition against a judgment of the Hon’ble Peshawar High Court, whereby writ petition filed by an employee of the Airport Security Force was dismissed, because the order impugned in the writ petition had been passed under Section 7-A of the Airport Security Force Act, 1975. After making reference to Section 7-A *ibid* the Hon’ble Supreme Court held as follows:-

“The above quoted provisions clearly shows that officers and members of the Airport Security Force are subject to Army Act. When so no other authority, Tribunal or Court shall have jurisdiction to vary, modify, alter, annul, set aside, revise or review any order passed by any officer of the force authorized under the Pakistan Army Act, 1952 – (XXXIX of 1952), as is provided in sub-section (4) of the provision reproduced above.”

18. Earlier, in the case of Azhar Majeed Khalid Vs. Force Commander, Airport Security Force, Quaid-e-Azam International Airport (2002 SCMR 1135), the Hon’ble Supreme Court dismissed an appeal against the judgment of the Federal Service Tribunal refusing to exercise jurisdiction, because the order impugned had been passed under the provisions of the Pakistan Army Act, 1952. Paragraphs 6 and 7 of the said report are reproduced herein below:-

“6. In the reported case as Gul Muhammad v. The Force Commander and another (1999 SCMR 2935), a Full Bench of this Court, comprising three Judges having taken into consideration the ratio of two judgments of this Court, reported as Fasihudin v. KhawarLatif Butt and others (1993 SCMR 1) and Force Commander, Airport Security Force, Karachi and others v. Haji Muhammad Rashid and another (1996 SCMR 1614), held that under above subsection (4) notwithstanding anything contained

in any other law for the time being in force, jurisdiction of any Authority, Tribunal or Court to deal with an order passed by any officer Airport Security Force, authorized under the Pakistan Army Act, 1952, was completely barred. Also it was held that after insertion of sub-clause (4) the ratio of just above-referred two judgments was not applicable. In other words, the Tribunal or for-that matter any authority, except as mentioned in section 7(A), would have no jurisdiction to vary, modify, alter, annul, set aside, revise or review any order passed by an officer of the force authorised under the Pakistan Army Act, 1952.

7. In the instant case, it is an admitted position that the appellant was dismissed by the Chief Security Officer, Airport Security Force, who is an officer of force within the meaning of Army Act, 1952. It being so, the Tribunal rightly declined to entertain the appeal for want of jurisdiction: No interference is warranted."

19. This Court, vide judgment dated 15.03.2016, passed in writ petition No.2979/2015, titled, "Muhammad Sharif Khan Vs. Secretary, Aviation, Aviation Division etc." held that where proceedings against an employee of the Airport Security Force were taken under the provisions of the Army Act, this Court had no jurisdiction to entertain a writ petition with respect to such a matter. In holding so, this Court gave credence to the judgment of the Hon'ble Supreme Court in the case of Mrs. Mushter Jahan Vs. Prime Minister of Pakistan (2005 SCMR 866) over the judgment of the Hon'ble Supreme Court in the case titled "Ch. Sikandar Ali Vs. Chief Security Officer, ASF, etc. Paragraph 6 of the said judgment passed by this Court is reproduced herein below:-

"6. The Hon'ble Supreme Court of Pakistan while deciding civil petition No.715-P of 2010 in clear words observed that decision of "Ch. Sikandar Ali Vs. Chief Security Officer, ASF etc." has no preference over judgment of three members Bench passed in "Mrs. Mushter Jahan Vs. Prime Minister of Pakistan and others" reported in "2005 SCMR 866", clarifying the entire position with regard to the maintainability of the petition. Hence in view thereof, I am fully convinced that this Court has no jurisdiction to entertain this writ petition, hence in view of legal position referred above, instant writ petition stands dismissed."

20. Vide judgment dated 29.07.2014, passed in writ petition No.2751/2012 titled "Syed Farzand Hussain Shah Vs. Federation of Pakistan etc." the Hon'ble Lahore High Court dismissed three writ petitions which had been filed on the strength of the judgment dated 07.03.2012, passed by the Hon'ble Supreme Court in the case of Ch. Sikandar Ali Vs. Chief Security Officer,

ASF, etc. The writ petitioners (who had been removed from service under the provisions of Army Act, 1952) in the said case had sought their reinstatement in service. The Hon'ble Lahore High Court after placing reliance on the judgment dated 24.10.2012, passed by the Hon'ble Supreme Court in civil petition No.715-P/2010 titled "Wasiullah Khan Vs. Chief Security Officer, Airports Security Force, Karachi etc.", dismissed the writ petitions.

21. The thrust of the argument of the learned counsel for the petitioner was that the Hon'ble Supreme Court of Pakistan, vide order dated 07.03.2012, passed in civil petition NO.2056-L/2011, titled "Ch. Sikandar Ali Vs. Chief Security Officer, ASF, etc." (herein after referred to as "Ch. Sikandar Ali's case), held that employees of the Airport Security Force were entitled to the procedural safeguards set out in Section 13 of the Civil Servants Act, 1973. On this basis, the learned counsel for the petitioner submitted that since punishment of compulsory retirement was imposed on the petitioner under the provisions of the Pakistan Army Act, 1952, and not under the Civil Servants Act, 1973, the benefit of the judgment in Ch. Sikandar Ali's case should be extended to the petitioner by setting aside the order, whereby the petitioner was compulsorily retired.

22. Since the petitioner was well aware that the Hon'ble Supreme Court had (vide order dated 24.10.2012 passed in civil petition No.715-P/2010 titled "Wasiullah Khan Vs. Chief Security Officer, Airports Security Force, etc.") had already held that since the judgment in Ch. Sikandar Ali's case was rendered by a two member bench, it could not be given preference over the judgment passed in Mushter Jahan's case which was given by a three member bench. For the petitioner to re-agitate the same very matter before this Court bespeaks of inequitable conduct on the petitioner's part.

23. The question as to whether the petitioner could be extended the benefit of the judgment of the Hon'ble Supreme Court in Ch. Sikandar Ali's case was considered and decided in the earlier round of litigation by the Hon'ble Supreme Court in its

judgment dated 24.10.2012, passed in civil petition No.715-P/2010. Furthermore, this matter was also considered and decided by the Hon'ble Peshawar High Court in the judgment dated 04.12.2014 passed in writ petition No.3618-P/2014. Through the instant petition, the petitioner wants to re-agitate the matter settled earlier by the Superior Courts in the said judgments. Thus, the petitioner's attempt to re-argue the case which has been finally decided by the Court of last resort is a clear abuse of process of the Court.

24. In the cases of Fazal Din Vs. Wali Muhammad (1972 SCMR 225), Mirza Maqbool Ellahi Vs. C.D.A. (1998 SCMR 1074), Fazal Din Vs. The Custodian, Evacuee Property, Lahore (PLD 1971 Supreme Court 779) and Abdul Majid and another Vs. Muhammad Riaz Hashim and another (1968 SCMR 816), it has been held that successive writ petitions in respect of the same cause of action were not just incompetent, but an abuse of the process of the Court. In the case of Muhammad Yaqoob Vs. Managing Director/Chief Executive Officer, OGDCL (2013 PLC (C.S.) 303), this Court dismissed with costs a writ petition through which the petitioner was re-agitating a matter that had been decided earlier.

25. Now, it is well-settled by a number of decisions of this Court that the principles of *res judicata* are applicable to proceedings in writ jurisdiction. Reference in this regard may be made to the cases of Managing Committee Masjid Muhajrin Vs. Mst. Zainab Bibi (1974 SCMR 230), Fazal Din Vs. Custodian Evacuee Property (P L D 1971 SC 779), Abdul Ghafoor Vs. Chief Settlement Commissioner (1985 SCMR 464), and Nazar Muhammad Vs. Custodian of Evacuee Property (PLD 1975 Karachi 498). Since the matter directly and substantially in issue in the instant petition was finally decided by the Hon'ble Supreme Court and the Hon'ble Peshawar High Court in the judgments referred to above, the instant petition is clearly barred by the doctrine of *res judicata*.

26. Justice Tek Chand delivering the unanimous Full Bench decision in the case of Mt. Lachhmi Vs. Mt. Bhulli (AIR 1927

Lahore 289 = I.L.R. (1927) 8 Lahore 384) traced the history of the doctrine *res judicata* in Islamic jurisprudence, and held that *“among Muhammadan law givers similar effect was given to the plea of “Niza-i-munfasla” or “Amar Mania taqrir mukhalif.”* Additionally, in the case of M. Nagabhushana Vs. State of Karnataka (AIR 2011 SC 1113), it was held as follows:-

“15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.”

27. It must also be noted that not a word has been mentioned by the petitioner in this writ petition about the earlier rounds of litigation up to the Hon’ble Supreme Court of Pakistan on the same subject matter. The Hon’ble Supreme Court has already held (in the order dated 24.10.2012 passed in civil petition No.715-P/2010) that the judgment of the Hon’ble Supreme Court in Mushtar Jahan’s case has to be given preference over the judgment _____ passed _____ in Ch. Sikandar Ali’s case. Therefore, the question of the petitioner being given any benefit under Ch. Sikandar Ali’s case does not arise.

28. It is well settled that writ jurisdiction cannot be exercised in favour of a litigant who has concealed or suppressed a material fact from the court. Reference in this regard may be made to the cases of (i) Ramzan Vs. Chief Settlement Commission (PLD 1968 Lah. 258); (ii) Abdur Rashid Vs. Pakistan (1969 SCMR 141); (iii) Principal, King Edward Medical College Vs. Ghulam Mustafa (1983 SCMR 196); (iv) Lahore Development Authority Vs. Mst. Shamim Akhtar (2003 MLD 1543); (v) Nazir Ahmad Vs. Faisalabad

Development Authority (2003 CLC 359); and (vi) Dilawar Hussain Vs. District Coordination Officer, Okara (2004 CLC 324).

29. In the case of Sajjad Ahmed Vs. Chairman, Capital Development Authority (2016 CLC 896), I have had the occasion to hold as follows:-

“20. Concealment of a material fact in the pleadings is akin to an abuse of the process of the Court. It is an elementary principle of law that a party, who approaches the court for discretionary relief, should candidly and forthrightly narrate all material facts in the plaint and/or the application for the grant of a temporary injunction. A litigant who had failed to make complete disclosure of an earlier litigation in the subsequent suit between the same parties, can be held to have abused the process of law and such an action was considered to be a deliberate attempt to hamper and obstruct due course of judicial proceedings in administration of justice. The petitioner, in the subsequent suit, ought to have disclosed the factum about the earlier litigation between the parties and the result thereof.”

30. Finding the instant petition to be not just frivolous and vexatious, but also barred by the doctrine of *res judicata*, the same is dismissed with costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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