

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1975 of 2012

Abdul Qayyum
Vs
Chairman C.D.A, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27-02-2015. M/S Muhammad Ramzan Khan, Abdul Rahim Bhatti, Muhammad Umair Baloch, Abdus Salam qureshi, Muhammad Shoaib Shaheen, Sana Ullah Zahid, Ch. Tanweer Akhtar, Zill-E-Huma, Malik Umer, Syed Kazim, Muhammad Fareed Ch, Ch. Abdul Ghafoor Qamar, Farzana Sultana Baig, Ch. Fayyaz Ahmed Pandana, Mohtisim Sattar Ch. Ahmed Nawaz Bhatti, Ch. Saghir Ahmad, Ahmed Nawaz Bhatti, Tariq Mehmood, G. Farooq Awan, Khawar Amir Bukhari, Saeed yousaf Khan, Ch. Asghar, Tariq Mahmood, Muhammad Shabbir Ahmed Nasir, G.M. Chaudhry, Ahmad Awais, Misbah Ullah Khan, Kashifa Awan, Muhammad Shabbir Ahmed, Riaz Hanif Rahi, Hafiz Arfat Ahmad Ch, Amir Abdullah Abbasi, Syed Atif Hussain Naqvi, Riasat Ali Azad, Ali Murad Baloch, Raja Tariq Mehmood, Niaz Ullah Khan Niazi and Akhtar Hussan Awan Advocates for the petitioners in their respective petitions.
Ch. Haseeb, M. Khalid Zaman, Mrs. Misbah Gulnar Sharif, Muhammad Nazir Jawad, Kashifa Niaz Awan, Ch. Abdul Khaliq Thind, Muhammad Anwar Dar, Hifz-ur-Rehman, Advocates for respondents in their respective petitions.
Raja Amir Abbas, Standing Counsel.
Mr. Maroof Afzal, Chairman of the C.D.A.

Through this consolidated judgment the instant writ petition along with the petitions listed in Schedule-A hereto, are being disposed of.

2. The petitioners, in all the listed petitions, are employees of the *Capital Development Authority* (hereinafter referred to as the “*CDA*”). The grievances of the petitioners relate to the terms and conditions of their service. They are not civil servants and, therefore, not amenable to the jurisdiction of the Federal Service Tribunal. They fall within the category

of employees, who are employed in an organization controlled by the Federal Government. They are entitled to invoke the extraordinary constitutional jurisdiction of a High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "*Constitution*") as they fall in one of the categories declared in "Pakistan Defence Officers Housing Authority and others versus Lt. Col Syed Jawaid Ahmed and others", 2013 SCMR 1707, to be amenable. Most of the petitions are pending in this Court since years, but could not be taken up for various reasons. The dominant factors for the delay in deciding the petitions are the phenomenal increase in litigation by employees of various organizations controlled by the Federal Government, failure on the part of the respondents to file comments within a reasonable time and above all, priority given to other cases requiring urgent attention while exercising the extraordinary jurisdiction by this Court. The increase in litigation by employees of various organizations has inevitably clogged the courts, causing delays in dispensation of justice, not only for the employees but for other bonafide litigants as well. Both the State and the respective organizations/employers have failed to provide effective, inexpensive and impartial forums for this category of employees to redress their grievances. The employees, who are neither civil servants nor amenable to the jurisdiction of the Federal Service Tribunal are, therefore, left with no adequate remedy and are compelled to invoke the extraordinary jurisdiction of the High Courts, provided they are able to satisfy the test laid down for maintainability of their petitions.

3. This exodus of petitions instituted on a daily basis and thousands of other similar petitions related to

service matters that are already pending, is indeed a poor reflection on the management of the respective organizations. Satisfaction of the employees and resolving their grievances without the need for them to approach the Courts manifests good governance and an efficient and caring employer. It is axiomatic that disputes or conflicts between employees and employers arise in every organization, but if left unresolved, the fundamental rights of the employees as well as the general public are violated. Unresolved disputes give rise to resentment, frustration and stress amongst the employees on the one hand, and consequently adversely affects the productivity and performance of state owned and controlled organizations on the other. Nevertheless, the most important consequence of depriving the employees of an effective and inexpensive forum for determination of their rights, arising out of the terms and conditions of service, is denial of the right to access to justice. We, therefore, need to examine, whether the employers owe a duty towards the employees in providing an effective and inexpensive forum or Tribunal, and if there is such a duty then its effect on the rights of the employees in case of failure to perform the same. It is also important to examine whether resorting to the extraordinary jurisdiction of this Court under Article 199 of the Constitution is an effective and inexpensive course for the employees for determination of their rights relating to the terms and conditions of service. In the event that there is a duty imposed on the employer and the extraordinary jurisdiction of this Court is not an adequate remedy for the employees, then what is the obligation of the State or the respective organizations?

4. At the very outset, it is pertinent to examine the nature of relationship of an employer with its employee and whether the former owes a duty of care? The law regarding the definition of a duty of care has made significant progress since the time of Lord Atkin's formulation of the 'neighbour principle' in the celebrated judgment of the House of Lords in "Donoghue versus Stevenson" (1932) A.C 562 to the 'Anns test' in "Anns versus London Borough of Merton" (1977) 2 ALL ER 492, and ultimately the law based on the statement of Lord Bridge's speech in "Caparo Industries plc versus Dickman and others", (1990) 1 ALL ER 568. The current law is based on a threefold test, firstly, whether the harm was reasonably foreseeable, secondly, whether there exists a relationship of proximity and lastly, whether it would be just, fair and reasonable in the circumstances for a duty of care to be imposed. The satisfaction of this three stage test determines if there is a duty of care between the parties. This duty of care is a legal duty. By now it is well settled law that there is a general duty of care between certain relationships i.e employers and employees, teachers and students, lawyers and clients, motorists and road users, doctors and patients etc. As far as duty of care in the case of an employer and employee relationship is concerned, reference may be made to the judgments of the House of Lords in "Fairchild etc versus Glenhaven Funeral Services Ltd and others", (2002) 3 ALL ER 305, and "John Edward Walker versus Northumberland County Council" (1994) EWHC QB 2. The concept of duty of care belongs to the realm of the law of tort, which is also recognized by our Courts. The Supreme Court has consistently observed and desired the need for promoting the law of tort and reference in this regard may be made to

“Punjab Road Transport Corporation vs. Zahida Afzal etc”, 2006 SCMR 207 & “Islamic Republic of Pakistan through Secretary, M/O Railways, etc vs Abdul Wahid etc”, 2011 SCMR 1836. Recognizing the applicability of the law of tort, it was held in “Abdul Majeed Khan vs. Tawseen Abdul Haleem”, PLD 2012 SC 80, that the law is applicable and administered in Pakistan as rules of justice, equity and good conscience.

5. There is also an implied statutory duty of care under the legislative enactment creating an organization such as the Capital Development Authority. CDA is established under section 4 of the Capital Development Authority Ordinance, 1960 (hereinafter referred to as the "**Ordinance**"). The constitution of the Board is provided under section 6. Section 37 confers the power on the Authority to appoint such officers, servants, experts or consultants as it may consider necessary for the performance of its functions 'on such terms and conditions as it may deem fit'. The power of the Chairman to make such appointments is provided under sub section 37(2). Section 38 further confers the power on the Authority to lay down procedure for the appointment of its officers and servants, and the terms and conditions of their service. The Authority is competent to take disciplinary action against them. The legislature obviously intended that the terms and conditions once determined pursuant to section 37 or the procedure laid down under section 38 shall be upheld and strictly followed. This statutory obligation includes an implied duty of resolving the grievances and disputes arising from the determined terms and conditions fairly, justly and in a manner so as to ensure inexpensive and expeditious justice. It is for

this reason that the legislature has vested the authority and power to make rules and regulations under section 50 and 51 respectively. Thus there is a statutory duty as well to ensure a mechanism for terminating disputes and grievances.

6. The duty of care owed by an employer towards an employee is, therefore, recognized and applicable in Pakistan. It is a clear duty of the employer to ensure the safety and welfare of its employees. It is mandatory for the employers to take all reasonable steps for keeping the employees protected against any foreseeable risk or harm. This duty of care essentially includes safeguarding the rights of the employees relating to their terms and conditions of service. Ensuring them an environment where they remain protected from harassment, discrimination and the feeling of insecurity is an essential part of this duty. The employer, therefore, is saddled with the duty to ensure that if a dispute arises relating to the terms and conditions of service, there exists a mechanism so that these grievances are redressed. Such mechanisms for redressing disputes may be through counseling, conciliation/mediation, and if unresolved, ultimately placed before an independent, impartial, judicious and effective forum for binding arbitration or judicial determination. The State as an employer has provided such a statutory forum to its employees falling in the category of civil servants, by establishing an exclusive Tribunal under the Federal Services Tribunal, 1973. However, employees who do not fall in the category of civil servants have been deprived of an administrative Tribunal for the determination of their rights relating to the terms and conditions of service. They are, therefore, compelled to invoke the extra ordinary jurisdiction

under Article 199 of the Constitution. Needless to mention that the employer is in breach of the duty of care it owes to the employees. It is not simply a question of breach of this duty, but the omission gives rise to a flagrant violation and denial of the right of access to justice, which has been held to be inextricably intertwined with the fundamental rights guaranteed under the Constitution, particularly the right to life under Article 9. If no forum or Tribunal has been made exclusively accessible to the employees, and they fall within the categories enumerated by the Supreme Court in “Pakistan Defence Officers Housing Authority and others versus Lt. Col Syed Jawaid Ahmed and others”, 2013 SCMR 1707, as being entitled to invoke the extraordinary jurisdiction under Article 199, then it needs to be examined whether the said jurisdiction is an adequate remedy on the touchstone of providing inexpensive and expeditious justice?

7. The jurisdiction of this Court under Article 199 of the Constitution is of extraordinary nature. The Constitution has conferred the power on the High Courts for enforcement of fundamental rights. The power includes issuance of orders, directions or writs of five kinds, namely habeas corpus, mandamus, certiorari, prohibition and quo warranto. The jurisdiction being discretionary and extraordinary, is exercised in grave cases rather than in routine. Despite the expansive nature of the powers and jurisdiction, it does not enable a High Court to act as an appellate forum. There are also various trappings or limitations required to be satisfied before jurisdiction will be assumed by a High Court. The jurisdiction, inter alia, cannot be exercised to resolve disputed questions of fact, while policy matters and enforcement of contractual terms and rights are

outside its scope. As it is an extraordinary jurisdiction to be exercised in grave cases, the High Court structures its discretion in taking up petitions for hearing, by giving priority to cases requiring urgent attention. Interpretation of the Constitution, incarcerated petitioners seeking bail, family disputes involving custody of children, missing citizens, human rights and civil liberty violations, excesses of public functionaries, public interest litigation, are some of the areas considered and treated as of higher priority than the individual grievances of employees relating to their service matters. This neither being an ordinary appellate jurisdiction nor exclusive forum for redressing grievances of the employees, inevitably causes delays in the adjudication of their petitions. The framers of the Constitution had surely not imagined that employees of organizations controlled by respective governments would be resorting to invoking the extraordinary constitutional jurisdiction under Article 199 in such a large number, nor could they have contemplated that in breach of the duty of care and in violation of fundamental rights, the employers, whether the Federal Government or the respective statutory organizations controlled by it, would deny to its employees an adequate remedy in law. A remedy is obviously adequate if it is inexpensive, independent, impartial and effective for redressing disputes and grievances relating to terms and conditions of service. Notwithstanding the extraordinary nature of jurisdiction under Article 199, the employees, having no other adequate remedy and, therefore, compelled to invoke the jurisdiction of a High Court are faced with the insurmountable trappings inherent in this jurisdiction. Many are left without a remedy because their grievances involve disputed questions of fact or enforcement of

contractual terms. Most employees, particularly in the lower grades, with their meager salaries, find it virtually impossible to approach the High Court and as a result retire without a remedy, thereby suffering grave miscarriages of justice. Those who are fortunate to bear the high cost of litigation and are able to overcome the limitations and trappings of Article 199, are faced with enduring a long wait while the courts struggle to find time to properly hear and decide their petitions, which rank low on the priority list. A favorable verdict is also of no avail, as the organizations invariably drag the employees to a higher judicial forum. Even the fortunate employees who are able to approach a High Court, ultimately become victims of miscarriages of justice, finding it difficult to outweigh the strength of the employers in pursuing litigation. Undoubtedly this tantamounts to a denial of access to justice. The fundamental rights of the employees guaranteed under the Constitution, particularly Articles 9, 10-A and 25 are violated. In the circumstances, the extraordinary jurisdiction of this Court under Article 199 of the Constitution is obviously neither an adequate remedy, nor a forum for providing inexpensive and expeditious justice in the case of the employees for determination of their rights arising from and out of the terms and conditions of service.

8. Next, what then is the effect, and whether the Federal Government or statutory entities controlled by it have any obligation under the Constitution or law to provide the employees with a forum for providing inexpensive and expeditious justice?

9. The failure on the part of the employer to provide an effective forum, ensuring inexpensive and expeditious justice to the employees, is indeed a denial of the right of access to justice. The said right being inextricably linked, results in violation of the fundamental rights of the employees guaranteed under the Constitution, particularly under Articles 9, 10-A and 25. The helplessness of the employee and denial of access to justice becomes a form of forced labour, besides compromising the inviolability of dignity of the employee, guaranteed under Article 14 of the Constitution. An employee without a remedy in the 21st century is obviously a modern slave, as he/she is forced to live with the injustice of being deprived of a choice on account of lack of resources, unequal bargaining power qua the employer and the compulsion to provide for the livelihood of the family. Such a shackled employee is virtually forced to accept this fate. This is a form of exploitation, which the State is under a constitutional command to eliminate pursuant to Article 3 of the Constitution. It also assumes a form of forced labour and slavery forbidden under Article 11 of the Constitution. Such treatment of an employee is a clear violation of the responsibilities and duties imposed on the State, each of its organ and authority, and of each person performing functions on behalf of an organ or authority of the State. Constitutional obligations and duties are, inter alia, imposed under Chapter 2 of the Constitution. The Principles of Policy in the said chapter are binding, inter alia, when read with Article 5, which declares obedience to the Constitution as an inviolable obligation. Article 37 makes it mandatory for the State, under clause (d) to ensure 'inexpensive and expeditious justice'; under clause (e) to make provisions for securing just and

humane conditions of work. Likewise Article 38 makes it an obligation to secure the well being by ensuring 'equitable adjustment of rights between employers and employees'. A combined and dynamic reading of the provisions of the Constitution unambiguously shows that the State, its organs and functionaries, besides owing duty of care towards the employees, have a constitutional obligation to provide them with an independent and impartial exclusive forum for inexpensive and expeditious justice. Leaving an employee without an adequate remedy is a denial of justice and a flagrant violation of the constitutional commands imposing mandatory obligations. It has already been held that compelling the employees to invoke the extraordinary jurisdiction of this Court under Article 199 of the Constitution, which is not an ordinary appellate forum and as a corollary not an adequate remedy, particularly when the number of individual grievances relating to terms and conditions is as large as is the case in every High Court.

10. It is now pertinent to examine the scope of the right of access to justice in the context of these employees and the effect of its denial. It is settled law that the right of access to justice is fundamental to, and an integral part of the rule of law. There is a chain of judgments of the Supreme Court lucidly expounding the scope and significance of this valuable right. In “Al-Jehad Trust & others vs. Federation of Pakistan and others”, PLD 1996 SC 324, recording his own reasons, Justice Ajmal Mian, as he then was, affirmed with approval a passage from the celebrated judgment of the High Court of Sind, authored by the then Justice Saleem Akhtar in “Sharaf Faridi and others versus The Federation and others”, PLD 1989 Karachi 404. This passage was later reaffirmed in “Sh.

Riaz-ul-Haq and another vs. Federation of Pakistan and others,” PLD 2013 SC 501. The same is reproduced as follows;

“In Sharaf Faridi v. Islamic Republic of Pakistan (PLD 1989 Karachi 404) after referring to Ms. Benazir Bhutto’s case (supra) it was observed as under:-

The right of ‘access to justice to all’ is a well-recognized inviolable right enshrined in Article 9 of the Constitution. This right is equally found in the doctrine of ‘due process of law’. The right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. This conclusion finds support from the observation of Willoughby in Constitution of United States, Second Edition, Vol. II at page 1709 where the term ‘due process of law’ has been summarized as follows:-

- (1) He shall have due notice of proceedings which affect his rights.*
- (2) He shall be given reasonable opportunity to defend.*
- (3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality, and*
- (4) That it is a Court of competent jurisdiction.*

It therefore follows that in terms of Article 9 of the Constitution a person is

entitled to have an impartial Court and tribunal. Unless an impartial and independent Court is established the right to have a fair trial according to law cannot be achieved. Therefore justice can only be done if there is an independent judiciary which should be separate from executive and not at its mercy or dependent on it.”

11. It was held in “Khan Asfandiyar Wali and others vs Federation of Pakistan and others”, PLD 2001 SC 607, that denial of access to justice to a person for grievances to be redressed is a violation of Article 4 of the Constitution, which envisages the right of access to justice to all and the same being equally founded in the doctrine of due process of law.

12. The Supreme Court emphasized the importance of effectual adjudication and inexpensive access to justice as an inherent part of the fundamental rights of a person in “Rauf B. Kadri vs State Bank of Pakistan”, PLD 2002 SC 1111.

13. The law in the context of right of access to justice and observations made in “Government of Baluchistan through Additional Chief Secretary vs. Azizullah Memon and 16 others”, PLD 1993 SC 341, were followed and affirmed in “Watan Party and others vs. Federation of Pakistan and others”, PLD 2012 SC 292, as follows:-

“The crux of the above judgments persuades us to hold that right of due process, inter alia, envisages the right to have a fair and proper trial and right to have impartial court

or tribunal. The phrase/expression in the principle highlighted therefrom are referable to the basic judicial function, which necessarily are known to judicial minded persons. For the safe administration of justice we may observe that the principle discussed in both the judgments can only be adhered to strictly by the forums manned by the persons responsible to deliver judicial findings subject to following principle of natural justice.”

A full Court judgment in “Suo Moto Case No. 4 of 2010”, PLD 2012 SC 553, declared as follows:-

“The principle of right to ‘fair trial’ has been acknowledged and recognized by our Courts since long and is by now well entrenched in our jurisprudence. The right to a ‘fair trial’ undoubtedly means a right to a proper hearing by an unbiased competent forum. The latter component of a ‘fair trial’ is based on the age-old maxim ‘Nemo debet esse judex in propria sua causa’ that “no man can be a judge in his own cause”. This principle has been further expounded to mean that a Judge must not hear a case in which he has personal interest, whether or not his decision is influenced by his interest, for “justice should not only be done but be seen to have been done.”

14. While examining the vires of the Contempt of Court Act, 2012, the august Supreme Court in “Baz

Muhammad Kakar and others vs Federation of Pakistan and others,” PLD 2012 SC 923, reaffirmed and followed the exposition of law and principles enunciated in its earlier pronouncements, declaring the right of access to justice as a well recognized inviolable right enshrined in Article 9 of the Constitution and equally found in the doctrine of due process of law. It was further reiterated that this right includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. The said principles were earlier declared in yet another judgment i.e “Muhammad Nadeem Arif and others vs. Inspector General of Police, Punjab, Lahore and others,” 2011 SCMR 408.

15. The last in the chain of judgments relating to the scope of right of access to justice, already referred to above, is “Sh. Riaz-ul-Haq and another vs. Federation of Pakistan and others,” PLD 2013 SC 501. The Supreme Court was examining the provisions of respective statutes establishing the Federal and Provincial Service Tribunals. Referring to civil servants it has been held that:-

“Admittedly, civil servants being citizens of Pakistan have Fundamental Rights including the right of access to justice as envisaged under Article 9 of the Constitution. The enforcement of terms and conditions of service of these civil servants depends upon the impartial, independent and unbiased Tribunal. Further, in the words of our founding father, the services are the backbone of the State as the affairs of the Government are performed by

the civil servants. Therefore, ultimately, the general public gets affected from the functioning of the service Tribunals: as such, the instant case involves a question of public importance.”

It was further held that;

It is to be noted that the right of “access to justice to all” is a well recognized inviolable right enshrined in Article 9 of the Constitution and is equally found in the doctrine of “due process of law”. It includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial court or tribunal.”

16. Perusal of the above case law reveals that the law relating to the right of access to justice is unequivocally well settled. It is an inviolable right inextricably linked, or in other words an integral part of the right to life guaranteed under Article 9 of the Constitution, and after the eighteenth amendment Article 10-A as well, guaranteeing a fair trial and due process. The said right also includes within its fold yet another integral and valuable right, to have inexpensive and expeditious justice through an impartial Court or Tribunal. The tribunal may not necessarily be a court in the strict sense of law. However, it ought to be a competent forum having judicial power and to act in a manner in which a judicial forum is expected to act, as has been held by the Supreme Court in the case of Sh Riaz ul Haq (supra) and the guidelines have also been laid down for such a forum. It must have the power and capacity to determine and terminate a dispute. The

exercise of power conferred under the Constitution or the law to give 'binding and authoritative' decisions, and after hearing the parties, to ascertain and investigate facts based on appreciation of evidence. Impartiality and independence are pre requisites for such a Tribunal or forum.

17. In the case of the present petitioners and employees of several other State/Government controlled corporations and organizations, no Tribunal or forum has been provided which meets the above mentioned tests laid down to satisfy the threshold of the right of access to justice, nor is invoking the extraordinary jurisdiction of this Court under Article 199 of the Constitution an adequate and proper remedy for the enforcement of their rights resting on the terms and conditions of service. Individual grievances invariably include disputed questions of fact or enforcement of contractual terms, leaving most of the petitioners without a remedy, while many others, due to meager resources, are dissuaded from approaching this Court. The unmistakable and manifest conclusion is that the employees suffer grave injustice and the right of access to justice is denied to them.

18. It is also pertinent to emphasize that by keeping the employees without a remedy, or refusal to determine their rights in an inexpensive, expeditious manner through independent and impartial tribunals/forums, the employer, in addition to other rights as explained above, also violates the principles of legitimate expectation, both procedural as well as substantive. The constitutional obligations and duties imposed on the State and the entities controlled by it, are explicit and manifest representations made to the employees that they shall be dealt with in accordance with law and the terms and

conditions of service shall be protected and upheld. At the time of seeking employment with a State/Government controlled entity, there also exists an unequivocal representation that disputes and grievances shall be terminated on the touchstone of providing inexpensive and expeditious justice. The Principles of Policy enshrined in Chapter 2 of the Constitution and the commitments and policy statements made and expressed by public sector organizations from time to time gives rise to legitimate expectations on part of the employees.

19. For what has been discussed above, it is held that providing inexpensive and expeditious justice, safeguarding and ensuring the right of access to justice through an independent and impartial Tribunal for the determination or enforcement of rights relating to or emanating from terms and conditions of service of such persons employed in organizations controlled by the State and Governments, is a mandatory obligation and onerous duty imposed under the Constitution and the law. Failure in providing a forum or Tribunal having judicial powers is breach of the duty of care of the employer towards the employees and a violation of their fundamental rights. Besides being exposed to claims of damages for the breach of duty of care, both the Federal Government and the respective entities controlled by it, may be liable for exemplary special costs for forcing its employees to invoke the extraordinary jurisdiction of this Court under Article 199 of the Constitution, which has been held to be an inadequate remedy for the employees in the case of their individual grievances relating to terms and conditions of service.

20. It was in this background that this Court had directed the Federal Government, including all organizations and entities, to satisfy this Court as to why an order may not be passed directing them for taking appropriate measures in providing independent, impartial and inexpensive forums/tribunals to their respective employees, while making interim arrangements for having the pending cases decided by an independent forum/commission. The Secretary, Establishment had appeared on behalf of the Federal Government. All the organizations/entities, including the Federal Government, agree in principle that there is a constitutional obligation to provide the employees with inexpensive and expeditious justice through independent, effective and judicial tribunals/forums. They have sought time and undertaken to make appropriate arrangements, while arranging interim forums.

21. The Capital Development Authority vide order dated 16-02-2015 was also directed as above. It was noted in the order that the extent of litigation either reflected an indifferent attitude of the management towards its employees, or the absence of an effective independent and impartial forum/mechanism for resolving the disputes and grievances of the employees.

22. In compliance with this Court's order dated 23-02-2015, Mr. Maroof Afzal, Chairman of C.D.A, appeared in person and has stated that pursuant to this Courts order and its constitutional and statutory obligations, C.D.A has decided to appoint Justice (Retd) Maulvi Anwarul Haq, Hon'ble retired Judge of the High Court and former Attorney General of

Pakistan, as a forum for deciding the grievances of the employees relating to their terms and conditions of service.

23. The learned counsels for the petitioners and CDA submitted that CDA is one of such organization which has taken the initiative and the lead in introducing an independent effective and impartial forum for resolving the disputes and grievances of its employees relating to their terms and conditions of service. The learned counsels submitted that it is expected that such a forum would effectively resolve the disputes and provide for the employees an inexpensive and effective forum. The learned counsels appearing for CDA assured this Court that the management of C.D.A is conscious of the need to address the grievances of its employees in an effective manner.

24. The learned counsels appearing for the petitioners have raised some concerns regarding the implementation of the decisions of such a forum. While consenting on behalf of the petitioners to refer their petitions to the forum established by CDA, they have however suggested that in order to ensure the effectiveness of this forum it may be made binding on CDA to accept and implement the decisions, including any interim order passed by such forum. They have stressed that as it is a new initiative, therefore, the right of an employee to assail the order passed by the forum may be reserved before this Court.

25. This Court records its appreciation for the initiative taken by the Chairman and the Board of C.D.A to provide for an effective, independent and impartial dispute resolution forum for the redressing of the grievances of its employees relating to their terms and conditions of service.

C.D.A, in taking this lead, has indeed demonstrated that it owns its employees and is alive to resolving their problems. If the management had provided an effective, independent and impartial dispute resolution mechanism earlier, there would have been no need for such a large number of its employees to have approached this Court by invoking the jurisdiction under Article 199 of the Constitution. It certainly becomes a matter of concern when the employees of organizations controlled by the government raise their grievances in such a large number. It undeniably manifests a grave wrong in the system, creating an impression that the employees are not being heard and have been left without a remedy. The volume of grievance petitions invoking the jurisdiction of this Court under Article 199 of the Constitution speaks volumes for depriving bonafide aggrieved employees of an effective forum to redress their grievances. When the organization fails to provide inexpensive, independent, and effective forums for dispute resolution, it gives rise to feelings of distrust and frustration amongst the employees. This in itself becomes a question of judicial review for the Court, as on the one hand it reflects the denial of the fundamental right of access to justice in the case of the employees, and on the other the standard of governance within the respective organization. The present petitioners appear to be an example of employees deprived of effective and inexpensive forums, or a dispute resolution mechanism to redress their grievances. Most of the employees can hardly afford to litigate within their meager means and may retire in pursuit of justice. Many may ultimately be declared to have been wronged, but by then it may be too late as 'justice delayed is justice denied'. The fault, I regret to say, is inevitably on account of the indifference of the Employers. It

is the prime duty of the Employer to provide its employees an inexpensive and effective forum to resolve their disputes. The decision of CDA to establish and provide for an independent, inexpensive and impartial forum to its employees for the redressing of grievances relating to their terms and conditions of service is indeed a step in the right direction, for which the credit goes to the present management.

26. In the light of the above, and as a consent order, the petitions are disposed of in the following terms:

- i- *The CDA shall issue the notification of Mr. Justice (Retd) Maulvi Anwarul Haq, for appointing him as forum to give binding determination of disputes relating to the terms and conditions of service of employees of CDA and full fill all codal formalities and requirements of law within three weeks from the date of receiving this order.*
- ii- *The instant petition and all other petitions listed in the Schedule attached with this order shall be deemed to be pending before Mr. Justice (Retd) Maulvi Anwarul Haq, and shall be placed before him by the CDA within one week from the date of issuance of the notification. Any grievance of employees other than the petitioners , if not resolved through other means, shall also be referred to this forum directly without the need for the employee to invoke the jurisdiction of this Court.*

- iii- *CDA having established the forum and the employees having given their consent, shall respect the orders passed by the forum, whether interim or final, and, therefore, implement the orders without delay.*
- iv- *Any delay in implementing the orders, whether interim or final, shall be deemed as violation of this order and, therefore, the person causing any impediment or delay in implementing the orders, whether interim or final, shall be proceeded against under the Contempt of Court Ordinance, 2003.*
- v- *CDA shall take all measures to facilitate the forum established with consent of the parties so that disputes are decided within a reasonable time and on the touchstone of ensuring the Constitutional obligation of providing 'inexpensive and expeditious' justice .*
- vi- *This Court expects that all the petitions transmitted to CDA for being placed before the Hon'ble Mr. Justice (Retd) Maulvi Anwarul Haq,, shall be decided expeditiously preferably within six months.*
- vii- *Any petitioner or CDA aggrieved by a decision passed by the forum shall be at liberty to approach this Court and this order shall not be a bar to the maintainability of the petition under Article 199 of the Constitution. However, the CDA shall implement the order before invoking*

the jurisdiction of this Court as the forum has been established with consent. .

- viii- *The interim orders passed in the petitions listed in the schedule attached with this order shall continue unless the same have been altered, modified or in any other manner changed by the forum established and headed by Mr. Justice (Retd) Maulvi Anwarul Haq.*
- ix- *The above is an interim arrangement which shall continue till a permanent appellate forum has been established either by CDA or the Federal Government by taking measures for providing such a forum through legislation.*
- x- *CDA and Justice (Retd) Maulvi Anwar ul Haq shall settle the fee and terms and conditions with mutual consent. CDA shall facilitate the forum so that the grievances are decided within the stipulated time.*
- xi- *The Federal Government shall, in compliance with the obligations under the Constitution, take necessary steps/ measures for ensuring 'inexpensive and expeditious justice' to the employees who fall in the categories amenable to the jurisdiction of this Court under Article 199 of the Constitution, as identified by the august Supreme Court in "Pakistan Defence Officers' Housing Authority and others versus Lt. Col Syed Jawaid Ahmed*

and others”, 2013 SCMR 1707, inter alia, by proposing to the Parliament legislative enactment for establishing an appropriate appellate forum. The Federal Government shall comply with this direction preferably within 60 days.

27. For what has been stated above, all the petitions are disposed of in the terms mentioned in Paragraph No. 26 above.

28. The office is directed to send a copy this judgment through special messenger to the Secretary, Establishment, Government of Pakistan for compliance with Para 26 (xi) above. In case the Federal Government or Capital Development Authority has any difficulty in implementing the direction, it shall be at liberty to approach this Court. However, this Court expects that the Federal Government shall proceed and fulfill its Constitutional obligations and comply with the above directions. A report in this regard shall be submitted by the Secretary, Establishment Division, to the Registrar of this Court within 65 days from the receipt of this order.

(ATHAR MINALLAH)
JUDGE

Approved for reporting.

JUDGE

*Asif Mughal**