

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P.No.153/2021

Saira Rubab Nasir & 110 others

vs.

Federation of Pakistan through Secretary Ministry of Law & Justice & 10 others

Petitioners by: M/s Zainab Janjua, Sana Taha Gondal, Muhammad Salman Ajaib, Abdul Rehman Khan, Rana Umer Iqbal, Haris Azmat, Barrister Faiza Asad, Syed Ahmad Hassan Shah, Badar Iqbal Ch., Advocates for petitioner in their respective writ petitions & contempt petitions

Respondents by: Barrister Muhammad Mumtaz Ali and Raja Muhammad Aftab Ahmad, AAG.
M/s Taimoor Aslam Khan, Mudassar Abbas, Haris Azmat, Barrister Faiza Asad, Sohaib Shahid, Advocates for respondents in their respective writ petitions & contempt petitions

Dates of Hearing: 23.02.2022, 24.02.2022, 25.02.2022, 28.02.2022,
01.03.2022, 02.03.2022, 03.03.2022, 04.03.2022,
07.03.2022, 08.03.2022, 09.03.2022, 10.03.2022

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, this Court intends to decide the captioned writ petition along with W.P. No.4657/2021 (Khalid Shabbir, etc. v. Federation of Pakistan, etc.), W.P. No.1201/2021 (Wali Muhammad, etc. v. Federal Government, etc.), W.P. No.581/2021 (Muhammad Iqbal, etc. vs. Federation of Pakistan, etc.), W.P. No.436/2021 (Dr. Habib Ullah Joiya v. PMC, etc.), W.P. No.987/2021 (Nosher Umer v. PMC, etc.), Crl. Org. No.105/2021 (Noshar Umer v. Shaista Zeeshan), Crl. Org. No.174/2021 (Saira Rubab Nasir v. Arshad Taqi), Crl. Org. No.321/2021 (Fahad Bin Hasnain v. Numan Azhar), Crl. Org. No.322/2021 (Saira Rubab Nasir v. Nouman Azhar) and Objection Case No.8838/2021 (Saira Rubab Nasir v. Federal Government, etc.) having been filed to challenge the vires of the Pakistan Medical Commission Act, 2020 as well as to assail the notification dated 21.09.2020, issued by the Ministry of NHSR&C, whereby Members of PMDC under the Pakistan Medical Commission Act, 2020 have been notified.

2. Through the captioned W.P. No.153/2021, W.P. No.4657/2021, W.P. No.1201/2021 and W.P. No.581/2021, the petitioners have challenged the *vires* of the Pakistan Medical Commission Act, 2020 as well as assailed the notification dated 21.09.2020, issued by the Ministry of NHR&C, whereby Members of PMDC under the Pakistan Medical Commission Act, 2020 have been notified.

3. Whereas, through W.P. No.436/2021, the petitioner Dr. Habib Ullah Joiya has assailed the order dated 05.01.2021, whereby the Pakistan Medical Commission has recalled earlier order dated 24.05.2019 and leave granted to the petitioner on full pay has been converted into leave without pay despite the fact that the petitioner was in process of completing his M.Phil Community Medicine Course.

4. Through W.P. No.987/2021, the petitioner Noshir Umer seeks issuance of direction to the respondents for regularization of his services in the Pakistan Medical Commission.

5. Through Crl. Org. No.105/2021, the petitioner Noshir Umer prayed for initiation of contempt of Court proceedings against the respondents for defiance of this Court's order dated 16.03.2021, passed in W.P. No.987/2021.

6. Through Crl. Org. No.174/2021, the petitioner Saira Rubab Nasir seeks issuance of contempt of Court proceedings against the respondents for non compliance of this Court's order dated 18.01.2021, passed in W.P. No.153/2021.

7. Through Crl. Org. No.321/2021 and Crl. Org. No.322/2021, the petitioners Fahad Bin Hasnain and Saira Rubab Nasir, respectively, sought initiation of contempt of Court proceedings against the respondents for defiance of orders passed by this Court, dated 18.01.2021 and 23.08.2021, passed in W.P. No.153/2021.

8. Brief and consolidated facts are that the legislature passed the Pakistan Medical Commission Act, 2020 on 23.09.2020 and after two days of passing of the said Act, the Prime Minister of Pakistan, vide notification dated 25.09.2020, appointed the members of the Council without any process or defined selection criteria despite the fact the appointments of such members was already declared illegal by this Court in earlier round of proceedings initiated by the present petitioners being employees of erstwhile PMDC. Furthermore, under Section 49 of the PMC Act, 2020, the employees of erstwhile PMDC have been deemed to be employees of the newly created PMC under new terms of service contrary to their legitimately built expectations over the course of their services with the erstwhile PMDC.

9. Learned counsel for petitioners in their respective petitions contended that this Court earlier in case, reported as *PLD 2020 Islamabad 130*, declared the appointments of certain Members of the erstwhile PMDC as illegal with further direction to the competent authority to appoint the Members based on a structured formula by way of open advertisement, but in clear defiance of such direction the competent authority vide impugned notification again appointed the same seven Members of the Medical and Dental Council without any selection criteria, per se, such appointments also depict “conflict of interest”, even otherwise, such constitution of Council in terms of Section 4 of the PMC Act, 2020 is liable to be struck down as the same amounts to annulment of the judicial pronouncement; that the employees of the erstwhile PMDC are not appointed by the PMC but are instead automatically deemed to be employees of the PMC, therefore, the PMC does not have the power to determine the terms and conditions of such employees, as such, the employees have a vested right to continue employment on the original terms and conditions, but Section 49 of the

PMC Act, 2020 allows the PMC to alter such terms and conditions to the detriment of the employees of erstwhile PMDC, which is *ultra vires* to the Constitution; that the doctrine of *locus poenitentiae* settles that the rights, once granted in such a way that rights have been created in favour of certain person, cannot then be taken away by the authority that granted them, even otherwise, the employees of erstwhile PMDC have a legitimate expectation to continue under their previous terms of employment, the employees have been denied their rights to employment and dignity under Articles 9 and 14 of the Constitution.

10. Learned AAGs along with learned counsel for respondents on behalf of respective respondents stressed that Medical Tribunal Act, 2020 has been promulgated with prescribed function to provide the setting up of special judicial Tribunal to efficiently and expeditiously hear and decide the disputes arising out of the matters pertaining to the medical and health sector, as such, the petitioners can approach the relevant specialized forum under the said Act of 2020; that the promulgated PMC Service Regulations, 2020 are non-statutory in nature having been promulgated by the Medical and Dental Council without requiring any approval from the Federal Government, per se, the employees are apparently governed under the principle of master and servant; that under the instructions of the apex Court the Appointment of Members (Council and Board) Rules, 2021 were notified on 18.05.2021, whereby all nominations and appointments having been made prior to the promulgation of the said Rules shall be deemed to have been validly made, as such, since the said Rules of 2021 have not been assailed, the validation rendered to all the nominations and appointments remains in field, even otherwise, the matter is still pending adjudication before the apex Court and it is in the interest of justice that the

matter agitated qua Section 4 of the Act together with the appointments of the Members is deferred to await the outcome of the decision of the apex Court.

11. Arguments heard, record perused.

12. Perusal of record reveals that the employees of erstwhile PMDC are primarily aggrieved with new legislation, known as Pakistan Medical Commission Act, 2020 along with the service rules i.e. Pakistan Medical Commission Service Regulations, 2020. However, in few of the writ petitions, the major focus is upon Sections 49 and 8(2)(a) of the PMC Act, 2020. That apart, the petitioners also aggrieved with the actions taken by the new PMC under the new law, where terms and conditions of petitioners have altogether been changed from their accrued and confirmed rights of service, which were in practice since their appointment, as such, their terms and conditions have been altered adverse to their confirmed rights. Notices were issued to Attorney General of Pakistan in terms of Order XXVII(A) CPC, whereas the Ministry of NHSR&C have also filed their para-wise comments other than the Pakistan Medical Commission, who have defended the legislation, regulations as well as actions taken by the new establishment of PMC.

13. Brief legislative history of PMC Act, 2020, if seen in the present scenario, it appears that the erstwhile PMDC was established under PMDC Ordinance, 1962 and later on certain amendments have been made in said Ordinance, however on 08.01.2019, the President of Pakistan promulgated PMDC Ordinance, 2019 repealing the earlier Ordinance of 1962 in terms of Section 49 of PMDC Ordinance, 2019 and new Council was constituted, whereby the existing employees of PMDC were protected by incorporation of a special provision i.e. Section 49(3) of the Ordinance, whereby all officers or employees of Council under repealed Ordinance were deemed to be employees of the Council on same

terms and conditions. However, the PMDC Ordinance, 2019 was not approved by the Senate of Pakistan in terms of resolution under Article 89(2)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, as such, the same stood repealed on 29.08.2019. On 20.10.2019, the Federal Government promulgated PMC Ordinance, 2020 and the entire structure of erstwhile PMDC has been changed from Council to a Commission. The vires of PMC Ordinance, 2020 were also challenged in W.P. No.3800/2020 (Saira Rubab vs. President of Pakistan) along with other writ petitions, whereby this Court, vide judgment dated 11.02.2020, has struck down the Ordinance through judgment reported as PLD 2020 Islamabad 130, being ultra vires to the Constitution of the Islamic Republic of Pakistan, 1973. All the employees stood reinstated in services with back benefits in accordance with their terms and conditions of their contract. This Court also declared the appointment of members of the Commission as illegal.

14. Keeping in view the above position, PMC Act, 2020 has been enacted by the legislature, which has been notified on 24.09.2020 in order to provide for regulation and control of the medical profession and to establish a uniform minimum standard of basic and higher education and recognition of qualification in medicine and dentistry. The Federal Government after enactment of said legislation issued another notification dated 25.09.2020, and notified respondent No.9 as Member of the Commission after seeking approval from Prime Minister of Pakistan.

15. It has been observed that Section 49 of the PMC Act, 2020 gives protection to employees of erstwhile PMDC as deemed to be employees of newly created PMC. The Council has been given wide powers of appointment along with determination of terms of such appointment, however the main feature of the Act is the establishment of National Medical Authority, National Medical and

Dental Academic Board, Pakistan Medical Commission, and Medical and Dental Council, which shall have their own jurisdictional sphere, whereas the Commission is the supreme body established by the Federal Government, a body corporate by the name of Pakistan Medical Commission having perpetual succession and common seal, with powers to hold and dispose of property, to enter into contract and shall in said name sue and be sued, whereas the Medical Dental Council, National Dental and Academic Board and National Medical Authority are under the umbrella of Pakistan Medical Commission. Likewise, Section 4 of the Act empowers the Council to appoint the members after approval of the Prime Minister of Pakistan for the period of three years. The entire power factor revolves around the Council in terms of Section 8(2)(a) of the Act qua the appointment of Members, officers and employees of the Commission on such terms and conditions as the Council deemed fit for the purpose of the Act, including but not limited to framing of regulations, approval of proposed annual work, budget strategic plans, financial resource development, accreditation standards, curriculum, conduct of admission and dental colleges, examination, recognition, assessment of international and undergraduate examination and their registration, to decide complaint against licensee of professional negligence and misconduct by the Provincial Government or Federal Government, to determine remuneration allowance of the members to hear the appeals, to levy fee, for grant renewal and revalidation of licensee, examination, registration, admission, etc. In a nutshell, the entire scheme in the PMC Act, 2020 empowers the Council to exercise its absolute authority and jurisdiction to regulate the medical profession in every sphere.

16. The petitioners in majority of the writ petitions are the employees in service or ex-employees, including the employees who have been given golden

handshake scheme or compulsory handshake scheme, have assailed the actions of the Council, including the vires of the law in these writ petitions, as such, they are mainly aggrieved with Section 49 of the PMC Act, 2020. For ready reference, said Section is reproduced as under:

49. Employees and officers of dissolved Pakistan Medical and

Dental Council.- (1) *Upon commencement of this Act all employees of the dissolved Pakistan Medical and Dental Council shall be deemed to be employees of the Commission, subject to clause (a) of sub-section (2) of section 8, and shall be subject to such terms and conditions of employment as may be determined by the Commission subsequent to the commencement of this Act and shall retain no right to any office, post, designation or terms of employment as were previously applicable to employees of the Pakistan Medical and Dental Council.*

(2) *Any amounts payable to or recoverable from the employees of Pakistan Medical and Dental Council as existing on the date of dissolution of Pakistan Medical and Dental Council or as determined thereafter by the Council shall be immediately paid or recovered by the Commission.*

17. On minute scanning of the said provision, it appears that the same has been divided into the following four distinct parts:

- i) Employees of erstwhile PMDC shall be “*deemed to be employees of the Commission.*”
- ii) The employment of those employees who have been given protection in these provisions is subject to Section 8(2)(a) of the Act.
- iii) The terms and conditions of those employees are to be determined by the Commission.
- iv) The employees who have been deemed to be employees of the Commission “*shall retain no right to any office, post, designation or terms of employment as were previous applicable.*”

As such, the above referred provisions regulate the terms and conditions of all the employees of erstwhile PMDC with reference to Section 8(2)(a) of this Act, therefore, it is necessary to reproduce the said provision at the same time, which is as under:

8. Powers and functions of the Council.- (1) *The Council shall have the functions and powers of general supervision over the working of the Commission and shall hold the President and Vice-President of the Council, National Medical and Dental Academic Board, the National Medical Authority, committees and other authorities accountable for all its functions. The Council shall have all powers not expressly vested in any other authority or officer by any other law where such powers not expressly mentioned in this Act are necessary for the performance of its functions.*

(2) *Without prejudice to the generality of the foregoing powers and notwithstanding anything contained in any other law for the time being in force, the Council shall have the following functions and powers, namely:-*

(a) *to appoint the members, officers and employees of the Commission on such terms and conditions as the Council deems necessary to carry out the purposes of this Act and to provide for all matters relating to welfare, terms and conditions of service of the members, officers and employees of the Commission in accordance with regulations framed by the Council and including the right, to institute a compulsory golden handshake scheme subject to approval of the Federal Government, or such other severance package for the employees of the Commission, as it may deem proper.*

18. The petitioners have mainly argued their case while interpreting provision of Section 49 read with Section 8(2)(a) of the PMC Act, 2020 on the analogy that the latter part of Section 49 of the Act, is ultra vires to Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973, where it has been referred that:

“(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) *The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.*

No doubt, Article 8 of the Constitution prohibits the State from enacting a law which would take away fundamental right conferred upon a citizen, whereas the definition of State has been provided in Article 7 of the Constitution, including the Parliament i.e. legislature, which is part of the State.

19. On the other hand, the learned counsel for PMC as well as the learned AAG opposed the instant writ petitions on the ground that the concept of right as claimed by the petitioners is not visible nor it could be considered a right, which has been given statutory protection under the law. In order to determine the status of petitioners' rights, who were employees of erstwhile PMDC, this Court has gone through the original statute i.e. PMDC Ordinance, 1962, whereby the Council known as Medical and Dental Council in terms of Section 2(d), constituted by the Federal Government in terms of Section 3 of the Ordinance, has extensive powers in terms of Section 9 of the Ordinance to elect the Vice President amongst the Members, constitute Executive Committee, appoint Registrar, and appoint or nominate such other officers and servants as the Council deems necessary to carry out the purposes of this Ordinance in terms of sub clause (d) of clause (1) of Section 9 of the Ordinance, 1962. Similarly, all those persons appointed or employed under the said provisions are deemed to be public servant(s) within the meaning of Section 21 of the PPC. Similarly, Section 33 of repealed Ordinance of 1962 empowers the Council to make regulations, to carry out the purpose of said Ordinance in which the Council can fix tenure of the office and also extends powers and duties of Registrar, including other officers and servants of Council under sub clause (e) of sub-section (1) of Section 33 of the Ordinance.

NON STATUTORY REGULATIONS

20. At this stage, Mr. Taimoor Aslam, Advocate on behalf of PMC has also highlighted the status of service rules of the erstwhile PMDC as well as of the present rules dealing with terms and conditions of the employees on the ground that all were non statutory in its nature. It has further been contended that when the rules are non statutory the employees have no vested right nor they can claim that their rights have been taken away, rather it has been governed under the principle of master and servant.

21. While dealing with this issue, this Court has also attended to the provision of Section 33 of the PMDC Ordinance, 1962, whereby on 26.05.1967, PMDC Regulations, 1967 were promulgated, in which powers and duties of officers and servants have been outlined. On 28.09.2007, the Medical and Dental Regulations, 2007 were enacted, as a result whereof, Part XII of the Regulations, 1967 were repealed, even Part IX has been added, including Regulation 52, which provided the terms and conditions as fixed by the Council. On 03.12.2009, PMDC Employees (Service and Administration) Rules, 2009 were promulgated with sanction of the Government, which explain the duties and terms of employees. On 10.08.2012, the Parliament has amended the PMDC Ordinance, 1962 through PMDC Amendment Act, 2012, wherein Section 33 was bifurcated into two sub Sections i.e. (1) and (2), whereby sub Section (1) provides for those items for which regulations were to be framed with prior sanction of the Federal Government, whereas in contrast, sub Section (2) empowers the Council to frame regulations on the subject listed therein, on its own, without prior approval and as per clause (1) of sub Section (2) of Section 33, the regulations as well as terms and conditions were non-statutory. In pursuance to the Amendment of 2012, the terms and conditions of Service Regulations, 2012 stood enacted on 28.08.2012 by the Council, without prior approval of the Government or any requirement of

any notification in official gazette, as per Section 2 of the said Regulations they are meant for internal use of the Council, which further confirms their non statutory status. Similarly, after enactment of PMC Act, 2020, the Service Regulations, 2020 were promulgated, which are also non statutory in nature governing the relationship of master and servant.

EFFECT OF DEEMING CLAUSE IN SECTION 49 OF THE PMC ACT, 2020 AND CONCEPT OF RIGHT

22. In view of above, the scheme of law provided in Section 49 read with Section 8(2)(a) of the PMC Act, 2020 as well as considering the previous regulations, including the rights of present petitioners, there is no cavil to the proposition that all the employees of erstwhile PMDC, who have been given protection through a *deeming* provision of Section 49 of the PMC Act, 2020, are governed through non-statutory rules and regulations, though their jobs are of a permanent nature, which ends on 60th year being the retirement age after superannuation.

23. The concept of deeming clause, which has been referred in Section 49 of the PMC Act, 2020, if seen in context of interpretation, it is known as a legal fiction, one which is not an actual reality, but which the law recognizes and the Court accept as a reality, therefore, in case of a legal fiction the court believes something to exists which in reality does not exist. It is nothing but presumption of existence of state of affair which in actuality is non-existence. The fact of such legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances¹. The purpose of importing a deeming clause is to place artificial construction upon word / phrase that would not otherwise prevail and sometimes it is to make construction certain. Deeming clause is fiction, which cannot be extended beyond the language of section by which it is

¹ (1997) 1 SC 650 (Gajraj Singh etc. vs The State)

created or by importing another fiction. Hence, the said clause is to be read to the extent of its application and not beyond that². Now question arises as what are the effects of deeming clause and in this regard, this Court has been guided with the following effects:

- (i) *When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time but by a legal fiction we are to assume as if it did exist.*
- (ii) *Where a statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.*
- (iii) *At the same time, it cannot be denied that the Court has to determine the limits within which and the purposes for which the Legislature has created the fiction.*
- (iv) *When a statute enacts that something shall be deemed to have been done which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.³*

24. With the help of above referred effects, it is necessary for the Court to ascertain for what purposes and between what persons the statutory fiction is to be resorted to for the purpose of imagination, which is not otherwise available. Hence, this Court is of the view that all the employees of erstwhile PMDC or PMC, as the case may be, under the old law have no legal protection and their status in job stands terminated, but they have been brought into the protection in terms of Section 49 of the PMC Act, 2020 for limited purposes. The above referred interpretation further reveals that the status, which was already available to the petitioners, has been brought into the cover of new law by fiction in a same manner as it was under the old law, though their status was not recognized at the time of enactment of PMC Act, 2020. This Court is of the view

² PLD 2012 SC 1 (All Pakistan Newspaper Society v Federation of Pakistan)

³ PLD 2006 SC 602 (Muhammad Mubin us Salam v. Federation of Pakistan)

that petitioners were already governed under non-statutory regulations through the concept of master and servant, though services of some of the petitioners have been regularized but they remained in contractual employment, whereas rest of them are under the concept of permanent contract, which is valid till age of superannuation. Hence, the deeming clause referred in Section 49 of PMC Act, 2020 only brought the previous employees under the umbrella of new law for the purposes to regulate their services under the new scheme in a new manner without being influenced from their previous terms, which were available to them under the old law i.e. PMDC Ordinance, 1962 or the regulations framed there-under, which is the purpose the legislature created the fiction, per se, such is the limit determined by this Court within which the purpose for which legislature created the fiction.⁴

EFFECT OF REPEAL

25. Similarly, this Court has also attended to the concept of expressed repeal provided in Section 49 of PMC Act, 2020, which has to be seen in the concept of Crawford's Interpretation of Law (1989 - Page 626), it is stated that an express repeal will operate through abrogate and exiting law unless there is some indication to contrary, such as saving clause. Even existing right and pending litigation, both civil and criminal, may be effected, although it is not an uncommon practice to use the saving clause in order to preserve the exiting right and exempt pending litigation. At Page 627, it is stated that moreover, where a repealing clause expressly referred to portion of prior act, the remainder of such act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is inconsistency between them. In like manner, if

⁴ PLD 1970 SC 29 (Begum B.H. Syed v. Mst. Afzal Jahan Begum) and PLD 1975 SC 397 (Mehreen Zaib-un-Nisa v. Land Commissioner Multan, etc.)

repealing clause is by its term confined to particular term, quoted by title, it could not be extended to an act upon a different subject.

26. The effect of repeal of law has already been considered in terms of Article 264 of the Constitution of the Islamic Republic of Pakistan, 1973, whereby any right, privilege, obligation or liability acquired, accrued or incurred under the law has been effected, except as otherwise provided in the Constitution, such is the limit provided in the Constitution. The same has also been considered in terms of Section 6 of the General Clauses Act, 1897, which is couched in similar terms⁵. Section 50 of PMC Act, 2020 simultaneously provides effect of repeal and saving, therefore, only those actions have been saved, which particularly provided in this provision, including all assets, rights, moveable and immoveable properties, record, cash, bank accounts, deposits, etc. of erstwhile PMDC under repealed Ordinance shall stand transferred to the Commission and shall be deemed to be assets, rights, properties, records, cash, bank accounts, deposits etc. of the Commission. Similarly, all registrations / recognitions granted by erstwhile PMDC under the repealed Ordinance have also been given effect. However, proviso to sub-section 2 of Section 50 of the Act has not given any *protection for enforceability to all regulations made and promulgated pursuant to repealed Ordinance or PMDC Ordinance, 2019, even the Council has the power to review and modify any saved decision taken, regulations made or amended and disciplinary action taken*. This aspect has changed the entire interpretational question qua rights of petitioners (ex employees of the erstwhile PMDC or the PMC, as the case may be), therefore, intention of legislature has clearly been referred with expressed provision to extend the authority to the Council in a larger context to settle the state of affairs which have previously been given protection, as a result whereof the Council has an absolute authority

⁵ PLD 2012 SC 106 (Federation of Pakistan v. Dr. Mubashir Hassan)

to pass any regulation to lay down the terms and conditions of service and ancillary administrative and financial matters of all employees of Commission by exercising powers in terms of Section 40(1)(e) read with Section 8(2)(a) of the PMC Act, 2020.

CONCEPT OF RIGHT TO REMAIN IN SERVICE

27. When this aspect has been confronted to the petitioners, they have referred the fundamental guarantees provided in the Constitution of the Islamic Republic of Pakistan, 1973 and contended that the vires of said provisions and the entire enactment has been challenged before this Court. Hence, this Court is to dilate upon the concept of right and theme behind the previous Ordinance, the regulations made there-under to explain the concept of right, whether it is a right which could not be taken away by the legislature. The simple definition of right provided in the Black's Law Dictionary means, *"which is proper under the law, morality, or ethics, something that is due to a person by just claim, legal guarantee, or moral principle, a power, privilege or amenity secured by a person by law, a legally enforceable claim that another do or will not do a given act, a recognized and protected trust, the violation of which is a wrong"*. The simple definition of **"right"** has to be seen in the context of jurisprudence, in which rights have been divided into different kinds to be known as absolute right, which belongs to every human being, such as the right of liberty, a natural right, or a right to life or right to property, though the petitioners are claiming their rights of employment with reference to Articles 4, 8, 9, 14, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, before entering into such arena, it is necessary to explain the concept of legal right at the first instance, which has following five elements involved in it:

- i) It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled;

- ii) A person against whom the right avails, and upon whom correlative duties lie, he may be distinguished as the person bound, or as the subject of the duty;
- iii) An act or omission which is obligatory on a person in favour of the person entitled. This may be termed the content of the right;
- iv) Something to which the act or omission relates, and which may be termed the object or subject matter of the right; and,
- v) A title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

28. The above referred elements explain certain concepts, where a right against some persons or a person and a right to some act or omission of such person and a right over or to something which that act or omission relates, therefore, the object of right is the main thing, whether it relates to material thing or in respect of one owns person. The right to services has to be established under a contract or under the law, whereas the Constitution ensures and guarantees a right to life in terms of Article 9, which includes the right to live, where every person has to be given a fair chance, equal opportunity to join any profession, job, or business or occupation in terms of Article 18 subject to such qualification, if prescribed by any law. Hence, the constitutional framework ensures the freedom of trade, business or profession in unequivocal terms by protecting the concept of right to life, including the right to services. From ancient times the concept of bonded slavery, which has now been changed to the rights and services, where the use of human being is to be considered on temporary and limited purposes on the basis of a voluntary agreement, where the services are subject to consideration in terms of pay or money or privileges, and where a person employed has to owe certain duties towards the employer.

Now the question arises as to whether the right claimed by the petitioners is of a permanent nature, and once it has been extended to the petitioners under the PMDC Ordinance, 1962, the same could not be curtailed in any manner? The answer to the proposition has to be seen on the touchstone of different parameters and yardsticks while dealing with the issue of vires of the law.

29. Right to employment is a fundamental right, but it is subject to law under Article 9 of Constitution of the Islamic Republic of Pakistan, 1973. The petitioners have mainly argued their case by claiming that they have fundamental right as well as their vested right regarding their terms and conditions, which cannot be varied by legislature on the basis of right available to civil servants or where the rules are statutory in nature, therefore, majority of judgments placed on record by the petitioners side to demonstrate their vested right are not applicable in this case as the employees of the erstwhile PMDC or PMC are governed under non statutory rules. Now question arises as to whether employees who are governed by non statutory rules have vested right to continue on employment? In this regard, the concept of vested right has to be seen in the legal parlance, whereby the apex Court has held as under⁶:

***What is a vested right?** According to the Oxford English Dictionary, "vested" means "clothed, robed, dressed especially in ecclesiastical vestments, vested rights essentially differ from rights which are contingent that is, completely created vested interests may perhaps be defined as rights based not upon contract but upon custom". A close examination of these meanings and explanations reveals that vested right is free from contingencies, but not in the sense that it is exercisable anywhere and at any moment. There is hardly any right which can be so exercised. There must always be occasions at which and circumstances under which they may be exercised. Those occasions and circumstances do not constitute contingencies, but are the peculiar characteristics of those rights. For instance, the right to cross examine (not to re-cross*

⁶ PLD 1969 SC 599 (Nabi Ahmed v. Home Secretary, Government Of West Pakistan, Lahore)

examine) a witness is a vested right, although the occasion for exercising it arises only if the witness says or has said something unfavourable and often after his examination in chief is over. The occasion to cross examine may not arise or may not be exercised but the right is not to be denied. The following discussion of the connotations of "vested rights" by J. G. Sutherland in his book on "Statutes and Statutory Construction," Vol. 2, Art. 2205, is helpful in clarifying the above thought:-

"It is impossible to assign precise meaning to the term (vested right) for any attempt results only in conflict in the decisions. By 'vested right' can be meant no more than those rights which under particular circumstances will be protected from legislative interference (unless it is clearly intended). But as it is a right which vests upon equities, it has reasonable limits and restrictions : it must have some regard to the general welfare and public policy, it is not a right which is to be examined, settled and depended on a distinct and separate consideration of the individual case, but rather on broad and general grounds which embrace the welfare of the whole community and which seek the equal and impartial protection of the interest of all."

30. This aspect clearly establishes that a right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent is known to be a vested right, which is absolute, complete and unconditional to exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency⁷.

31. In view of the definitions given by the superior Courts, it is not a vested right of the petitioners to claim continuation of their employment till their age of superannuation, especially when their terms and conditions of service are non statutory in nature. The recent example in which rights of civil servant have been settled through Civil Servants (Directory Retirement from Service) Rules, 2020 read with Section 13(1)(i) of the Civil Servants Act, 1973, in pursuance whereof

⁷ 2022 PLC (CS) 6 Lahore (Government of Punjab v. Muhammad Kamran Bashir)

any civil servant completing 20 years of service can be retired on the direction of the competent authority in the public interest, as such, the superior Courts are agreed with the concept of vested right attached to the employees or civil servant, whose services are of permanent nature based on a statutory backing. In this regard, the apex Court set aside the judgment of Federal Services Tribunal and affirmed the retirement of a civil servant under Section 13(1)(i) of Civil Servants Act, 1973 by the competent authority⁸. Similarly, the validity and propriety of Section 13 of Civil Servants Act, 1973 has also been seen by the Court by explaining the difference between the phrase of “compulsory retirement” with Rule 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973 and Section 13 of the Civil Servants Act, 1973, the compulsory retirement is a punishment while under Section 13 of the Act, it is not a punishment and a civil servant under this Section gets all service benefits without any stigma⁹. Even this Court in recent pronouncement while considering the vires of Civil Servants (Directory Retirement from Service) Rules, 2020 in a detailed manner and held that these rules were intra vires as the same have been made by the competent authority within the scope of powers delegated therein and do not go beyond the parent legislation¹⁰. This Court while considering the stance of civil servant in similar cases declared that civil servant has no vested right nor can exercise of this prerogative be interfered with except when exceptional circumstances exist e.g. they are clearly person specific or malafide is apparent and floats on record¹¹. In similar case, the Court also held that a court through erroneous and unnecessary intrusions could harm the ability of the competent authority to formulate dynamic, creative and innovative policies in

⁸ 2004 PLC (CS) 707 SC (Chairman Central Board of Film Censors, Islamabad v. Muhammad Ali Shah)

⁹ 2003 PLC (CS) 1389 SC (Muhammad Qadeer v. Secretary Defence Production Division)

¹⁰ W.P. No.1355/2020 (Syed Mohsin shah v. Federation of Pakistan) [judgment dated 27.5.2021]

¹¹ 2021 PLC (CS) 1450 Islamabad (Sikandar Hayat Maken v. Federation of Pakistan)

order to enhance the efficiency of the civil servant or endeavors to ensure that civil servants, who are competent, suitable and known for their integrity are appointed through promotion against selection post. It could also have the effect of impeding the process of weeding out those who are incompetent or for any other reason not suitable to be appointed to a higher post. Excessive intrusion in matters relating to promotion could have profound consequences for the governance of the State and the formulation of policies. Therefore, when civil servant has no vested right, no other employee or person having been regulated through non statutory rules of service could claim the concept of vested right, which is within exclusive jurisdiction of competent authority to determine the terms and conditions of service¹². There is no bar that an amendment could not be made in the relevant rules / regulation by competent authority adversely affecting the rights of the employees¹³. Therefore, it was held that in cases of civil servant the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in service rules, and the apex Court was not impressed with arguments that rules could not be changed having adversely affecting the terms and conditions of the employees¹⁴.

32. From above, this Court is of the conclusive view that the terms and conditions of civil servant which have been backed by the Civil Servants Act, 1973 *vis-a-vis* the Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 which are statutory in nature even then change in the terms and conditions of service has not been negatively treated by the superior Courts therefore, taking the analogy from above discussion the petitioners who are employees of erstwhile PMDC and at present of PMC have no vested right to claim specific terms and conditions on the touchstone of fundamental rights when they have

¹² **PLD 1988 SC 155** (Muhammad Insha Ullah v. Chief Conservator Forests)

¹³ **PLD 2003 SC 143** (Dr. Muhammad Hussain v. Principal Ayub Medical College)

¹⁴ **2016 SCMR 1021** (Government of KPK v. Hayat Hussain, etc.)

no nexus with those rights where Article 9 read with Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973 only ensure right to employment in context of term “life” in accordance with law, but regulating the terms and conditions of service is not to be treated as a vested right nor it is the fundamental rights of the petitioners to claim that their terms of service have been varied to their disadvantage.

33. This Court has attended the proposition on the basis of principle of interpretation of statutes, whereby Syed Ahmad Hassan, ASC has highlighted the test of legislative competence, test of derogation from fundamental rights as well as the test of reconcilability and argued his case that there are procedural lapses in law making, such that the process in Constitution has not been followed and lack of subject matter jurisdiction, including on the basis of legislative list in Fourth Schedule to the Constitution. He has also highlighted that PMC Act, 2020 is ex-facie discriminatory, unjust and oppressive.

34. While dealing with the proposition in hand, this Court has been guided by the principle for adjudging the constitutionality of legislation i.e. PMC Act, 2020 on the basis of judgments of the superior Courts¹⁵, whereby the following principles have been observed:

- i) Judiciary has a duty to examine vires of the legislation at touchstone of Constitution;
- ii) Presumption of legality, validity, constitutionality and legislative competence would attach to a statute and heavy burden lies on a person challenging its vires or validity;

¹⁵ *2017 SCMR 206* (Shahid Pervaiz v. Ejaz Ahmad), *2021 SCMR 1569* (Muhammad Afzal v. Secretary Establishment Division, Islamabad), *2018 SCMR 1956* (Pakistan Medical and Dental Council v. Muhammad Fahad Malik), *PLD 2012 SC 870* (Baz Muhammad Kakar v. Federation of Pakistan), *PLD 2013 SC 501* (Sh. Riaz ul Haq v. Federation of Pakistan), *PLD 2012 Sindh 129* (All Pakistan Newspaper Society v. Federation of Pakistan), *PLD 2006 SC 602* (Muhammad Mubeen us Salam, etc. v. Federation of Pakistan), *PLD 2005 SC 373* (M/s Master Foam (Pvt.) Ltd., etc. v. Government of Pakistan through Secretary), *PLD 2014 SC 283* (National Bank of Pakistan v. Saf Textile Mills Ltd.), *2015 SCMR 1739* (Lahore Development Authority v. Ms. Imrana Tiwana, etc.)

- iii) Any law, if inconsistent with the right conferred under Chapter 1 of the Constitution and / or any other mandate thereof would be void to the extent of such inconsistency;
- iv) The question of constitutionality of law depends upon examining the language of the Constitution and of comparing the legislative authority conferred on the Parliament with the provision of sub constitutional law by which the parliament purports to exercise that authority;
- v) While examining the validity of statute, the principle is that the presumption of constitutionality of statute is to be applied and every explanation in favour of statute must be found;
- vi) The Court generally leans towards upholding the constitutionality of the statute rather than destroying it, however if a statute is ex facie discriminatory or capable of discretionary application or violates any provision of the Constitution, it may be declared *void ab initio* since its inception;
- vii) Each statute has its own complexion which can be determined by examining the intent, purpose and object for which it was enacted and mischief, if intended, to suppress; and,
- viii) Redundancy to be avoided and the same could not be attributed to the legislation.
- ix) There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two.

- x) Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favored validity.
- xi) A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid.
- xii) Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds.
- xiii) Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality.
- xiv) Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution.
- xv) Malafide should not be attributed to the Legislature.
- xvi) The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to sub-serve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act.

- xvii) It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.
- xviii) A construction, which attributes redundancy to the legislature, will not be accepted except For compelling reasons such as obvious drafting errors.
- xix) If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver.
- xx) Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction, which is that the intention of the Legislature should be primarily gathered from the words, which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.
- xxi) The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction

is possible, the Court must adopt the ordinary rule of literal interpretation.

- xxii) It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself.
- xxiii) A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it “according to the intent of them that made it”. From that function the court is not to resile. It has to abide by the maxim, *ut res magis valiat quam pereat*, lest the intention of the legislature may go in vain or be left to evaporate into thin air.
- xxiv) If the language of the statute is clear and unambiguous and it' two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.
- xxv) It is a well settled law of interpretation that when the words of the statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.
- xxvi) In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.
- xxvii) A piece of legislation, unless it is shown to have offended any of the provisions of the Constitution such as those dealing with Fundamental Rights or distribution of legislative powers, cannot be

struck down on the ground that it involves encroachment on judicial functions.

xxviii) The interpretation function of the Court is to discover the true legislative intent, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

35. The above referred principles of interpretation if applied in the case of PMC Act, 2020, there is nothing available to agree that the said law has been enacted without legislative competence nor any conflict among the institutions referred in this Act i.e. Pakistan Medical Commission, Medical and Dental Council and Medical Tribunal is visible from any angle. The parliament has clearly provided the composition of council, their eligibility, terms of office,

powers and functions of the council, whereby President is Principal Officer of the council supported by Vice President and the supervisory role was ascribed to the council to look into the affairs of medical and dental and educational programs, registration, recognition of medical institutions, assessment of international undergraduate medical programs, assessment of authorities, decide the complaints, licensing and to advice the Federal Government on healthcare commission issues, the service structure of the employees. All these powers and functions are in line with the initial mandate of Pakistan and Medical Dental Council Ordinance, 1962, rather present enactment is more conclusive and based upon clear terms. However, there is a change in the previous regulatory regime, where Pakistan Medical and Dental Council was the exclusive Authority and in this case is additional body Pakistan Medical Commission in terms of Section 3 has separately been constituted by the Federal Government having perpetual succession to hold and dispose of property to enter into contracts and shall in the said name sue and be sued, which consist upon Medical and Dental Council, National Medical and Dental Academic Board, National Medical Authority, though specific powers have not been defined in the act to the extent of Commission, but it works under the supervision of Medical and Dental Council as the council shall have all the powers in this entire law to regulate the Medical and Dental Council, National Medical and Dental Academic Board, National Medical Authority and committees and other Authorities accountable for all its functions, therefore, the Commission though seems to be independent Regulator, but it subject to the supervision of Medical Dental Commission in terms of Section 8 of the Act.

36. Similarly, National Medical Authority constituted under this Act has separately been explained in terms of Section 15, comprising of 07 members to

deal with the Education and Evaluation, Examinations, Licensing, Information Technology, Finance, Legal and Administration, the said functions has been explained in Section 16 subject to approval of the Council. The Act separately deals with the Medical and dental colleges admissions tests (MDCAT) in terms of Section 18, provided the concept of accreditation standards to all universities and medical and dental colleges in a regulatory framework also deals with the National Licensing, Examination under the command of Authority, even detail concept of regulatory regime to deal with the foreign institution, undergraduate and postgraduates for the purposes of qualification and standardization has been recognized in a clear manner. The concept of house jobs, recognition of hospitals and license of contract, inspection of institutions, withdrawal of recognition, disciplinary proceedings, suspension and cancellation has separately been given with detailed concept of penalties in offences. Similarly, the council has also been equipped to frame the regulations in detailed manner, as such if this Act has been compared with the previous laws i.e. PMDC Ordinance, 1962 as well as mandate of ordinances including PMDC Act, 2019, it is considered to be a comprehensive document, which covers all spheres of medical education recognition accreditation etc., as such petitioners, who are challenging the vires of this law has not been able to justify any of its constitutional defect nor able to explain that any of the principles explained above, which have been laid down as a test, negates the constitutionality of this statute. Though it has widely been argued that instant case is ex-facie discriminatory, but this Court is not satisfied with all these arguments, especially, when no *malafide* has been attributed to the legislature nor any fundamental right of the petitioners or any other person has been violated in this law. The plain, clear and unambiguous wording reveals the

meaningful expression of interpreting the statute, whereby no question of construction of statute arises.

37. Similarly, the principles of interpretation referred in Para-34 above, if applied in the case of Section 49 read with Section 8(2)(a) of PMC Act, 2020, it appears that the language of these provisions simply conveyed the intent of the legislature in a manner that the terms and conditions of the petitioners' employment would only be determined by the Commission under their specific powers enlisted in Section 8(2)(a) of the PMC Act, 2020, though their initial terms and conditions have been given protection for a limited purposes by fiction of law, which was not available at the time of present enactment, under which they were already being regulated prior to enactment through a deeming clause, but the difference in the previous enactment and the present provision of Section 8(2)(a) is the inclusion of compulsory golden handshake scheme *subject to approval of the Federal Government, or such other severance package for employees of the commission as it may deemed proper*. This aspect was not available in the earlier enactments dealing with the powers and functions of erstwhile PMDC in this specific manner, though the plain reading of previous Ordinances and Amendments clearly stipulate that the erstwhile PMDC was empowered to frame service regulations and there is no restriction that PMDC cannot include the severance package or compulsory golden handshake scheme in that period. It is not the case of petitioners that they were governed under statutory regulations in the previous period prior to enforcement of PMC Act, 2020, therefore, it is the function of the Court to discover the true legislative intent while interpreting the statute, the words have to be given a clear, plain, unambiguous and reasonable meaning irrespective of the consequences. The words used by legislature in any enactment or provision must be expounded in their natural or ordinary sense.

When the language is unambiguous and reflects only one meaning, no question of construction of statute arises, as the Act speaks for itself. The Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional. As such, if Section 49 is read in conjunction with Section 8(2)(a) of PMC Act, 2020, the legislative intent is clear that it is the function of the Council to settle the terms and conditions of the services of employees of the Commission in accordance with regulations framed by it as the Council deems necessary to carry out the purpose of this Act, therefore, there is no absurdity, inconsistency or adverse meaning to the rights of petitioners or employees of the Council flowing out of said provision.

38. This Court is mindful of the fact that effort should be made to give effect to each and every word used by the legislature and, as such, the legislative intent is clear that the Council can frame the regulations while considering the welfare of the employees while settling their terms and conditions, even no restriction has been imposed upon the Council by the legislature from terminating the services of the employees of erstwhile PMDC, rather a beneficial scheme like compulsory golden handshake scheme or any other severance package was included in Section 8(2)(a) of the PMC Act, 2020, therefore, the impugned provisions have no inconsistency nor the same are in conflict with fundamental

guarantees provided in Constitution of the Islamic Republic of Pakistan, 1973, neither the petitioners are able to demonstrate that previously they have attained the permanent character in their service, which could not be curtailed in any manner. Their services have been regularized through non statutory rules under the previous laws and same is the position at present. Hence, their status has not been changed, rather a beneficial scheme has been imposed.

39. Learned counsel for petitioners have also drawn attention of this Court towards the tenure of service in the erstwhile PMDC, where the retiring age has been referred as 55, but all these timelines are within the mandate of erstwhile Council in terms of Section 33 read with Section 9(f) of the PMDC Ordinance, 1962. Similarly, the PMDC Regulations, 2007 have also fixed the retiring age as of 60 year or completion of 25 years qualifying service, whichever is earlier in terms of Regulation 54. However, certain amendments have been made in which option of employees have been inserted through the amendment of 2010, but the petitioners have failed to justify that they have absolute right to remain in service till the retirement age under the law and their tenure of service could not be curtailed. The retiring age which has earlier been fixed in previous laws is only meant to explain the maximum period of service without considering the nature of job, whether it is permanent, contractual or adhoc, every person has to be given retirement on attaining the age of superannuation or qualifying the 25 years of service, whichever is earlier, hence no fundamental right has been violated if a compulsory golden handshake scheme has been introduced by the Council through their regulations under the law.

40. This Court has also attended to the concept of golden handshake scheme, as referred in the PMC Act, 2020, on the touchstone that the petitioners are entitled for pensionary benefits, as claimed by them, which is the subject matter

of connected W.P. No.133/2021 (Ismat Hashmi, etc. v. PMC through Secretary), whereby this Court opined that the petitioners' pensionary rights have not been given protection in any manner nor any financial rules to that extent have been formulated in last 58 years, though the erstwhile PMDC extended pensionary benefits to some of the ex employees without any lawful justification, hence the calculation of amount towards pension in terms of Federal Government rates, as claimed by many of the petitioners, is not justiciable, therefore, the only scheme benefiting the petitioners is the golden handshake scheme / voluntary separation scheme package, which is the policy decision of the PMC in accordance with the mandate of law. It is settled law that framing of Government policy is to be undertaken by the executive, which is in a better position to decide on account of mandate, experience, wisdom and sagacity, which are acquired through diverse skills¹⁶. The primary theme behind such a scheme is to reorganize and rationalize the PMC Board, which could not be entered into by this Court as the PMC is the best judge to announce any severance package and to apply the same on specific yardstick against the employees of the erstwhile PMDC or the PMC, as the case may be. Hence, this Court is of the view that when petitioners cannot achieve their reinstatement directly, they cannot be reinstated by indirectly challenging the golden handshake scheme and relevant provision under the law¹⁷.

41. Syed Ahmad Hassan Shah, Advocate representing in one of the petition has argued his case with reference to Article 154 of the Constitution of the Islamic Republic of Pakistan, 1973 by referring role of Council of Common Interests (CCI), which has been empowered to formulate policy in relation to matters enumerated in Part-II of the legislative list and to supervise and control

¹⁶ **PLD 2014 SC 1** (Dossani Travels (Pvt.) Ltd. v. Travels Shop (Pvt.) Ltd.) and **1998 SCMR 2679** (Institute of Chartered Accountant of Pakistan v. Federation of Pakistan)

¹⁷ **2018 CLC 1275 Islamabad** (Farrukh Nawaz Bhatti v. Federal Government), **2016 PTD 2727 Islamabad** (Commissioner Inland Revenue, Islamabad v. OGDCL), **PLD 2016 Islamabad 1** (Shafqat Hussain v. President of Pakistan) and **PLD 2003 SC 979** (Haji Muhammad Boota v. Member (Revenue) Board of Revenue)

the related institutions. He contends that the law in question has to be enacted with reference to unanimous policy decision by all the federating units in terms of Article 154 of the Constitution under the mandate of CCI as the erstwhile PMDC or PMC in this case is regulator who had been or is regulating the medical institutions, which are covered by Entry No.16 of Part-I or Entry No.11 of Part-II of Federal Legislative List (FLL). While considering his arguments, this Court is of the view that the powers available to the Parliament to legislate in terms of legislative procedure under Article 70 of the Constitution is absolute to make the laws with respect to matters enumerated in FLL, as such, no constitutional restriction or constraint has been imposed upon the powers and authority of the Parliament to legislate with respect to matters enumerated in FLL. The CCI has no role in legislative process with respect to matters enumerated in FLL nor it has been referred in Article 70 of the Constitution of the Islamic Republic of Pakistan, 1973, even the CCI has no supervisory role over the Parliament under the scheme of Constitution and it has been held that the Parliament without any restriction has absolute authority to make laws with respect to matters enumerated in FLL without requiring any approval or assent from any forum in the country¹⁸. At last not a single Province has raised any objection on this law, nor challenged the same, therefore, the arguments of learned counsel is misplaced.

ALTERNATE REMEDY

42. Learned AAG along with counsel for PMC contends that the PMC Act, 2020 provided remedy of appeal in terms of Section 37 with Medical Tribunal to redress the grievance of any employee of the Commission aggrieved by order of the Commission, including the Council, therefore, the writ petitions to the extent of those employees, who are challenging the orders of the Commission, are not maintainable. Whereas, Mr. Muhammad Salman Ejaz Butt, Advocate in the

¹⁸ 2018 SCMR 1956 (PMDC v. Muhammad Fahad Malik)

respective W.P. No.987/2021 has claimed that no alternate remedy is available in these cases primarily on the ground that the Tribunal is not functional, therefore, this Court has jurisdiction to settle these questions raised in these petitions. It is further contended that majority of petitioners, who are contractual employees appointed on the basis of contract in different intervals of time, which has been extended from time to time during subsistence of different laws enforced in case of erstwhile PMDC or the PMC, as the case may be, and claimed that status of such kinds of contractual employees has to be considered in terms of initial appointment. It has also been argued on behalf of petitioners side that the claim of alternate remedy in terms of Section 37 of the PMC Act, 2020 if read in conjunction with Medical Tribunal Act, 2020 conveys a different meaning as the Federal Government has not issued any notification under Section 6(2) of the Medical Tribunal Act, 2020 making such decisions, orders and acts of the authorities formed under the PMC Act, 2020 appealable before the Medical Tribunal. This Court has dealt with the issue on the basis of judgment passed by this Court on 20.08.2021 in W.P. No.1380/2021 (*Syed Muhammad Hasan Rizvi v. Federation of Pakistan*) [not yet published] based on the following reasoning:

28. Section 6(2) of the MT Act also provides that appeals against decisions, orders and acts of the authorities formed pursuant to any other law as may be notified by the Federal Government can be heard and decided by the Medical Tribunal. Till date the PMC Act has not been notified by the Federal Government so that appeals against the decisions, orders and acts of the authorities formed pursuant to the said Act could be filed before the Medical Tribunal. Since the PMC Act was not enacted prior to the MT Act but on the very same day (i.e. 22.09.2020), this is perhaps the reason why the PMC Act was not included in the list of statutes with respect to which the Medical Tribunal could exercise jurisdiction. Learned counsel for the PMC confirmed that a notify by the Federal Government

providing for appeals, claims, complaints etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act to be filed before the Medical Tribunal is awaited. Section 3(1) of the MT Act does not oust the jurisdiction of a Court to take cognizance in a matter to which the jurisdiction of the MT does not extend. Therefore, unless and until the PMC Act is notified by the Federal Government pursuant to the provisions of Section 6 and 8 of the MT Act, it cannot be held that the Medical Tribunal has the exclusive jurisdiction to decide appeals, claims, complaints, etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act, or that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021.

29. *Section 37(1) of the PMC Act provides that any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or Disciplinary Committee, under any provision of the said Act, or rules or regulations may prefer an appeal only before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction. Now, the Medical Tribunal has not been constituted pursuant to the provisions of the PMC Act but under the provisions of the MT Act, Section 37(1) of the PMC Act does not start with a non obstante clause and therefore, does not have an overriding effect over the provisions of the MT Act. Had it had an overriding effect, then it could have been held that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021. But Section 37(1) of the PMC Act cannot apply proprio vigore (by its own force) to enlarge the scope of Sections 6 and 8 of the MT Act by investing the Medical Tribunal with the jurisdiction to hear and decide appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act.*

30. *Had Section 6 of the MT Act not restricted the jurisdiction and powers of the Medical Tribunal only to appeals against decisions, orders, and acts of the authorities formed*

pursuant to the provisions of the statutes mentioned in the said Section, it could have been argued that appeals against decision, orders and acts of the authorities formed pursuant to the provisions of the PMC Act could have been filed before the Medical Tribunal. But Section 6 of the MT Act does not include the PMC Act amongst the statutes listed in the said Section. The literal interpretation of Section 6 of the MT Act would lead this Court to hold that the jurisdiction and powers of the MT Act does not extend to hearing appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act. Therefore, on the above grounds, the objection taken by the learned counsel for PMC to the maintainability of the instant petitions is dismissed. I now proceed to decide these petitions on merits.

10. *For the reasons mentioned in the aforementioned judgment, I hold that the Medical Tribunal does not have the jurisdiction to hear appeals against decisions taken or orders passed or acts done by authorities formed pursuant to the provisions of the PMC Act, unless the Federal Government issues a notification under Section 6(2) of the Medical Tribunal Act, 2020, making such decisions, orders and acts of the authorities formed under the PMC Act appealable before the Medical Tribunal.*

The above referred view has further been reiterated by this Court in judgment dated 01.11.2021, passed in W.P. No.3636/2021 (*Professor Dr. Tahir Uddin v. Secretary, Pakistan Medical and Dental Council, etc.*) [not yet published]. In the light of above, this Court is of the considered view that alternate remedy in terms of Section 37 is not available to the petitioners / employees unless a notification is issued by the Government as required by this Court in the case of *Professor Dr. Tahir Uddin supra*. Therefore, this Court has jurisdiction to adjudicate upon the matter and objection raised by respondent is not tenable.

43. It has also been observed from the record while considering the provision of Section 49 of the PMC Act, 2020 that the said Section does not create distinction between contractual or regular employees as all employees have been

placed on same level, whereas in terms of Section 8(2)(a) of the Act the Council or Commission was to determine the terms and conditions of the petitioners / employees by framing the regulations. Apart from Section 8(2)(a) of the Act, no power exists in terms of the Council to deal with employees of Commission. The petitioners were employees of Commission pursuant to Section 49 of the PMC Act, 2020 and in terms of Section 8(2)(a) the Council was to frame terms and conditions in accordance with the Regulations. The respondent PMC has framed PMC (Service) Regulations, 2020 on 10.11.2020 when previous contract of petitioners was in field and the Regulations clearly provided in proviso to sub-regulation (2) of Rule 7, that employees absorbed, pursuant to Section 49 of the PMC Act, 2020, shall be appointed as regular employees to an available designation or position in any cadre, subject to fulfilling the qualification criteria and process provided under sub clause (3) other than a prior advertisement for such designation or position, under the contract on the standard terms and conditions determined under the Regulations for all regular employees. Such appointments shall be deemed initial appointment. By virtue of this provision, the petitioners, who are on contract employment, stood regular employees of the Commission by PMC Act, 2020 and Regulations framed thereof by the Council. There is no denial that PMC Act, 2020 only contains two provisions specifically dealing with employees of erstwhile PMDC namely Section 49 and Section 8(2)(a) of the PMC Act, 2020, which are special provisions in relation to the employees having overriding effect over the general provisions, as such, it has also been held by the apex Court that general provision in a statute could not operate to control specific (special) provision in same statute¹⁹.

APPOINTMENT OF RESPONDENTS NO.3 TO 9 AS MEMBERS OF PMDC

¹⁹ **2014 SCMR 1268** (A. Qutubuddin Khan v. Chec Millwala Dredging Co. (Pvt.). Ltd.), **PLD 1991 SC 143** (Sher Ali Baz v. Secretary Establishment Division) and **PLD 1993 SC 473** (Nawaz Sharif v. President of Pakistan)

44. As per record, the Government of Pakistan, Ministry of National Health Services, Regulations and Coordination, vide notification dated 25.09.2020, have notified the appointment of respondents No.3 to 9 in terms of power conferred under sub-section (1) of Section 4 of PMC Act, 2020 after approval by the Prime Minister of Pakistan *pursuant to their nomination by the concerned Ministry*, as such, the names of the members are as under:

- 1) Mr. Roshaneh Zafar, Kashf Foundation, Lahore
- 2) Mr. Muhammad Ali Raza, RKA Law, Islamabad
- 3) Mr. Tariq Ahmad Khan, Partner, Baker Tilly, Islamabad
- 4) Dr. Rumina Hassan, Agha Khan University
- 5) Dr. Asif Loya, Shaukat Khanum Memorial Cancer Hospital
- 6) Dr. Arshad Taqi, Hameed Latif Hospital, Lahore.
- 7) Dr. Anees Rehman, Islamabad.

45. Learned counsel for petitioners contended that these members have been appointed through an illegal process in violation of judgment passed by this Court in previous round in case of Saira Rubab Nasir, reported as **PLD 2020 Islamabad 130** as well as in violation of the Hon'ble Sindh High Court's view given in CPs No.D-4953, 5036, 5158, 5237 of 2020 (Peoples University of Medical And Health Sciences for Women v. Pakistan, etc.), dated 31.12.2020, whereby the following observations in both sets have been recorded:

11. *If we preview the prelude and prologue of Pakistan Medical Commission Act, 2020 it unambiguously expounds that it lays down the law to regulate and control medical profession with an eye to establish uniform minimum standard of basic and higher medical education and training and recognition of qualifications in medicine and dentistry. Section 3 of Act commands the Federal Government to establish Pakistan Medical Commission. In tandem, Section 4 writes down the configuration and constituents of Council to be notified in pursuit of approval of Prime Minister in the official gazette. In the same section,*

the benchmarks for the appointment and qualification are also jot down. The learned counsel for the petitioners challenging the vires of this section made much emphasis that unbridled discretionary powers have been bequeathed to the Prime Minister to appoint the members and no parameters or see-through and or translucent procedure have been provided for the appointment of members. What we have deciphered from the solemnity of this section is that Clauses (a) to (e) in essence converged to the members of the Council appointed by the Prime Minister that is to say three members of the civil society consisting of a nationally recognized philanthropist or person of known repute, a legal professional and a chartered accountant; three members amongst licensed medical practitioners and one member being a licensed dentist, all should have at least 15 years experiences of outstanding merit and not being the vice chancellor, dean, principal or administrator or owner or shareholders of a medical or dental university, college or hospital; one member being the Surgeon General of the armed forces medical service or his nominee and the Secretary of the Division. Nonetheless the Council is to be notified after approval of the Prime Minister but the qualification and experience of each member to be appointed is clearly mentioned in Section 4. With the intention of avoiding conflict of interest or any bias, Section 4 has also disqualified and debarred the persons from consideration including vice chancellor, dean, principal or administrator or owner or shareholders of a medical or dental university, College or hospital. It is further provided in sub-section 4 that no member shall enter upon office of the member of the council until he signs and submits a declaration of no conflict of interest while Section 5 of the Act, lays emphasis on that no person, his spouse or children shall be eligible to become a member of the council if they or any one of them has any conflict of Interest being an owner or having any direct or indirect financial interest in medical or dental institution which in our outlook is a footstep to uphold and keep up transparency in the affairs of the Council so that the decision of the Council should be free from decision structured on personal interest, nepotism and or preconceived notion.

12. *Nonetheless under Section 4 of the PMC Act 2020, powers have been given to appoint members with the approval of the Prime Minister and we also declared such provision intra vires in our short order but here we feel it our utmost sense of duty to put into operation the doctrine*

of reading down of a statute. What we have noted that no guiding principle, procedure or modus has been assimilated to structure the discretionary powers or to begin with the recruitment or appointment process of members of the council and if we glance at Section 15 of the PMC Act 2020 in juxtaposition which is in particular associated to the composition of National Medical Authority, it sets down in sub-section-2 that council shall appoint the members of this authority through a "transparent process" on merits but this expression "transparent process" which has manifold connotations and broad spectrum is missing from the provision crafted for the appointments of the members of the council under Section 4 before approval of P.M. In our considerate visualization, prior to accomplishing or getting hold of approval of Prime Minister for appointment, there must be evenhanded procedure and watertight course of action to short list the interested candidates' profile and after due diligence, short listing and weighing the credentials and antecedents if found commensurate to the required qualification, a dossier should be placed before the P.M for his approval.

13. As a general rule or by and large, the recruitment or selection process in the statutory bodies or in other government departments is guided and navigated by some rational and translucent principles and procedure to afford fair and equal opportunity to all eligible candidates who intend to join recruitment/selection process. Regardless that the appointments are being made directly under a statute without the intervention of competitive process or public service commission but to ensure transparency and fair-mindedness, applications could be invited through advertisements of vacant posts in the vernacular newspapers with defined procedure for submitting curriculum vitae and walk-in job interview so that the best of the best could be appointed. The utmost compelling advantage of transparency in the recruitments essentially ratifies and disseminates public confidence in the impartiality and authenticates that the appointment process is not manipulated or sham but it is free from favoritism, nepotism or bias.

46. This Court is in complete agreement with the view given by the Sindh High Court above, whereby emphasis has been placed on the portion underlined has been attended with reference to the para-wise comments submitted by Ministry of National Health Services, Regulations and Coordination, in which

neither a single word has been suggested, nor any record has been appended to show as to how and under what circumstances respondents No.3 to 9 have been selected or their data has been collected for the purposes of scrutiny in a transparent manner, even though the Ministry of National Health Services, Regulations and Coordination was well aware that in the case of *Saira Rubab Supra*, as well as the in the judgment recorded by Hon'ble Sindh High Court in the case of *Peoples University of Medical And Health Sciences for Women supra* a detailed view has been rendered by both the Courts qua the discretion of the Prime Minister of Pakistan or relevant Ministry, as the case may be, but the relevant Ministry has not taken into account the parameters laid down for the appointment of said Members in a transparent manner. No competitive process or inviting of applications through advertisement for vacant posts in any newspaper has been made, neither any interview has been called to select best of the best amongst the potential candidates, therefore, the serious flawed process further confirms that Ministry of National Health Services, Regulations and Coordination had no regard for the decisions rendered by the superior Courts and the parameters laid down by the apex Court in different judgments²⁰. While scanning the entire process of appointment of respondents No.3 to 9, following points have been observed:

- i) The appointment of respondents No.3 to 9 is based upon unstructured exercise of discretion by the Prime Minister of Pakistan;
- ii) Ministry of National Health Services, Regulations and Coordination has not adopted the transparent process on merit before the approval of the Prime Minister of Pakistan;

²⁰ **PLD 2013 SC 195** (Syed Mahmood Akhtar Naqvi v. Federation of Pakistan), **2014 SCMR 949** (Syed Mubashar Raza Jafri v. EOBI), **PLD 2012 SC 132** (Muhammad Yasin v. Federation of Pakistan)

- iii) No evenhanded procedure was applied for short-listing of the candidates, who have submitted their applications through advertisement;
- iv) Not a single document for submission of due diligence, short listing, comparison of credentials, educational qualification, relevant experience has been brought on record;
- v) No reason has been brought on record as to why thousands of lawyers, doctors, philanthropists, dentists, or persons of known repute and chartered accountant have been ignored, who fulfill the conditions of Section 4(1)(a),(b),(c) of PMC Act, 2020, especially when the status of respondents No.3 to 9 was already discussed by this Court at length in the case *Saira Rubab supra*, where the illegalities, including conflict of interest of certain members, were undressed in a manner that structured criteria in appointing the said Members was missing, as also acknowledged by the Ministry concerned; and,
- vi) The impartiality / independent selection process for potential candidates has not been adhered to despite having the guidelines referred by the apex Court²¹.
- vii) No advertisement has been brought on record which is the minimum requirement for such type of appointment.²²

47. On the contrary, learned AAG along with counsel for PMC maintained that respondents No.3 to 9 have been notified on 25.09.2020 by the Government of Pakistan when the rules in terms of Section 4(a) were not notified and after

²¹ **2019 SCMR 1952** (in the matter of HRC No.11827-S/2018 regarding Selling of National Assets including PIA at Throwaway Price)

²² **PLD 2013 Lahore 343** (Barrister Sardar Muhammad vs. FOP and others)

2020 PLC (C.S) 1331 (Dr. Basharat Hussain Bashir vs. FOP)

2022 SCMR 39 (The Chief Secretary, Government of Balochistan, Quetta and others vs. Hidayat Ullah Khan)

judgment rendered by the Hon'ble Sindh High Court in *Peoples University of Medical And Health Sciences for Women supra*, the matter has been assailed before the apex Court in CPs No.1301-K and No.1302-K of 2020, whereby the learned Attorney General for Pakistan recorded the stance before the apex Court, as reflected in order dated 30.03.2021, which is as under:

2.He informs that finalization of regulatory framework for appointment of members of Council is well under way. He seeks six weeks time for necessary rules to be notified and placed before this Court.

3. It would be appropriate to grant Federal Government time to do the needful.....

48. Learned counsel for respondents further submitted that on the basis of said order the Government of Pakistan, Ministry of National Health Services, Regulations and Coordination have notified the *Appointment of Members (Council and Board) Rules, 2021* on 18.05.2021, in which Search and Nomination Committee has been constituted by the Prime Minister of Pakistan for recommendation of persons suitable to be appointed as members of the PMC and the National Medical and Academic Board in which the Minister Incharge was the Chairman, Secretary Establishment is Vice Chairman, Secretary, Ministry of National Health Services, Regulations and Coordination, Head of Public Medical University, Head of Private Medical Institution, representative of civil society and senior members of medical profession are to be appointed as Members nominated by the Prime Minister of Pakistan. It has also been argued that Search and Nomination Committee shall after due scrutiny compile a proposed panel of three candidates for each of the position of members required to be filled in terms of sub clauses (a), (b) and (c) of Section 4 of the PMC Act, 2020 by the Prime Minister of Pakistan. It has also been pointed out by the learned AAG that protection was given to the present members (respondents No.3 to 9), who have

been notified by the Prime Minister of Pakistan much prior to the promulgation of the *Appointment of Members (Council and Board) Rules, 2021* by referring Rule 8, which is as under:

All nominations and appointments to the Medical and Dental Council and the National Medical and Dental Board of the Pakistan Medical Commission as having been made prior to the promulgation of these rules shall be deemed to have been validly made and hereon shall be subject to these rules from the date of notification of these rules.

49. The above referred Rule 8 has been made in order to bypass the selection process in a transparent manner with clear intention to accommodate the blue eyed persons previously appointed in terms of previous law, knowingly to supersede and bypass the judgment rendered by this Court. No doubt legislature has certain powers to nullify a judicial decision by changing the law retrospectively and thereby removing the decision rendered by a High Court, such a course cannot be considered as an encroachment upon the judicial power. But that function is only within the domain of legislature and same is not permitted to be applied by the executive in clear disregard with the principles set out in different pronouncements. The concept of deeming clause, which has been referred in these rules in order to protect the unlawful appointment of members in earlier round, if seen in context of principle of interpretation, the term “deeming” is to be considered a fiction i.e. *one which is not an actual reality but which the law recognizes and the Court accepts it as a reality.* However, in this case there is no law or provision referred in the statute, which recognizes the appointment of respondents No.3 to 9 in any manner, rather the direct notification dated 25.09.2020, issued by the Federal Government is based upon personal whims as well as in sheer violation of principles of natural justice,

lacked transparency with no justiciable reason to sustain. All these aspects are indirectly questioning the appointment of respondents No.3 to 9 in terms of quo warranto, though there is no doubt to settle principle that a person who has personal interest involved are not to be permitted to challenge the appointment of such person, but when the very foundation of the appointment is illegal, it will not affect the case of petitioners. A writ of quo warranto is in nature of laying information before the Court, against the person who claims and usurps an office, franchise or liberty, requesting for holding an inquiry to enable him to show the authority under which he supported his claim to office, franchise or liberty. Its object is to determine the illegality of holder of statutory or constitutional office and decide whether he was holding such office in accordance with law or was unauthorized in occupying the public office²³.

50. In view of above discussion, this Court comes to an irresistible conclusion that the very appointment of respondents No.3 to 9 is illegal, contrary to the settled principles of law, transparency and against the public interest.

W.P. NO.436/2021 (DR. HABIB ULLAH JOIYA V. PMC, ETC.)

51. One of the petitioners, Dr. Habib Ullah Joya, was working as Assistant Registrar in PMDC, Islamabad as a regular employee since 24.12.2010, who was granted two years in service deputation for M.Phil Community Medicine Course through Institute of Public Health Lahore for the period from 10.06.2019 to 10.06.2021 with full pay, by the competent authority and his services have been placed on disposal of Institute of Public Health Lahore for said program after issuance of NOC for joining the program vide letter dated 24.05.2019, however he has been informed vide letter dated 05.01.2021 by the Director Admin PMC,

²³ **PLD 2007 SC 52** (Hafiz Hamdullah v. Saifullah Khan) and **PLD 2018 Islamabad 127** (Dr. Farzana Bari v. Ministry of Law, Justice and Human Rights)

Islamabad, whereby *all previous rights extinguished the leave to be converted into unpaid leave*, which was after the elapse of one year and seven months, whereas the remaining period for completion of M.Phil was only for five months. This apparent conduct of the administration of PMC reveals that no show cause notice was issued nor any right of hearing was given to the petitioner, even Sections 32 and 33 of the Rules of 2012 have not been adhered to along with the eligibility for transfer on deputation describes in sub-section (3) of Section 24 of the Rules of 2020. During pendency of instant writ petition, the petitioner has been posted as OSD, whereafter he filed CM No.2700/2021 and brought on record certain subsequent changes in the chain of events i.e. show cause notice dated 18.05.2021, his request to claim the documents including the Rules to submit the reply of show cause notice, his joining request and copy of cheque amounting to Rs.899,580/- dated 17.05.2021 issued by PMC. The petitioner has also filed CM No.3261/2021 in terms of Order VI Rule 17 CPC for amendment of pleadings in order to assail the show cause notice and order of PMC, whereby he has been posted as OSD w.e.f. 28.06.2021 under the PMC Service Regulations, 2020. The record reveals that this Court vide interim order dated 24.06.2021 has already restrained PMC from taking any adverse action against the petitioner, as a result whereof, the show cause notice has not been implemented nor culminated into any further action. There is no cavil to proposition that the principle of *audi alteram partem* has not been adhered to in the actions taken by the PMC against the petitioner at the initial stage. This Court is mindful of the fact that when injunctive order has been passed the same is to be considered after application of mind while considering the facts and circumstances of the case and it remained

in field till final adjudication or till its recalling or vacating order has been passed by the Court²⁴.

52. This Court believes that when injunctive order has been passed, the respondent authority against whom the order was passed is bound by its term and is not in a position to do any act for its own advantage or to disadvantage of the party who has approached the Court in terms of inherent jurisdiction provided in Section 151 CPC, therefore, any order passed against the petitioner after injunctive order of this Court will seized to exist as it has technically no effect to the rights of the petitioner²⁵.

W.P. NO.987/2021 (NOSHER UMER V. PMC, ETC.)

53. The petitioner Nosher Umer was appointed on contract basis on 22.11.2017 after complete process for period of one year under the terms and conditions of the employment / contract, which has been extended from time to time and lastly it was extended from 23.06.2020 to 22.12.2020, as such, there is no vested right available to the said petitioner, who has already been regulated through a contract, whereby clause 18 of the contract refers the termination by issuance of one month's notice, even otherwise, the status of contractual employees has already been settled by the apex Court by declaring that they have no vested right to claim regularization as having been appointed for a particular period.²⁶ However, the Council in this case has decided that the contracts of pre-existing contractual employees, which are expired, shall not be renewed, whereas the petitioner approached this Court on 15.03.2021 after expiry

²⁴ **AIR 2015 M.P. 51** (Smt. Sangeeta Bansal v. State of MP etc) **AIR 2001 Allahabad 165** (Vishnu Dutt Sharma etc. v. Regional Joint Director of Education Agra, etc.)

²⁵ **1980 SCMR 89** (Bakhtawar v. Amin), **PLD 2017 Lahore 848** (Chaudhry Sugar Mills Ltd. v. Province of Punjab) and **PLD 1975 Lahore 126** (Iftikhar Ali v. Javed Dastgir)

²⁶ **2020 SCMR 507** (Province of Punjab through Secretary Agriculture Department, Lahore and others vs. Muhammad Arif and others), **2021 SCMR 1045** (Government of Khyber Pakhtunkhwa through Chief Secretary and others vs. Muhammad Younas, **2020 SCMR 406** (Muhammad Miskeen vs. District Judge Attock),

of his contract on 22.12.2020, therefore, no effective order could be passed in his favour nor any right has been demonstrated by the said petitioner.

CONCLUSION

54. In view of above detailed discussion, this Court comes to the following conclusion:

- i) All the employees of erstwhile PMDC or the PMC, as the case may be, whether contractual, adhoc, temporary or permanent, are governed under the non-statutory rules and regulations since inception of erstwhile PMDC;
- ii) All the employees including the petitioners have no right to challenge the legislative intent of the parliament in the PMC Act, 2020 where the Parliament has settled the terms and conditions of the employment of all the employees of erstwhile PMDC or PMC in terms of Section 49 read with Section 8(2)(a) of the PMC Act, 2020 through special provision while considering their status and they have been given protection by using a phrase “deeming” for a limited purposes and similarly, by extending the concept of compulsory golden handshake scheme while considering the rights of all the employees;
- iii) The golden handshake scheme or voluntary severance scheme is the policy decision and legislative intent of Federal Government, which has been included in the statute, whereafter the scheme has been introduced, which is not adverse to the rights of petitioners;
- iv) The petitioners / employees of erstwhile PMDC or PMC have no vested right in any manner to claim for continuation of their service till age of superannuation;
- v) The PMC Act, 2020 is *intra vires* and is not in violation or against the fundamental rights of the petitioners in any manner or the employees of erstwhile PMDC;

- vi) The very appointment of respondents No.3 to 9 through notification, dated 25.09.2020, is illegal, non transparent, without any selection process and against the merits promoting the favoritism and nepotism, as such, the protection given to those members in terms of Rule 8 of the *Appointment of Members (Council and Board) Rules, 2021* is also illegal;
- vii) Rule 8 of *Appointment of Members (Council and Board) Rules, 2021* is person specific which is contrary to the parent statute and principle of fairness therefore, same is ultra vires and against the concept and wisdom referred in Constitution and law.
- viii) All acts, orders, decisions, etc., passed or approved by the respondents No.3 to 9 being Members after notification dated 25.09.2020 are also declared illegal having no legal effect, unless the same are approved by the newly appointed members of PMC in their upcoming meeting independently with their own reasons and justification;
- ix) The Federal Government is directed to initiate the process of appointment of members in terms of sub-section (1) of Section 4 of PMC Act, 2020 pursuant to nomination by the concerned Ministry in accordance with the *Appointment of Members (Council and Board) Rules, 2021* in a transparent manner on the principle of selection of best of the best within period of three (03) months.
- x) Till appointment of new members on these positions, which were with respondents No.3 to 9, the Federal Government shall notify the officers of the relevant Ministry to deal with the day to day affairs of PMC.
- xi) In case of petitioner Dr. Habib Ullah Joiya, the order passed by the PMC is to be treated illegal in the light of conclusion, referred at (viii) *supra*.
- xii) The case of contractual employees seeking regularization after termination or expiry of their contract is a closed and past transaction,

which could not be re-agitated, even before the new PMC, like the cases of other petitioners.

55. All the writ petitions stand **DISPOSED OF** in the above terms.

56. Similarly, all the criminal original petitions are not made out as PMC Act, 2020 has been declared intra vires, whereby compulsory golden handshake scheme is also given protection, therefore, the same are hereby **DISMISSED**.

57. Likewise, the objections raised in the captioned Objection Case are **SUSTAINED** and same is consigned to record.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open court on: **13.04.2022**.

JUDGE

Khalid Z.