

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3757/2020

Waseem Ahmad.

Vs.

Federation of Pakistan through its Secretary, Ministry of Information
Technology and Telecom, Islamabad & others.

PETITIONERS BY: M/s Ishtiaq Ahmed Chauhdry, Hassan
Muhammad Rana, Abdul Rahim
Bhatti, Khalil ur Rehman Abbasi and
Yasser Rahim Bhatti, Advocates.

RESPONDENTS BY: M/s Shahid Anwar Bajwa, Rana
Muhammad Waqar, Raja Aamir
Shahzad, Habib Ahmed Bhatti,
Ikhlaz Ahmed Bhatti, Ali Nawaz
Kharal, Danish Aftab and Asif Nazir
Advocates alongwith Raheel Zafar,
Senior Manager (Legal), PTCL.
Barrister Atif Rahim Burki, Abdul
Rahman Hur Bajwa and Muhammad
Latif Saeedi, Advocates alongwith
Muhammad Matee-ur-Rehman,
Manager (Legal), PTET.
Mr. Farrukh Shahzad Dall, Chaudhry
Fayyaz Hussain and Syed Nazar
Hussain Shah, Assistant Attorney
General.

DATE OF DECISION: 14.10.2021.

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BABAR SATTAR, J.- This judgment shall decide the
instant petition as well as the petitions listed in the Schedule
attached hereto which involve common questions of law and
facts in relation to employees and former employees of Pakistan
Telecommunication Company Limited (PTCL).

2. The petitioners are seeking enforcement of their rights
as erstwhile employees of PTCL guaranteed under Section 36 of
the Pakistan Telecommunication (Re-organization) Act, 1996

("Telecom Act 1996") read together with Section 45, 46 and 59 of the Telecom Act 1996, which they claim are being denied by PTCL.

3. The question before this Court is two-fold: whether the petitions are maintainable and the petitioners have a right to seek a remedy before this Court under Article 199 of the Constitution? And whether the petitioners are entitled being *"Transferred Employees"* as defined under Section 36 of the Telecom Act 1996 read together with Section 35(2), to such pensionary benefits as allowed from time to time by the Federal Government?

4. The petitioners in their capacity as Transferred Employees fall into three categories. Category-I comprises Transferred Employees who were employees of the Telephone and Telegraph (T&T) Department and were initially transferred to Pakistan Telecommunication Corporation (PTC) under the Pakistan Telecommunication Corporation Act, 1991 (**"PTC Act 1991"**) and subsequently transferred to PTCL after promulgation of the Telecom Act 1996. Category-II comprises Transferred Employees who were inducted by PTC and were not employees of T&T Department and were subsequently transferred to PTCL under the Telecom Act 1996 and thus qualify as Transferred Employees. And Category-III comprises Transferred Employees whether originally inducted by the T&T Department or PTC who availed the Voluntary Separation Scheme (VSS) offered by PTCL and accepted the benefits afforded pursuant to the terms and conditions of VSS.

5. The two-fold question articulated above in paragraph 3 will be addressed in relation to each of the three Categories of the Transferred Employees identified herein above and the arguments of the learned counsel for the parties will be accordingly discussed in the opinion rendered by this Court.

Category-I.

6. The question of maintainability of the petitions and the entitlement of the petitioners with regard to the terms and conditions of service as well as the pensionary benefits for those falling within Category-I mentioned above as already been adjudicated by this Court in the matter of **Khalid Mehmood & others vs. Federation of Pakistan & another (Writ Petition No.3391 of 2018)** which relied on and reaffirmed the decision of another Bench of this Court in relation to employees of PTCL fall within Category-I in **Rasool Khan and 29 others vs. Federation of Pakistan through Secretary Ministry of Information and Technology and 2 others (2021 PLC (C.S) 14).**

7. In relation to Category-I, the learned counsel for the petitioners as well as the learned counsel for PTCL adopted and reiterated the arguments that they had made in **Khalid Mehmood** and have already been addressed in the judgment of this Court, the relevant part of which is as follows:-

11. The question of entitlement of transferred employees to pensionary benefits as protected under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act has an arduous litigation history. The history of litigation between the transferred employees and PTET as well as the arguments raised by the counsel

of the transferred employee and PTET have been recorded in detail in the judgment of this Court in Rasool Khan and need not be rehashed. This Court agrees with the ratio in Rasool Khan and ICA No. 34/2017 and finds that it is bound by these precedents in line with the principles of law laid down in Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423). In C.R.P No. 104-L/2019 etc. (Farooq Hussain v. Sheikh Aftab Ahmed), the august Supreme Court has held that where a court is satisfied with the reasoning and conclusions of the judgment challenged before it does not find any cause for interference, the court can simply endorse the impugned judgment and adopt the reasoning of the Court below without re-tracing the path travelled by such court in the interest of saving public time which can be allocated to other cases. The same principle of brevity and efficiency would apply to a case in which the High Court is to follow a binding precedent of the same court wherein all issues impinging on the controversy before it have already been addressed at length in such binding precedent. The judgment in Rasool Khan has dealt with the history of relevant provisions of the statute in question, the history of litigation in relation to the subject-matter in the instant petitions and the relevant case law cited at the bar. This Court, therefore, does not feel obliged to rehash the legal analysis carefully undertaken in Rasool Khan and adopts the reasoning and conclusions drawn in Rasool Khan. It does, however, feel the need to address the contentions raised by Mr. Bajwa on behalf of PTET. Notwithstanding that the decision of this Court in W.P No. 3435/2017 was announced later in time than that in Rasool Khan, the ratio and dicta in Rasool Khan is in consonance with the decision of the learned Division Bench of this Court in ICA No. 34/2017 and is the correct enunciation of law laid down by the august Supreme court in Masood Ahmed Bhatti, P.T.C.L v. Masood Ahmed Bhatti, Muhammad Arif and Muhammad Riaz. The first contention of Mr. Bajwa that all decisions in relation to the entitlements of the transferred employees including, inter alia, their pensionary benefits, between 1996 and 2016, when the august Supreme Court clarified in P.T.C.L v. Masood Ahmed Bhatti that the transferred employees were no longer civil servants, were rendered pursuant to

misapprehension that the transferred employees were civil servants, is misconceived. The ratio in Masood Ahmed Bhatti is not that the transferred employees are entitled to emoluments and benefits as guaranteed under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act because such transferred employees retained their status as civil servants. The ratio in Masood Ahmed Bhatti was that the terms and conditions of service of the transferred employees were protected by section 9 of the PTC Act and sections 35 & 36 of the Telecom Act and given that the statute itself afforded protection to their terms and conditions of service, a grievance of such transferred employees that their terms and conditions of service were being varied to their disadvantage could be agitated before a High Court in its constitutional jurisdiction and there was no need to undertake any further inquiry to determine whether rules and regulations pursuant to which their emoluments and benefits were being guaranteed were instruments of a statutory nature or not. In other words, the august Supreme Court held that notwithstanding the employment status of transferred employees and whether or not they were civil servants their terms and conditions of service had been protected by the PTC Act and the Telecom Act and any breach of terms and conditions so guaranteed would tantamount to a breach of law amenable to the writ jurisdiction of the High Court. The entire debate in relation to the employment status of transferred employees has been in the context of maintainability of petitions and determination of the forum vested with jurisdiction to adjudicate the grievances of transferred employees. Whether or not transferred employees had the status of civil servants had to do with the forum that could adjudicate their grievances. And in none of the precedents cited at the bar has it been held that what is protected as part of terms and conditions of service under section 9 of the PTC Act and sections 35 & 36 of the Telecom Act is contingent on the employment status of the transferred employees. The august Supreme Court in Masood Ahmed Bhatti observed the following:

"11. We have already observed that between 1991 and 1996 when the Corporation was in existence, the rules of

employment applicable to the appellants were statutory rules having been given such status by virtue of section 9 of the PTC Act. What now needs to be seen is the effect of the Reorganization Act on the rules of employment applicable to the appellants and to determine if such rules underwent any change so as to relegate their status to that of non-statutory rules.”

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

employees were handed over to entities by legislative fiat created by the PTC Act and the Telecom Act. Having considered the possible interpretations, the august Supreme Court held in Masood Ahmed Bhatti read together with Muhammad Arif that the correct interpretation of relevant statutory provisions was the latter. Not that any ambiguity remained after the decision of the august Supreme Court in Masood Ahmed Bhatti and Muhammad Arif, but Muhammad Riaz once again reiterated that ratio and dicta in Masood Ahmed Bhatti and Muhammad Arif.

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

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

8. The learned counsel for PTCL, Mr. Shahid Anwar Bajwa, ASC, contended that petitions in relation to terms and conditions of PTCL employees who fall within Category-I were not maintainable as many of PTCL employees qualified as workmen as defined under the Industrial Relations Act, 2012, and consequently could not be considered civil servants who were to be afforded benefits guaranteed to civil servants under the Civil Servants Act, 1973, and further that their petitions were not

maintainable as they have an appropriate remedy before the National Industrial Relations Commission (NIRC), and that this aspect was not duly considered by this Court while rendering its judgment in **Khalid Mehmood**. On behalf of the petitioners, Mr. Abdul Rahim Bhatti, ASC, contended that even in the event that some of the Transferred Employees were deemed workmen, the petition of a workman seeking remedy against breach of a provision of the statute or statutory rules was maintainable before the High Court in its constitutional jurisdiction as a remedy was being sought against breach of law.

9. The lack of relevance of whether or not PTCL employees falling within Category-I qualified as civil servants was addressed in detail in **Khalid Mehmood** and forms part of the opinion has been reproduced above. This Court had found that the maintainability of the petitions of PTCL employees of Category-I as well as their entitlement to terms and conditions of service and pensionary benefits as afforded by the Federal Government to its own employees was not dependent on the status of such employees as civil servants. Instead, such entitlement was rooted in Section 36 of the Telecom Act 1996 read together with Section 9 of the PTC Act 1991, which guaranteed the terms and conditions of service of such employees as they existed at the time of promulgation of the two statutes, respectively. It is not denied that the terms and conditions of service and pensionary benefits that PTCL employees in Category-I were being afforded prior to promulgation of the Telecom Act 1996 were the same as the terms and conditions and pensionary benefits afforded by the Federal Government to its employees from time to time and

PTCL employees in Category-I continued to be afforded such benefits up until 2009 as also noted by the august Supreme Court in **Pakistan Telecommunication Employee Trust & others vs. Muhammad Arif and others (2015 SCMR 1472)**. Consequently, nothing would turn on whether or not PTCL employees in Category-I were regarded as civil servants while they were employees of T&T Department prior to the enactment of the PTC Act 1991. As regards the status of PTCL employees in Category-I as workmen while they were the employees of T&T Department, the same is also equally irrelevant for the reasons stated above in relation to their status as civil servants. It is also interesting to note that several employees of PTCL who considered themselves to be workmen had brought their grievances before the NIRC and the assumption or jurisdiction by the NIRC and the decision rendered by it was challenged by PTCL in **Pakistan Telecommunication Company Limited vs. Mohammad Dilpazeer Abbasi, etc. (2017 PLJ Islamabad 153)** wherein the contention of PTCL against assumption of jurisdiction by NIRC was accepted by this Court, which held that, *"in the present case the private respondents were not dismissed/retrenched, laid off as a result of industrial dispute rather, voluntarily opted to leave the petitioner company hence, are not worker/workman for the purposes of the [Industrial Relations] Act..."* The said judgment was upheld by the august Supreme Court. (We will revert to the decision in **Mohammad Dilpazeer Abbasi** later in this opinion, while considering the entitlement of PTCL employees falling within Category-III). Thus, whether or not PTCL employees were civil servants or workmen

does not disentitle them from seeking enforcement of their rights as guaranteed by Section 36 of the Telecom Act 1996, and any petition by an employee alleging breach of Section 36 of the Telecom Act by PTCL would be maintainable under Article 199 of the Constitution.

10. The learned counsel for the respondents has not furnished any arguments that would convince this Court to take a view contrary to the one taken in **Khalid Mehmood**, wherein it was held that petitions by employees in Category-I seeking enforcement of the terms and conditions of service and pensionary benefits guaranteed under Section 36 of the Telecom Act 1996 were maintainable and further that such employees were entitled to the same service and pensionary benefits as allowed from time to time by the Federal Government to its own employees in view of the law laid down by the august Supreme Court in **Masood Ahmed Bhatti and others vs. Federation of Pakistan through Secretary Ministry of Information Technology and Telecommunication and others (2012 SCMR 152) P.T.C.L. and others vs. Masood Ahmed Bhatti (2016 SCMR 1362) Muhammad Arif and Muhammad Riaz vs. Federation of Pakistan and others (2015 SCMR 1783)**.

Category-II.

11. The crux of the arguments of the learned counsel for the petitioners in relation to employees of PTCL that fall within Category-II was that their terms and conditions of service including pensionary benefits were protected under Section 36 of the Telecom Act 1996 and no distinction could be drawn between

the statutory protection afforded to PTCL employees falling within Category-II and PTCL employee falling within Category-I and consequently the ratio of the law laid down in **Masood Ahmed Bhatti, Muhammad Arif** and **Muhammad Riaz** is equally applicable to PTCL employees falling within Category-II and consequently their petitions for enforcement of the protection afforded to the terms and conditions of service and pensionary benefits under the Telecom Act 1996 were maintainable. And thus, they were also entitled to the same benefits as approved and announced from time to time by the Federal Government in relation to its own employees, as that is what they were receiving at the time the Telecom Act 1996 was promulgated and Section 36 of the Telecom Act 1996 entered into force. Mr. Abdul Rahim Bhatti, ASC, submitted that there was essentially only one category of PTCL employees before this Court, which was that of Transferred Employees. That according to the law laid down in **Masood Ahmed Bhatti**, 01.01.1996 was the cut-off date and anyone who was an employee of PTC and subsequently PTCL hired prior to such day was a Transferred Employee whose terms and conditions of service were afforded statutory protection under Section 36 of the Telecom Act 1996. He submitted that in view of the law laid down in **Hameed Akhtar Niazi vs. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185)** and **Tara Chand and others vs. Karachi Water and Sewerage Board, Karachi and others (2005 SCMR 499)** all present and past employees who fell within the definition of Transferred Employees were entitled to the rights declared in

Masood Ahmed Bhatti whether or not they were before the august Supreme Court. He further submitted that it was PTC that decided that terms and conditions of PTC employees would be regulated under the Efficiency and Disciplinary Rules framed under the Civil Servants Act, 1973, the same as erstwhile T&T employees. And that such decision and order was protected under Section 59 of the Telecom Act 1996, and consequently the terms and conditions of service applicable to PTC employees were granted statutory backing due to legislative intervention in view of Sections 35 and 36 read together with Sections 58 and 59 of the Telecom Act 1996.

12. The learned counsel for PTCL, Mr. Shahid Anwar Bajwa, ASC, and Mr. Habib Ahmed Bhatti, ASC, submitted that the judgments of the august Supreme Court were not applicable to PTCL employees falling within Category-II as they were not erstwhile employees of the T&T Department. He contended that unlike employees of the erstwhile T&T Department, the terms and conditions of PTC employees were not governed by statutory rules and consequently their petitions seeking enforcement of their terms and conditions of service were not maintainable. He further submitted that this Court in rendering its judgment in **Khalid Mehmood** had relied on prior judgment of this Court in **Rasool Khan** in view of the law laid down by the august Supreme Court in **Multiline Associates vs. Ardeshir Cowasjee & 02 others (PLD 1995 SC 423)** and in **Rasool Khan** the petitions of PTCL employees falling within Category-II had been dismissed for not being maintainable on the basis that terms and conditions of the employees who were employed in

PTC after the enactment of the PTC Act 1991 were not governed by statutory rules. Rana Muhammad Waqar, ASC, also appearing on behalf of PTCL, submitted that while T&T employees had been afforded protection under Sections 35 and 36 of the Telecom Act 1996 to be treated at par with government employees and the service and pensionary benefits afforded to them by the Federal Government, from time to time, the PTC employees were not entitled to the same treatment. He contended that T&T employees were treated as civil servants and thus afforded benefits that civil servants were entitled to. But as PTC employees were never deemed to be civil servants, they would not claim such entitlement. He also contended that the petitions were not maintainable on the basis that PTCL was not a "person" performing functions in relation to the Federation, even though he fairly conceded that the august Supreme Court had held otherwise and such ground may only be taken up before the august Supreme Court to reconsider application of the 'person-test' to PTCL for purposes of Article 199 of the Constitution.

13. Let us reproduce the relevant provisions of the Telecom Act 1996:-

Section 2(t) "telecommunication employees" means the employees of the Corporation who are transferred to the employment of the Company under this Act, other than those to whom sub-section (3) of section 36 applies, and all persons who, on the effective date for the Company, were employees of the Corporation, the former Telegraph and Telephone Department of the Federal Government and are receiving, or are entitled to receive, pensionary benefits from the Corporation;

Section 35. Vesting of the rights, property and liabilities of the Corporation.- (1) *The Federal Government may, by orders, direct that all or any property, rights and liabilities to which the Corporation was entitled or subject to immediately before such orders, and identified therein, shall, on such terms and conditions as the Federal Government may determine, vest in-*

(a) the Company;

(b) the National Telecommunication;

(c) the Authority;

(d) the Trust; or

(e) the Board through Federal Government, and become the property, rights and liabilities of the respective entity.

(2) An order issued under sub-section (1) shall specify the employees of the Corporation who shall, as from the effective date of the order, be transferred to and become employees of the entity referred to in the order:

Provided that such order shall not vary the terms and conditions of service of such employees to their disadvantage.

Section 36. Terms and conditions of service of employees.- (1) *No person transferred to the Company pursuant to sub-section (2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the Company:*

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including pensionary benefits of the Transferred Employees.

(2) Subject to sub-section (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate compensation.

(3) At any time within one year from the effective date of the order vesting property of the Corporation in the Company, the Federal Government may, with the prior

written agreement of a Transferred Employee, require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer.

(4) Subject to proviso to sub-section (1) of section 45 on transfer of a Transferred Employee under sub-section (3), the Federal Government shall assume responsibility for his pensionary benefits without recourse to the Pension Fund referred to in that section.

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

Section 46. Functions and powers of the Trust.- (1)

For carrying out the purposes of the Trust, the Board of Trustees shall-

(a) take over and assume the liability of the Pension Fund, including contributions of the Company to the Pension Fund;

(b) obtain payment from the Company of the amount determined by Actuary as representing the unfunded proportion of the accrued pension liabilities to be discharged by the Company;

(c) determine, at the commencement of each financial year, the amount to be contributed to the Pension Fund by the Company; and

(d) make provision for the payment of pensions to telecommunication employees to the extent of their entitlement.

(2) In performance of its functions, the Board of Trustees shall-

(a) have the exclusive right to determine the amounts, if any, payable in respect of pension benefits to the telecommunication employees;

(b) administer and operate the Pension Fund;

(c) specify and certify the requirements to be fulfilled for payments of the pensions to be made from the Pension Fund;

(d) appoint, promote, remove and exercise discipline and control over its employees;

(e) enter into contracts;

(f) acquire, lease, encumber, dispose of, exchange, invest or otherwise deal with any moveable or immovable property or any interest therein; and

(g) exercise all such powers as may be necessary or incidental to the performance of any of its functions or the exercise of any of its powers.

Section 59. Repeal and savings.- *(1) The Pakistan Telecommunication Corporation Act, 1991 (XVIII of 1991), the Pakistan Telecommunication (Re-organization) Ordinance, 1996 (LXXVII of 1996), and the Ministry of Communications, Government of Pakistan, Notifications numbering 5(4)/95 PTC, dated the 7th August, 1995 are hereby repealed.*

(2) Notwithstanding anything contained hereinbefore, all orders made, actions taken, vesting orders or Notifications issued, property, assets and liabilities of the Corporation vested or transferred and the employees of the Corporation transferred to the Pakistan Telecommunication Authority, Frequency Allocation Board, Pakistan Telecommunication Company Limited, National Telecommunication Corporation or Pakistan Telecommunication Employees Trust, under any of the powers conferred or vested under the Pakistan Telecommunication (Re-organization) Ordinance, 1995 (CXV of 1995), the Pakistan Telecommunication (Re-organization) Ordinance, 1996 (LXXVII of 1996) shall be deemed always to have been lawfully and validly made, taken, issued, vested or transferred under the provisions of this Act and shall continue to be in force unless amended, varied, withdrawn, rescinded or annulled by a person or authority competent to do so under this Act.

14. Let us also reproduce Section 9 of the PTC Act 1991.

Section 9. Transfer of department employees to the Corporation.- *(1) Notwithstanding anything contained in any law, contract or agreement, or in the conditions of service, all departmental employees shall, on the establishment of the Corporation, stand transferred to, and become employees of the Corporation, on the same terms and conditions to which they were entitled immediately before such transfer,*

provided that the Corporation shall be competent to take disciplinary action against any such employee.

(2) The terms and conditions of service of any such person as is referred to in sub-section (1) shall not be varied by the Corporation to his disadvantage.

(3) Notwithstanding anything contained in any law for the time being in force, no person who stands transferred to the Corporation by virtue of sub-section (1) shall be entitled to any compensation because of such transfer.

15. There are two things to note in relation to Section 9 of the PTC Act 1991 and Section 36 of the Telecom Act 1996. The first is that neither of these provisions incorporates by reference the terms and conditions and employment and pensionary benefits afforded to civil servants under the Rules and Regulations framed under the Civil Servants Act, 1973. Section 9 of the PTC Act 1991 as well as Section 36 of the Telecom Act 1996 merely guaranteed the terms and conditions (i.e. service and pensionary benefits) as being afforded to employees being transferred at the time of promulgation of such statutes. Neither the PTC Act 1991 nor the Telecom Act 1996 index the employment and pensionary benefits of Transferred Employees with those being afforded to civil servants nor do they adopt either for purposes of erstwhile T&T employees or for purposes of erstwhile PTC employees the terms and conditions afforded by the Federal Government to civil servants under the Civil Servants Act, 1973, as amended from time to time. What the PTC Act 1991 and the Telecom Act 1996 did was simply guarantee through legislative intervention whatever terms and conditions of service, including employment and pensionary

benefits, that were promised and being afforded to the Transferred Employees prior to their transfer to PTC under the PTC Act 1991 and then to PTCL under the Telecom Act 1996. What terms and conditions applied to such employees and what employment and pensionary benefits they were entitled to at the relevant time is a simple matter of fact. This question of fact is not disputed. It is an admitted position that T&T employees were being afforded the same employment and pensionary benefits prior to their transfer to PTC as were being afforded to civil servants under the terms and conditions of service prescribed under the Civil Servants Act, 1973. Likewise, it is an admitted fact that the second PTC Board Meeting adopted all the rules and procedures of the erstwhile T&T Department till such time that new rules were framed under the PTC Act 1991 and such decision was notified by PTC on 06.02.1992. It is also admitted that PTC up until the promulgation of the Telecom Act 1996 did not prescribe any rules to regulate the terms and conditions of service of PTC employees and consequently, the PTC employees employed after the promulgation of the PTC Act 1991 were also afforded the same terms and conditions of service including employment and pensionary benefits as being afforded to T&T employees prior to promulgation of the PTC Act 1991. It has already been emphasized above that the law laid down by the august Supreme Court in **Masood Ahmed Bhatti, Muhammad Arif** and **Muhammad Riaz** in relation to the employment and pensionary benefits of erstwhile T&T employee (i.e. Category-I defined above) was not dependent on the status of such employees as civil servants. Their entitlement was rooted in the

language used by the legislature in Section 9 of the PTC Act 1991 and Section 36 of the Telecom Act 1996.

16. In Section 9 of the PTC Act 1991 it was stated that T&T employees were being transferred to PTC *"on the same terms and conditions to which they were entitled immediately before such transfer"*. Likewise, the language used in the proviso of Section 36(1) states that, *"Federal Government shall guarantee the existing terms and conditions of service and rights including pensionary benefits of the Transferred Employees"*. What is abundantly clear from the language reproduced above is that the legislature did not incorporate any provision of any statutory rules framed by the Federal Government for purposes of civil servants. The legislature created a statutory obligation for the Federal Government to guarantee that the Transferred Employees would continue to be afforded employment and pensionary benefits that they were entitled to at the time of such transfer. The right to continue to be afforded whatever employment and pensionary benefits they were being afforded at the time of transfer is the statutory right created by the Telecom Act 1996 under Section 36 and the terms and conditions of service afforded to them by PTC was given statutory protection under Section 59 of the Telecom Act 1996. That at the relevant time they had been granted the same employment and pensionary rights as being afforded to civil servants is largely relevant for purposes of determination of the scope and quantum of entitlement. The right of the petitioners whether they fall in Category-I or in Category-II therefore emanates not from any statutory rules framed under the Civil Servant Act, 1973, but

from Section 36 read together with Section 59 of the Telecom Act 1996. What is sought to be enforced by the petitioners whether in Category-I and Category-II is not any entitlement by any prescribed statutory rules, but the entitlement prescribed by the statute itself, which is why the status of any rules that might regulate their entitlement while they were employees of T&T or employees of PTC as the case may be, is wholly irrelevant for purposes of maintainability of these petitions. The only question before this Court is what is it that Section 36 of the Telecom Act 1996 read together with Section 46 and 59 of the Telecom Act 1996 guarantees to Transferred Employees and whether or not such entitlement is being afforded by PTCL in accordance with the statutory obligation created under Section 36 of the Telecom Act 1996.

17. The second thing that emerges from reading of Section 9 of the PTC Act 1991 and Section 36 of the Telecom Act 1996 is that there is no material difference in the protection afforded by the legislature under both enactments. Both enactments protected whatever employment and pensionary benefits the employees in question were entitled to immediately prior to the time of their transfer, whether under the PTC Act 1991 or the Telecom Act 1996. As the entitlement in both cases flows from statutory provisions themselves and what is protected is merely a question of fact, which in both cases (i.e. in relation to T&T employees and also PTC employees) is not a disputed question of fact, no distinction can be drawn between T&T employees (Category-I) and PTC employees (Category-II) to the extent of the protection afforded to them under Section 36 of the Telecom

Act 1996. The reason for this is obvious. But let us restate it once again. It is admitted that T&T employees prior to and after their transfer to PTC under the PTC Act 1991, and PTC employees inducted after creation of PTC were being afforded the same employment and pensionary benefits in view of the decision of PTC Board in its second meeting announced through notification dated 06.02.1992. And the decisions and orders of PTC have been given statutory protection by Section 59 of the Telecom Act 1996. Consequently, no distinction can be drawn between what has been guaranteed to PTC employees and what has been guaranteed to T&T employees by the legislature to the extent that both these Categories fall within the definition of Transferred Employees whose employment and pensionary benefits have been guaranteed on a continuing basis under Section 36 of the Telecom Act 1996. And what has been guaranteed is whatever employment and pensionary benefits they were entitled to at the time of transfer to PTCL, which has been interpreted by the august Supreme Court to mean whatever employment and pensionary benefits federal government notifies for its employees under the Civil Servants Act, 1973, from time to time.

18. The aforesaid understanding of the Telecom Act 1996 is also borne out by the dicta of the august Supreme Court. In **Masood Ahmed Bhatti** the apex Court drew no distinction between T&T employees and PTC employees as sub-categories of Transferred Employees with distinguishable rights, when it held the following:-

14. We may now consider the effect of this transfer of the appellants to PTCL along with the assets and liabilities of the Corporation and the implications of such transfer on the nature of the rules of employment applicable to the appellants from the date (i.e. 1-1-1996) they became employees of PTCL. The proviso to section 35(2) of the Reorganization Act provides a clear answer to this controversy. It specifies that even after the transfer of the appellants to PTCL their terms and conditions of service which existed on 1-1-1996, would be the base and bare minimum in matters of their employment with PTCL...

17...Their terms and conditions of service cannot be altered adversely by PTCL "except in accordance with the laws of Pakistan or with the consent of the transferred employees and the award of appropriate compensation". When this legal provision is read together with section 35, it becomes abundantly clear that by operation of the Reorganization Act, the terms and conditions of service of the appellants as on 1-1-1996 stood conferred on them as vested rights under the said law.

In **P.T.C.L. vs. Masood Ahmed Bhatti** the august Supreme Court declared that PTCL was a person performing functions in relation to affairs of the Federation and while addressing the challenge to maintainability raised by the PTCL's counsel, drew no distinction between erstwhile T&T employees and erstwhile PTC employees:-

"7. The argument of Mr. Khalid Anwar, learned Sr. ASC for the petitioners that where a three-Member Bench of this Court in the case of Pakistan Telecommunication Company Ltd. v. Iqbal Nasir and others (supra) held that the employees of PTCL being governed by the principle of master and servant could not invoke jurisdiction of the High Court under Article 199 of the Constitution, another Bench with equal number of Judges could not deviate therefrom, is based on misconception when the employees in the aforesaid case, were not those whose terms and conditions of service on their transfer to the Corporation and the Company were protected and guaranteed under section 9 of the Act of 1991 and sections 35(2) and 36(1) and (2) of the Act of 1996, but those who were employed on contract or on work-charge basis..."

19. Let us also consider the history of evolution of the Telecom landscape from the T&T Department to PTCL. The legislative intent, which can be deciphered from provisions of the PTC Act 1991 and the Telecom Act 1996, is unmistakable to the extent of the protection that the statutes sought to afford to employees being transferred from one entity to another in this evolutionary process. The legislative intent as interpreted by the august Supreme Court in **Masood Ahmed Bhatti** was to not create a disincentive for government employees to resist their transfer initially from T&T Department to PTC and subsequently from PTC to PTCL. Section 9 and Section 36 of the PTC Act 1991 and Telecom Act 1996, respectively, were meant to assure the employees that notwithstanding their transfer they would continue to be treated at par with Government Employees as if the organizational evolution has never taken place.

20. The object of promulgation of the Telecom Act 1996 was to create a statutory framework for introduction of private entities within the telecom sector. The creation of PTCL as a limited liability company was motivated by the object of creating a mechanism to transfer the ownership of a wholly-owned national telecom enterprise into a private entity, in part at least. This is why the proviso of Section 36(1) of the Telecom Act 1996 created an obligation for the Federal Government to guarantee the existing terms and conditions of service and benefits, including the future right of the Transferred Employees to pensionary benefits. Similarly, under Section 36(5) of the Telecom Act 1996, an obligation was created for the Federal Government to require PTCL *"to assume the responsibility of*

pensionary benefits of the telecommunication employees” and it was mandated that *“the company shall not alter such pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation”*. Likewise, under proviso of Section 35(2) of the Telecom Act 1996, the Federal Government was prohibited from altering the terms and conditions of service of the employees being transferred to one of the five entities being created under Section 35(1) of the Telecom Act 1996. It is obvious from provisions of the statute that privatization of PTCL was envisaged as an object of the Telecom Act 1996 and the legislature was prescribing conditions for the Federal Government in compliance with which it would engage in the privatization of PTCL, which at the time of promulgation of the Telecom Act 1996, was wholly-owned by the Federal Government.

21. There was no ambiguity in the Federal Government’s understanding of the obligation created by the Telecom Act 1996, which is why the share-purchase agreement between the Federal Government and Etisalat International Pakistan LLC included a representation on behalf of the purchaser which acknowledged in clause 15.2 of such agreement that *“the rights and benefits and terms and conditions of service guaranteed to Transferred Employees under Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996 will not be prejudiced or affected by this agreement”*. Thus, at the time when the present management of PTCL acquired a stake in PTCL, it was aware of the statutory obligation created under Section 36 of the Telecom Act 1996 and the fact that the current

management continued to afford the Transferred Employees the same employment and pensionary benefits as announced by the Federal Government for its employees from time to time, supports view that there was no ambiguity in terms of the obligation created by Section 36 of the Telecom Act 1996 for PTCL either.

22. On the question of maintainability, it has already been clarified above that the right that is sought to be enforced by the petitioners falling within Category-I and Category-II of PTCL employees is the right guaranteed by Section 35(2) and Section 36 of the Telecom Act 1996 itself. Section 46(2)(a) of the Telecom Act 1996 obliges the Board of Trustees of the Pakistan Telecommunication Employees Trust (PTET) to determine the amounts payable in respect of pensionary benefits to the telecommunication employees. While the determination of the quantum of benefits payable falls within the domain of the Board of Trustee of PTET, the Board can only exercise such powers in accordance with the provisions of the Telecom Act 1996, including Section 36 thereof. Consequently, to the extent that PTCL denies PTCL employees the rights guaranteed under Section 36 of the Telecom Act 1996 or PTET determines the amount of benefits in exercise of its powers under Section 46(2)(a) of the Telecom Act 1996, which is not in accordance with the entitlement guaranteed to PTCL employees under Section 36 of the Telecom Act 1996, such action whether of PTCL or of PTET would be in breach of law and therefore amenable to the jurisdiction of a High Court under Article 199(1)(a)(i) of the Constitution.

23. Before delving further into the debate about maintainability, let us also reiterate that under Section 59(2) of the Telecom Act 1996 all orders made, actions taken, vesting orders or notifications, issued by PTC have been protected and are deemed to be orders, actions and notifications made and issued under provisions of the Telecom Act 1996. In other words, the decisions of the second PTC Board Meeting notified on 06.02.1992, pursuant to which PTC adopted the rules of T&T Department and pursuant to which service and pensionary benefits were afforded to PTC employees, is an action and decision that has been provided statutory protection under Section 59(2) of the Telecom Act 1996.

24. In the context of maintainability of a grievance in relation to terms and conditions of service, the idea that such terms and conditions must be regulated by statutory rules is sometimes misunderstood. The requirement of terms and conditions of service being guaranteed by statutory rules is not a mandatory requirement for maintainability of employment and service-related grievance under Article 199 of the Constitution in all cases. The test of maintainability prescribed under Article 199(1)(a)(i) of the Constitution is that the aggrieved party ought to be seeking a direction against a person performing functions in connection with the affairs of the Federation *"to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do"*. Further, Article 212 of the Constitution provides that *"matters relating to the terms and conditions of persons [who are or have been] in the service of Pakistan, including disciplinary matters"* fall within the exclusive

domain of the Federal Service Tribunal (FST). It is in the context of the requirement to act in accordance with law and not to act in breach of law that the term 'statutory rules' has been used in our service law jurisprudence as a proxy for the concept of 'acting in accordance with law' under Article 199(1)(a)(i) of the Constitution. The concept simply is that if a person acting in connection with the affairs of the Federation acts in breach of the law (i.e. statutory provisions) or statutory rules (i.e. rules prescribed under a statute by a competent authority who has been delegated such authority by the statute to prescribe such rules) and a person is aggrieved by such action, he/she can seek the adjudication of his/her grievance emanating from the action taken in breach of statutory provisions, or statutory rules that qualify as law, before a High Court in its Constitutional jurisdiction. In the event that the rules, regulations and guidelines regulating the terms and conditions of service of an employee do not have statutory backing giving them the status of law, any claim on the basis of such employment rules, regulations and guidelines or their breach would not be a claim for enforcement of law and consequently, any action in breach of such rules, regulations and guidelines would not be amenable to the jurisdiction of a High Court under Article 199(1)(a)(i) of the Constitution. Thus, where an individual is aggrieved by an action of a person performing functions in connection with the affairs of the Federation for such action being in breach of provision of the statute that itself protects any service or pensionary right of such individual, the alleged breach would constitute a breach of law and the grievance would be justiciable by the High Court in

its Constitutional jurisdiction (subject to satisfaction of other requirements prescribed under Article 199 of the Constitution). Such individual seeks the enforcement of provision of a statute itself, which has the status of law, and not any rights and entitlements under rules and regulations that do not have the status of law and consequently the petition would be maintainable.

25. Let us go back to the law laid down by the august Supreme Court in **The Principal, Cadet College, Kohat & another vs. Muhammad Shoab Qureshi (PLD 1984 SC 170)**. An employee was seeking enforcement of entitlements under rules which the august Supreme Court found not to have statutory backing, and consequently it was held that any entitlement under such rules which did not have the force of law could not be enforced in writ jurisdiction. The ratio in **Muhammad Mubeen-us-Salam and others vs. Federation of Pakistan through Secretary, Ministry of Defence (PLD 2006 SC 602)** and **Muhammad Idrees vs. Agricultural Development Bank of Pakistan (PLD 2007 SC 681)** was that Section 2-A of the Federal Service Tribunal Act, 1973, was ultra vires the Constitution and consequently on the basis of such provisions, petitions could not be filed before the Federal Service Tribunal. In these cases the power of the High Court under Article 199 of the Constitution was not in question. The only consequence of **Muhammad Mubeen-us-Salam** was that the bar that previously might have applied under the Article 212 of the Constitution read together with Section 2-A of the Federal Service Tribunal Act 1973, was no longer applicable. None of the

cases since in **Muhammad Mubeen-us-Salam**, including **Pakistan International Airline Corporation vs. Tanweer-ur-Rehman (PLD 2010 SC 676)**, **Executive Council, Allam Iqbal Open University, Islamabad vs. M. Tufail Hashmi (2010 SCMR 1484)** and **Pakistan Telecommunication Company Limited through Chairman vs. Iqbal Nasir and others (PLD 2011 SC 132)**, have held that actions of statutory authorities that have no statutory rules will not be amenable to the jurisdiction under Article 199 of the Constitution, even if they are in breach of a provision of the law or the Constitution. An employment relationship is ordinarily deemed to be regulated by the Master-Servant Rule, if law places no fetters on the conduct of the master/employer in terms of how he regulates the terms and conditions of service of his servant/employee. This is why, where there are no statutory rules having the status of law that regulate the terms and conditions of employment or place fetters on how the employer is to regulate such terms and conditions, it is deemed that the relationship is governed by the Master-Servant Rule and any action of such employer that aggrieves the employee does not amount to an action in breach of law. And consequently, such grievance is not amenable to the constitutional jurisdiction of a High Court and the remedy lies before a civil court for breach of contract.

26. However, where the grievance of an employee emanates from an action of the employer which is in breach of a provision of law (i.e. the statute itself) that guarantees a right or entitlement of an employee, such grievance cannot be dismissed for being not maintainable on the basis that employment rules

otherwise applicable to such employee are not statutory rules. The Master-Servant Rule would not come into play in such case as the right or entitlement sought to be enforced is not a right or entitlement emanating from or being claimed under any rules of a non-statutory nature, but a right or entitlement guaranteed by the statute itself. And thus, any action denying such right or entitlement would therefore constitute an action in breach of law, which would be justiciable by a High Court in its constitutional jurisdiction.

27. In **Mrs. Anisa Rehman vs. P.I.A.C. and another (1994 SCMR 2232)** the question before the august Supreme Court was whether a grievance of employees, who were not afforded their right to natural justice, even though their terms and conditions of service were not regulated by statutory rules, was amenable to the constitutional jurisdiction of the High Court. It was held that, *"the violation can be equated with the violation of a provision of law warranting pressing into service constitutional jurisdiction under Article 199 of the Constitution which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No.1 Corporation and its relationship with its employees is that of Master and Servant will not negate the application of the maxim audi alteram partem."*

28. It was held by the august Supreme Court in **Civil Aviation Authority through Director General vs. Javed Ahmad and another (2009 SCMR 956)**, in relation to the right of an employee to agitate a grievance related to action of the employer in breach of a provision of the statute that, *"the*

learned High Court was fully empowered to consider whether the actions complained of is in accordance with the Removal from Service (Special Powers) Ordinance, 2000. Therefore, the violation of law falls within the parameters of the constitutional jurisdiction and the petition was properly entertainable regarding punishment of compulsory retirement to Javed Ahmed."

29. It was held by the august Supreme Court in **Pakistan Defence Officers' Housing Authority and others vs. Lit. Col. Jawaid Ahmed (2013 SCMR 1707)**, while holding a series of decisions to not constitute binding precedents on the basis, *inter alia*, that, "in all the above cases, the point that irrespective of the Rules/Regulations being non-statutory the promulgation of Ordinance 2000 was a statutory intervention and any violation thereof would be amenable to writ jurisdiction was not considered." It was further held that, "it was not disputed before this Court by appellants' learned counsel that the respondent-employees were "persons in corporation service" within the meaning of section 2(c) of the Ordinance 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a 'statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, [(in Mubeen us Salam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681)]. They could in these circumstances invoke

constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above.”

30. In a nutshell, where a grievance relates to terms and conditions of service of a government employee that falls within the exclusive domain of the FST, the grievance cannot be adjudicated by the High Court in view of Article 212 of the Constitution. Where the terms and conditions are non-statutory and an employee is aggrieved by the actions of an employer for being in breach of rights emanating from an instrument that does not have the status of law, including the rules or regulations of persons acting in connection with affairs of the Federation that are for internal use of such person and do not have the backing of a statute or the status of law, the rule of Master-Servant applies and such grievance is not amenable to writ jurisdiction. But where the grievance of an employee is that the actions of an employer are in breach of law, including, *inter alia*, the breach of a provision of a statute that binds such employer, whether or not the overall framework of employment relationship is regulated by statutory rules or not is irrelevant. As the grievance emanates from breach of a provision of the statute, the action is tantamount to breach of law, and such grievance qualifies for adjudication before a High Court in its

constitutional jurisdiction, subject of course to satisfaction of other requirements prescribed by Article 199 of the Constitution.

31. For the aforesaid reasons and guided by the law laid down by the august Supreme Court in **Masood Ahmed Bhatti**, which is binding on this Court in terms of Article 189 of the Constitution, this Court finds that the petitions filed by PTCL employees falling within Category-II as described above are **maintainable** and the such employees are entitled to the employment and pensionary benefits that they were entitled to immediately prior to their transfer to PTCL in terms of Section 36 of the Telecom Act 1996. The august Supreme Court has already held in **Masood Ahmed Bhatti**, **Muhammad Arif** and **Muhammad Riaz** that Transferred Employees are entitled to the benefits announced by the Federal Government for its own employees from time to time. PTC employees in Category-II are entitled to the same benefits as being promised and afforded to them and the T&T employees at the time of promulgation of the Telecom Act, 1996 i.e. employment and pensionary benefits as declared by the Federal Government for its own employees under the Civil Servants Act, 1973, from time to time.

Category-III.

32. The learned counsel for the petitioners stated that pensionary rights of PTCL employees falling within Category-III (i.e. employees who had availed the VSS offered by PTCL) were also protected under Section 36 of the Telecom Act 1996. The crux of their arguments was that the terms and conditions of service and pensionary rights are separately referred to under

Section 36(2) and Section 36(5) of the Telecom Act 1996 and consequently, in view of the independent treatment of such rights, pensionary benefits could not be treated as a part of the terms and conditions of service of Transferred Employees. And that while VSS determined the terms and conditions of service of Transferred Employees, their pensionary benefits still survived and they are liable to be paid the same pensionary benefits that were being afforded to government servants by the Federal Government.

33. The learned counsel for the petitioners submitted under Rule 2(j) of the Pakistan Telecommunication Employee Trust Fund Pension Rules, 2012, PTCL employees who had availed VSS were not excluded from the definition of 'beneficiary' and while determining the amount of pensionary benefits, the Board of Directors of PTET was obliged to afford PTCL employees in Category-III the same pensionary benefits that are to be afforded to PTCL employees in Category-I and Category-II. The contention was that the statutory and legal analysis that applies in relation to the pensionary benefits of Transferred Employees under Section 36 of the Telecom Act 1996 would apply equally to those Transferred Employees who had availed the VSS.

34. The learned counsel for PTCL, Mr. Shahid Anwar Bajwa, ASC, contended on the other hand that VSS was a Voluntary Scheme afforded to PTCL employees and availed by those employees who sought to benefit from it. He submitted that those employees who had availed the benefits afforded through VSS could not claim any additional benefits under the statute as

Section 36(5) itself provided that PTCL could alter pensionary benefits with the consent of the individual concerned and award of appropriate compensation. And that both these conditions stood satisfied in case of the beneficiaries of VSS who consented to and voluntarily availed VSS and was consequently awarded appropriate compensation according to the terms of VSS. He further submitted that the question of entitlement under VSS had been settled by the august Supreme Court as well as this Court and it had been held that the petitions of PTCL employees who had availed VSS were not maintainable.

35. The case of PTCL employees falling within Category-III, who availed themselves of VSS, is clearly distinguishable from that of PTCL employees in Category-I and Category-II. This Court agrees with PTCL's reading of Section 36(2) and Section 36(5) of the Telecom Act 1996. Both Sections 36(2) and 36(5) of the Telecom Act 1996 provide a statutory mechanism for affecting a change in the terms and conditions of Transferred Employees and the attendant pensionary benefits to be afforded to them, to the extent that such change is: (i) with the consent of the employee concerned, and (ii) subject to award appropriate compensation. VSS was a voluntary scheme and PTCL employees were under no obligation to accept it. Those who availed and accepted VSS also accepted the benefits that accrued pursuant to such scheme in terms of benefits afforded by PTCL including, *inter alia*, severance pay, separation bonus, enhanced retirement payment etc., and consequently opted to be bound by the terms and conditions of the VSS. Once they accepted the VSS, the terms and conditions of their service,

including pensionary benefits, were no longer subject to the restraint applied by Section 36 of the Telecom Act 1996. While it is well established that one cannot contract out of a statute, in the instant case the statute itself provided for an opting-out mechanism. VSS satisfied the two-point test for opting-out prescribed under Section 36(2) and Section 36(5) of the Telecom Act 1996. And once an employee opted out of the protection to the continuity of terms and conditions of service and pensionary benefits, afforded by Section 36 of the Telecom Act 1996 by accepting VSS, such employee could no longer claim the benefits of continuity of terms and conditions of service and pensionary benefits after availing himself of the benefits under VSS.

36. It is received wisdom that you cannot have your cake and eat it too. Section 36 of the Telecom Act 1996 does not envisage double-dipping by beneficiaries of VSS by garnering benefits under VSS while also claiming benefits of continuing guarantee of existing terms and conditions of service promised to Transferred Employees. The argument of the learned counsel for the petitioners that the terms and conditions of service and pensionary benefits are separately mentioned under Sections 36(2) and 36(5) of the Telecom Act 1996 and are thus to be considered independent benefits is misconceived. Section 36(2) of the Telecom Act 1996 deals generally with terms and conditions of service which include pensionary benefits as well. However, as the Telecom Act 1996 created PTET as a separate statutory entity and provisions of the Telecom Act 1996 created an obligation for PTCL to contribute to the pension fund being administered by PTET, Section 36(5) of the Telecom Act 1996

therefore separately provides that pensionary benefits cannot also be altered except with the consent of the individual concerned and subject to award of appropriate compensation. This separate provision makes sense in case a scheme is to be initiated to only alter the pensionary benefits of Transferred Employees. Section 36(5) of the Telecom Act 1996 provides a mechanism for such purpose in relation to already retired employees. VSS however altered both terms and conditions of service and pensionary benefits, and thus the separate treatment of pensionary benefits by Section 36(5) of the Telecom Act 1996, is of no benefit to Category-III Transferred Employees. This test in Section 36(5) of the Telecom Act 1996 is no different from that in Section 36(2) of the Telecom Act 1996. And it is otherwise settled law that pensionary benefits are one genre of employment benefits.

37. Let us also consider how the entitlement of VSS beneficiaries has been treated by the courts. It was held by the august Supreme Court in **Pakistan Telecommunication Company Limited vs. Iqbal Nasir (PLD 2011 SC 132)** that, *"as to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions."* It is clarified by the august Supreme Court in **Muhammad Arif** that, *"the question of entitlement of VSS employees had not been considered or decided by it"*. The question of entitlement of compensation sought by employees of

the State Bank of Pakistan who had availed themselves of VSS came before the august Supreme Court in **State Bank of Pakistan through Governor and another vs. Imtiaz Ali Khan and others (2012 PLC (C.S.) 218)** and the following was held:-

"28. Since the respondent-employees have not retired from service of the appellant-Bank by application of the Regulations, 1980 nor under the Staff Regulations, 1993 but they have left the service of the appellant-Bank at their own by exercising their own right of option by accepting the Scheme, therefore, their cases are squarely governed and controlled under the terms and conditions as was clearly spelt out in the Scheme itself."

38. The question of entitlement of employees who had availed VSS came before this Court in **Mohammad Dilpazeer Abbasi** wherein the following was held while relying on the law laid down by the august Supreme Court in **Muhammad Arif and National Bank of Pakistan through Chairman vs. Naseem Arif Abbasi (2011 SCMR 446):-**

"...the respondents were given option to sever their ties from the petitioner company by way of Voluntary Separation Scheme. The terms and conditions of the Scheme were circulated amongst the employees/private respondents in English as well as Urdu and reservations/errors were invited; it is only after the referred fact that respondents executed Voluntary Separation Scheme. The bare reading of the terms and conditions of the Scheme shows that it is opted by the employees voluntarily without any coercion or duress and the terms/clauses mentioned therein are accepted. At the end of the Scheme there is also an acknowledgment and waiver to the effect that the employee acknowledges and accepts the terms and conditions and waives the right to challenge the same."

39. This Court had concluded that the employees who availed the VSS were estopped from challenging or questioning the terms of such scheme. It was held by this Court in Writ Petition No.3991 of 2014 **Muhammad Ashraf, etc. vs. Federation of Pakistan, etc.** that, "*the petitions filed by beneficiaries of VSS were not maintainable*". The matter was again adjudicated by this Court in Writ Petition No.403 of 2017 **Muhammad Saleem vs. Federation of Pakistan and another** wherein, the following was held:-

"Since the petitioner voluntarily opted for the V.S.S. and consciously opted for commutation factor to be 35% and pension factor to be 65 % with continuing medical facility, thus, he voluntarily accepted his pensionary entitlement to be in accordance with the said option. In the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), it was held inter-alia that no relief could be granted by the High Court to the employees seeking the benefit of V.S.S. due to the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the V.S.S. was not offered under any statutory provisions."

40. The question in before the august Supreme Court and was adjudicated and decided in Civil Appeal No.2506 of 2016 **Mst. Tasneem Fatima and others vs. Pakistan Telecommunication Company Limited and others** wherein judgment dated 18.03.2019, the following was held:-

"In our opinion the appellants did not have a grievance as they had voluntarily served their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employees who had less than twenty years of service could receive. The case of P.T.C.L. v Masood Ahmed Bhatti, which has been relied

upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to an employee, may be set aside. However, in the present case the Company did not take any action prejudicial to the appellants. On the contrary the appellants had voluntarily availed of the VSS, received payments there under, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.”

41. And most recently it was held by this Court in **Rasool Khan** that the petitions to the extent of petitioners who had availed the benefits of VSS were not maintainable.

42. PTC employees in Category-III who availed the VSS opted-out of the protection afforded to the terms and conditions of service, including pensionary benefits, guaranteed by Section 36 of the Telecom Act 1996, in accordance with the opt-out mechanism prescribed by the statute. Once having voluntarily foregone the protection of the statute in lieu of being awarded compensation by PTCL in terms of the VSS, they cannot claim being subjected to any breach of law by PTCL.

43. For the aforesaid reasons, it is declared that the petitions of PTCL employees falling within Category-III (i.e. who had availed themselves of the VSS) are **not maintainable**. The Transferred Employees who have voluntarily opted-out of the protection afforded under Section 36 of the Telecom Act 1996 and their terms and conditions of service and their pensionary benefits are governed under the terms of the VSS, which terms are of a contractual nature. And any claim under such

arrangement between PTCL and the petitioners falling in Category-III does not amount to a grievance in relation to an action that PTCL is in breach of law, and consequently, such petitions are not maintainable. The petitions filed by Transferred Employees who have availed VSS are therefore **dismissed**.

44. For the reasons stated above, the petitions of petitioners falling within Category-I and Category-II, who are Transferred Employees, whether being erstwhile T&T employees or erstwhile PTC employees, are **allowed** and they are declared to be entitled to the terms and conditions of service and pensionary benefits being afforded by the Federal Government to its employees under the Civil Servants Act, 1973, as notified from time to time. PTET in terms of Section 46 of the Telecom Act 1996 is under an obligation to calculate and afford them employment and pensionary benefits accordingly.

45. The petitions that include petitioners falling within Category-I and Category-II are **allowed** to the extent of claims of petitioners falling in Category-I and Category-II and **dismissed** to the extent of claims of petitioners falling in Category-III who have availed the VSS.

(BABAR SATTAR)
JUDGE

Approved for reporting

CATEGORY-I & CATEGORY-II

Sr. No.	Case No.	Case Title
1.	W.P. No.3769/2020	Muhammad Roshan vs. Federation of Pakistan, etc.
2.	W.P. No.3770/2020	Naseem Abbas vs. Federation of Pakistan, etc.
3.	W.P. No.3771/2020	Ghulam Abbas vs. Federation of Pakistan, etc.
4.	W.P. No.3772/2020	Niaz Hussain Chandio vs. Federation of Pakistan, etc.
5.	W.P. No.3773/2020	Muhammad Idrees vs. Federation of Pakistan, etc.
6.	W.P. No.3774/2020	Akhter Hussain Saqi vs. Federation of Pakistan, etc.
7.	W.P. No.3775/2020	Ashiq Hussain vs. Federation of Pakistan, etc.
8.	W.P. No.3776/2020	Shoukat Ali vs. Federation of Pakistan, etc.
9.	W.P. No.847/2021	Agha Najeeb Ullah Khan, etc. vs. Federation of Pakistan, etc.
10.	W.P. No.848/2021	Muhammad Rafique vs. Federation of Pakistan, etc.
11.	W.P. No.849/2021	Muhammad Kaleem Uddin vs. Federation of Pakistan, etc.
12.	W.P. No.850/2021	Umar Amir Ul Haq vs. Federation of Pakistan, etc.
13.	W.P. No.851/2021	Kanwar Mohsin Ali Khan vs. Federation of Pakistan, etc.
14.	W.P. No.1562/2021	Muhammad Ghous vs. Federation of Pakistan, etc.
15.	W.P. No.1673/2021	Iftikhar Mehmood Vaseer vs. Federation of Pakistan, etc.
16.	W.P. No.1674/2021	Muhammad Naseer Ahmed Abid vs. Federation of Pakistan, etc.
17.	W.P. No.1675/2021	Ijaz Sadiq vs. Federation of

		Pakistan, etc.
18.	W.P. No.1676/2021	Muhammad Munawar vs. Federation of Pakistan, etc.
19.	W.P. No.1678/2021	Allah Rakha vs. Federation of Pakistan, etc.
20.	W.P. No.1679/2021	Arshad Ali vs. Federation of Pakistan, etc.
21.	W.P. No.1680/2021	Muhammad Idrees vs. Federation of Pakistan, etc.
22.	W.P. No.1681/2021	Intizar Ahmed vs. Federation of Pakistan, etc.
23.	W.P. No. 1682/2021	Muhammad Zahid Sheikh vs. Federation of Pakistan, etc.
24.	W.P. No. 1683/2021	Muhammad Tufail Tariq vs. Federation of Pakistan, etc.
25.	W.P. No.1684/2021	Safdar Hussain vs. Federation of Pakistan, etc.
26.	W.P. No.2264/2021	Sheikh Faisal Mehmood vs. Federation of Pakistan, etc.
27.	W.P. No.2265/2021	Muhammad Akram vs. Federation of Pakistan, etc.
28.	W.P. No.2266/2021	Muhammad Tariq Qamar vs. Federation of Pakistan, etc.
29.	W.P. No.2267/2021	Zafar Shafiq vs. Federation of Pakistan, etc.
30.	W.P. No.3252/2021	Hadi Hassan Shah, etc. vs. Federation of Pakistan, etc.
31.	W.P. No.3253/2021	Kashif Hafeez vs. Federation of Pakistan, etc.
32.	W.P. No.3255/2021	Ashfaq Ahmed Ramay vs. Federation of Pakistan, etc.
33.	W.P. No.3256/2021	Syed Ashfaq Hussain vs. Federation of Pakistan, etc.
34.	W.P. No.3280/2021	Amjad Majeed, etc. vs. Federation of Pakistan, etc.
35.	W.P. No.3281/2021	Ghulam Shabbir Khosa vs. Federation of Pakistan, etc.

36.	W.P. No.3304/2021	Hafiz Wajid Ejaz & others vs. Federation of Pakistan, etc.
37.	W.P. No.3321/2021	Muhammad Ajmal Khan vs. Federation of Pakistan, etc.
38.	W.P. No.3326/2021	Farrukh Hassan vs. Federation of Pakistan, etc.
39.	W.P. No.3327/2021	Shafiq Hussain Khokhar vs. Federation of Pakistan, etc.
40.	W.P. No.3379/2021	Muhammad Azhar Latif vs. Federation of Pakistan, etc.
41.	W.P. No.1560/2021	Muhammad Jamil Sheikh & others vs. Federation of Pakistan, etc.
42.	W.P. No.1563/2021	Muhammad Mushtaq Shahzad vs. Federation of Pakistan, etc.
43.	W.P. No.2745/2021	Zafar Hayat Chaudhry, etc. vs. Federation of Pakistan, etc.
44.	W.P. No.3279/2021	Aziz Ahmed vs. Federation of Pakistan, etc.
45.	W.P. No.3282/2021	Sohail Ishaq vs. Federation of Pakistan, etc.
46.	W.P. No.3302/2021	Waseem Bukhtiar Shah vs. Federation of Pakistan, etc.
47.	W.P. No.3303/2021	Khalid Imran Khan vs. Federation of Pakistan, etc.
48.	W.P. No.3341/2021	Khawar Naveed Butt & others vs. Federation of Pakistan, etc.
49.	W.P. No.3342/2021	Tariq Manzoor vs. Federation of Pakistan, etc.
50.	W.P. No.3343/2021	Amir Rashid Khan & others vs. Federation of Pakistan, etc.
51.	W.P. No.3344/2021	Ghulam Mustafa Raza vs. Federation of Pakistan, etc.
52.	W.P. No.3345/2021	Mubarak Khan vs. Federation of Pakistan, etc.
53.	W.P. No.3347/2021	Naveed Ahmed & others vs. Federation of Pakistan, etc.
54.	W.P. No.3357/2021	Muhammad Naeem Ashraf vs.

		Federation of Pakistan, etc.
55.	W.P. No.3372/2021	Ghulam Raza vs. Federation of Pakistan, etc.
56.	W.P. No.3380/2021	Muhammad Anis vs. Federation of Pakistan, etc.
57.	W.P. No.3429/2021	Anees ur Rehman vs. Federation of Pakistan, etc.
58.	W.P. No.3430/2021	Shoaib Ali vs. Federation of Pakistan, etc.
59.	W.P. No.3431/2021	Muhammad Usman vs. Federation of Pakistan, etc.
60.	W.P. No.3432/2021	Farhan Aleem vs. Federation of Pakistan, etc.
61.	W.P. No.3438/2021	Agha Muhammad Raza, etc. vs. Federation of Pakistan, etc.
62.	W.P. No.3439/2021	Muhammad Azhar Nasim vs. Federation of Pakistan, etc.
63.	W.P. No.3450/2021	Zulfiqar Ali vs. Federation of Pakistan, etc.
64.	W.P. No.3452/2021	Muhammad Siddiqu Butt vs. Federation of Pakistan, etc.
65.	W.P. No.3453/2021	Ikram ul Haq Siddiqui, etc. vs. Federation of Pakistan, etc.
66.	W.P. No.3454/2021	Muhammad Tahir Karim vs. Federation of Pakistan, etc.
67.	W.P. No.3455/2021	Muhammad Bashir vs. Federation of Pakistan, etc.
68.	W.P. No.3456/2021	Sajjad Muhammad Amir vs. Federation of Pakistan, etc.
69.	W.P. No.3457/2021	Javed Anjum vs. Federation of Pakistan, etc.
70.	W.P. No.3458/2021	Shakil Ahmed Khan vs. Federation of Pakistan, etc.
71.	W.P. No.3459/2021	Mahmood Hussain vs. Federation of Pakistan, etc.

CATEGORY-III

Sr. No.	Case No.	Case Title
1.	W.P. No.1675/2019	Arshad Elahi & others vs. Federation of Pakistan & another.
2.	W.P No.1151/2020	Muhammad Rafique & others vs. Federation of Pakistan & another.
3.	W.P. No.1354/2020	Musarat Nawaz & others vs. Federation of Pakistan & another.

Sr. No.	Case No.	Case Title
1.	W.P. No.2461/2014	Gul Muhammad Khan & others vs. Federation of Pakistan & others.
2.	W.P No.934/2014	Mukthar Ahmad Malik & others vs. Federation of Pakistan & others.