JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,

ISLAMABAD

CASE NO. : W.P. NO.1854/2016
Muhammad Ismail
Vs.
Pakistan Medical & Dental Council (PM&DC) through its Registrar etc.

CASE NO. : W.P. NO.2389/2016
Muhammad Ismail
Vs.
Pakistan Medical & Dental Council (PM&DC) through its Registrar etc.

CASE NO. : W.P. NO.2975/2016
Prof. Dr. Masood Hameed Khan
Vs.
Federation through the Secretary, Ministry of National Health Services Regulation & Co-ordination, Islamabad etc.

Petitioners by	:	M/s Sardar Latif Khan Khosa, Senior ASC & Sardar Shahbaz Khan Khosa, Advocate, Mr. Abdul Rahim Bhatti, Senior ASC, Sardar Nasir Ahmad Sagheer, Advocate & Mr. Saleem-ur-Rehman, Advocate
Respondents by	:	Mr. Kamran Murtaza, Senior ASC, Hafiz Arfat Ahmad Chaudhry & Ms. Kashifa Niaz Awan, Advocates Raja Khalid Mahmood Khan, DAG
Date of hearing	:	31.05.2017

AAMER FAROOQ J. This judgment shall decide the instant petition as well as W.P. No.2389-2016 & W.P. No.2975-2016, as common questions of law and facts are involved.

2. The facts in instant writ petition as well as W.P. No.2389-2016, in brief, are that the petitioner was appointed as 'Accounts Officer' in SPS-09 in Pakistan Medical & Dental Council, Islamabad and was working in the said capacity, when he was transferred from Islamabad to Quetta vide order dated 26.04.2016. The

referred order has been challenged by the petitioner in the instant petition primarily on the ground that his wife is working as Trained Graduate Teacher (TGT) at F.G. Junior Model School No.36, G-9/2, Islamabad hence on the basis of Wedlock Policy issued by the Federal Government, he is entitled to stay in Islamabad. During pendency of instant petition, the PM&DC/respondent No.1 withdrew the reinstatement order dated 03.06.2013 on 27.05.2016 resultantly the petitioner stood dismissed from service. The referred action of respondent No.1 has been challenged in W.P. No.2389-2016.

3. The petitioner, in W.P. No.2975-2016, claims to be the elected President of Pakistan Medical & Dental Council for a period of four years on the basis of elections held in 2013. In this behalf, the petitioner became Member of the Council in 2013 and was elected as President however the Federal Government promulgated Pakistan Medical & Dental Council Amendment Ordinance, 2014, on 19.03.2014. By virtue of the referred Ordinance, Section 36B of Pakistan Medical & Dental Council Ordinance, 1962 was replaced and the Council was made dysfunctional and consequently, a Managing Committee was constituted. The Ordinance of 2014 was disapproved by the Senate vide Resolution dated 23.04.2014 therefore said legislation stood repealed in terms of Article 89(2)(a)(ii) of the Constitution. The Federal Government promulgated another Ordinance i.e. Pakistan Medical & Dental Council (Amendment) Ordinance, 2015 on

28.08.2015, whereby the Council was yet again dissolved and structural changes in the Constitution and composition of the Council were made. The Managing Committee was constituted, which held elections and a new Council was elected. The Ordinance of 2015 was not enacted by the Parliament therefore after expiry of 120-days it was re-promulgated for another period of 120-days, where-after the same lapsed. Since Ordinance of 2015 stood lapsed/repealed therefore the petitioner held meeting of the Council elected in 2013 claiming to be the representative council. In the petition, the petitioner seeks restraining order against respondents from interfering in the affairs of Pakistan Medical & Dental Council.

4. Learned counsels for the petitioner, in the instant petition & in W.P. No.2389-2016, *inter alia,* contended that the petitioner was an Accountant in the Council and was made Incharge of National Examination Board w.e.f. 01.09.2008 and remained posted on the said position till 09.01.2009; that some complaint was received, on the basis of which, the petitioner was dismissed from service without following the law i.e. provisions of Removal of Service Ordinance, 2000; that the petitioner filed a representation before the Secretary under the Removal from Service (Special Powers) Ordinance, 2000, which was not decided; that the petitioner had no alternate remedy inasmuch as the right of appeal provided under the Ordinance of 2000 was held not to be applicable to non-civil servant in light of the law laid down by the

august Apex Court in Mubeen-ul-Islam's case (PLD 2006 SC 602) as well as in case reported as 'Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Javed Ahmad' (2013 SCMR 1707). It was contended that since the petitioner had no right of appeal therefore any disciplinary proceedings initiated under Ordinance of 2000 and action taken there-under in violation of the procedure and the law prescribed, would be amenable to jurisdiction of the High Court under Article 199 of the Constitution. Learned counsels further contended that Pakistan Medical & Dental Council Amendment Ordinance, 2015 was promulgated on 28.08.2015, which ultimately lapsed on 25.04.2016, however, the orders of transfer and there-after dismissal from service were passed on 26.04.2016 hence same are without lawful authority and jurisdiction inasmuch as the Council elected and holding the position pursuant to Ordinance of 2015 ceased on the lapse/expiry of the Ordinance. It was further contended that even-otherwise, the recent judgment by the august Apex Court in case reported as 'M/s Mustafa Impex, Karachi & others Vs. Government of Pakistan through Secretary Finance, Islamabad and others' (PLD 2016 SC 808) is attracted in the facts and circumstances of the case inasmuch no approval was obtained from the Federal Government therefore the Ordinance promulgated in 2015 was in violation of the provisions of the Constitution. Reference was also placed on case reported as 'Government of Punjab through Secretary, Home Department Vs. Ziaullah Khan & two others" (1992 SCMR 602) in

support of the argument that on the lapse of Amendment Ordinance, it has no legal sanctity. Learned counsels further contended that any action taken by the Council of PM&DC, after the lapse of 2015 Ordinance, is without lawful authority inasmuch after the expiry of the referred Ordinance, all rights and interests accruing there-under, became instinct. Reference was placed on cases reported as 'Muhammad Arif & Another Vs. The State & Another' (1993 SCMR 1589) & 'Peer Sabir Shah Vs. Federation of Pakistan and others' (PLD 1994 SC 738). Reference was also placed on cases reported as 2016 SCMR 2146, PLD 1978 SC 220, PLD 1969 SC 407, 1992 SCMR 602, 1993 SCMR 1589, 1992 SCMR 1617, PLD 1994 SC 738 & PLD 1972 Lah. 316.

5. Learned counsel for the petitioner in W.P. No.2975-2016, *inter alia,* contended that the petitioner was initially elected as a member of the Council and subsequently as the President under the elections validly held in 2013; that the incumbency of the petitioner was to last for four years i.e. till 2017; that after the expiry of Ordinance of 2015 on 25.04.2016, the Council duly elected in 2013 was revived hence the petitioner became the President and had a right to conduct the affairs as its elected President. It was further contended that after the expiry of Ordinance of 2015, the Council elected in 2014-15, ceased on the principle that when temporary statute is repealed, the effect of the same is that, entire structure built upon the same, vanishes. It was further contended that even-otherwise, the Ordinances

promulgated in 2014 & 2015, are in violation of the judgment reported in case reported as 'M/s Mustafa Impex, Karachi & others Vs. Government of Pakistan through Secretary Finance, Islamabad and others' (PLD 2016 SC 808) inasmuch the Ordinances were not placed before the Cabinet for approval before its promulgation. Learned counsel further submitted that since Ordinance of 2015 has expired therefore it is an obsolete statutory instrument and no action can be taken there-under; that it is a trite law that where law has been repealed or deemed to have been repealed by or under the Constitution, the repeal shall not affect the previous operation of law or anything done or suffered under the law. Reliance was placed on case reported as 'Government of Punjab through Secretary, Home Department Vs. Ziaullah Khan & two others" (1992 SCMR 602), Muhammad Arif & Another Vs. The State & Another' (1993 SCMR 1589), 'Sindh High Court Bar Association through Secretary and another Vs. Federation of Pakistan through Secretary, Ministry of Law & Justice, Islamabad and others' (PLD 2009 SC 879), 'Chief Justice of Pakistan Iftikhar Muhammad Chaudhry Vs. President of Pakistan through Secretary and others' (PLD 2010 SC 61), 'Dr. Mubasshar Hassan and others Vs. Federation of Pakistan and others' (PLD 2010 SC 265).

6. Learned counsels for Pakistan Medical & Dental Council, *inter alia,* contended that the petitioner, in W.P. No.1854-2016 & W.P. No.2389-2016, was appointed as an Accountant in BS-16. He was dismissed from service on 06.01.2010 under Removal from

Service (Special Powers) Ordinance, 2010. In this behalf, it was elaborated that inquiry was ordered against the petitioner under Ordinance of 2000 on 30.05.2009; inquiry report was filed on 21.01.2010, where-after show cause notice was issued on 25.01.2010, which was duly replied on 04.02.2010 and personal hearing was granted to him; that order of dismissal was passed on 06.02.2010. Against the referred order, the petitioner filed appeal before the Secretary Health under Ordinance of 2000 on 13.02.2010, which was rejected on 18.06.2010. Learned counsel contended that the petitioner never assailed rejection of appeal before Federal Service Tribunal; that on 03.02.2013, the petitioner filed an application for reinstatement before PM&DC and on 03.06.2013, the Council reinstated him however on lapse of Ordinance, the earlier order for reinstatement was recalled with the effect that he stood dismissed from service. It was further contended that judgment in M/s Mustafa Impex Pvt. Ltd.'s case was rendered in 2016, whereas the Ordinances were promulgated in 2014 & 2015 hence the referred judgment is not applicable in present case inasmuch as it is trite law that effect of a judgment of the superior court takes affect prospectively and not retrospectively; that PM&DC is a Regulator and one of the contentions of the petitioner is that legislation with respect to the same should be approved by the Council of Common Interests, whereas Ordinances were not so approved. Learned counsels contended that said submission is not sustainable in light of the

law declared in cases reported as ‘Federation of Pakistan through Secretary Ministry of Petroleum, National Resources and others Vs. Durrani Ceramics and others’ (2014 SCMR 1630), ‘Sami-ud-Din Qureshi Vs. Finance Member, Railway Board, Lahore (1980 PLC(CS) 207), ‘Flying Cement Company Ltd. and others Vs. Government of Pakistan through Secretary Ministry of Water & Power and Others’ (PLD 2015 Lah. 146) & ‘M/s Gadoon Textile Mills and 814-ohters Vs. WAPDA and others’ (1997 SCMR 641). It was further contended that the courts cannot supply words into a statute and in this regard, the framers of the Constitution, while framing Article 154 of the Constitution, did not deliberately inserted the word ‘law’ and only confined the Council of Common Interests for framing policies. Reference was placed on cases reported as ‘Azam Jan Zarkoon Vs. The State’ (2000 P.Cr.LJ 1621) & ‘Nadem Ahmad, Advocate Vs. Federation of Pakistan’ (2013 SCMR 1062). It was further contended that dismissal order of the petitioner in W.P. No.1854-2016 attained finality and was recalled in 2013 by the then Council illegally. Reference was placed on cases reported as ‘Peer Mukaram-ul-Haq Vs. Federation of Pakistan and others’ (2014 SCMR 1457) & ‘Muhammad Sharif through legal heirs and 4-others Vs. Sultan Humayun and others’ (2003 SCMR 1221). Learned counsel further contended that expiry/lapse of Ordinance of 2015 does not change the position in so far as amendments were made in 1962 Ordinance. It was contended that it is an established principle of interpretation of statutes that textual amendment i.e. insertion,

omission and substitution made in some enactment, remains intact despite repeal of the amending law. Reference was placed on cases reported as (AIR 1960 SC 89), 'Government of Punjab through Secretary, Home Department Vs. Ziaullah Khan & two others" (1992 SCMR 602), 'Abdul Majid Vs. the Custodian of Evacuee Property West Pakistan and others' (PLD 1962 West Pakistan Karachi 306), 'Abdul Shakoor Vs. State' (1995 P.Cr.LJ 2477), 'Seema Farid Vs. Ali Hakim Din' (2006 YLR 611), 'M/s Arif Marble Industries Vs. WAPDA (1994 CLC 2419), 'Syed Mahtab Butt Vs. Government of Punjab' (1998 PLC (CS) 535), 'Irfan Gul Magsi Vs. Haji Abdul Khaliq Somro' (1998 CLC 364), 'Zameer Ahmad Sheikh Vs. Pakistan Railways' (PLD 2000 Lah. 181), 'Mahmood Hassan Harvi Vs. Federation of Pakistan through Secretary Interior, Government of Pakistan, Islamabad and three orders' (PLD 1999 Lah. 320), (PLD 1994 Karachi 173), 'Lal Buksh Vs. The State' (PLD 2004 Karachi 532), 'Muhammad Afzal Khan Vs. Excise & Taxation Officer and two others' (PLD 1984 Peshawar 215) & 'Khadim Hussain & Another Vs. District Council, Lyalpur (PLD 1976 Lah. 1044).

7. Notices under Order XXVII-A CPC were issued to the Attorney General for Pakistan and pursuant thereto, learned Deputy Attorney General appeared and adopted the stance/arguments by the learned counsels for the respondents i.e. PM&DC.

8. The facts, leading to the filing of the petitions, have been mentioned in detail hereinabove therefore need not be reproduced.

9. The foremost contention by the learned counsels for the petitioners is that since amendments were made in the Pakistan Medical & Dental Council's Ordinance, 1962 through Ordinances which have expired/lapsed therefore the original Ordinance, as it stood before the amendments were made through Ordinances, has revived. Before dealing with the contentions of learned counsels for the petitioners on the referred issue and discussing the case law on the subject, it is appropriate that the chronology of the law and amendments made in the same, be elaborated.

10. The Pakistan Medical & Dental Council (PM&DC) was created through Medical & Dental Council Ordinance, 1962. Under section 3, the Council is to be constituted by the Federal Government and the composition whereof, is mentioned in the same. Under subsection (2), the President is to be elected by the Members of the Council from amongst themselves. In this regard the Council, so elected, is a Body Corporate and the President elected is also for a term of four years. Section 10 ibid provides for the creation of the Executive Committee. Amendment was made in 1962 Ordinance through Medical & Dental Council Amendment Act, 2012 and section 3 was substituted by virtue of section 4 of the same. In the amended/substituted Section 3, the composition of the Council was changed. Similarly, under section 8, Section 7 of 1962

Ordinance was substituted and the term of the President was reduced to four years. Likewise, by virtue of Section 7, Section 10 of 1962 Ordinance was substituted. The Act of 2012 provides the transitory provision, whereby the then Council was dissolved and the President, Vice President and the Executive Committee of the Council was to continue till the new Council was constituted. Further amendment was made in the law through Medical and Dental Council Amendment Ordinance, 2013. By virtue of the referred Ordinance, section 36B was substituted and under the same, powers were provided to the Federal Government to appoint an Administrator and the Executive Committee was to exercise powers of the Council till constitution of new Council and conduct of elections for membership of the Council within 90-days. The elections were accordingly held and the result of the same was published in the Official Gazette on 22.05.2013. In pursuance of the elections of the Council, the petitioner in W.P. No.2975-2016 was appointed as its President on 30.04.2013. The law was amended again through Pakistan Medical & Dental Council Amendment Ordinance, 2014; section 2 of the referred Ordinance substituted section 36(B) of the 1962 Ordinance whereby, the Members of the Council were denotified and ceased to have effect as Members of the Council or the Executive Committee. Moreover, under subsection (2), a Management Committee, consisting of seven professionals, was constituted to hold free and fair elections of the Council within 120-days from the commencement of the

Ordinance. The Management Committee also had a task to examine, investigate and fix responsibility for mismanagement, mal-administration and wrong doings in the affair of the Council. Under subsection (6) of substituted section 36(B), the Management Committee had the power to review any decision already taken by the Council or the Executive Committee. The Ordinance promulgated on 19.03.2014 was not approved by the Senate therefore lapsed/repealed. In this behalf, Senate Secretariat issued a Notification dated 23.04.2014. The Hon'ble Supreme Court of Pakistan, while hearing a matter in case titled 'Dr. Ahmad Nadeem Akbar Vs. Pakistan Medical & Dental Council and others' (CP. No.10 of 2014), took note of the developments going on in PM&DC and adjourned the matter to 25.08.2015. On the said date, the Secretary Ministry of Health appeared before the august Apex Court along with the Attorney General for Pakistan, who apprised the Court that some legislation is in the offing. On 28.08.2015, the Ordinance was promulgated i.e. Pakistan Medical & Dental Council Ordinance, 2015, whereby Section 3 of 1962 Ordinance was again substituted. Likewise, section 3 of the Ordinance substituted Section 4 of 1962 Ordinance along with Sections 5, 10, & 33. Moreover, Section 7 of 2015 Ordinance substituted section 36(B) of 1962 Ordinance, whereby the Federal Government was to notify a Management Committee for the interim period and also notify the Members of the Council when the election results are ready to be announced. The elections were to be held within 120-days of the

commencement of the Ordinance. The said Ordinance of 2015 was also not passed by the Parliament within the prescribed time period however on its lapse, was re-promulgated for another 120-days.

11. Under Article 89 of the Constitution, the President has the power to promulgate the Ordinance, if he is satisfied that circumstances exist which renders it necessary to take immediate action as required under the circumstances. Under sub-article (2), an Ordinance promulgated has the force and effect as an Act of Parliament however the same is to be laid before the Parliament before the expiration of 120-days from the promulgation or if before expiration, a resolution is passed disapproving the same. The National Assembly may, by resolution, extend the Ordinance for a further period of 120-days and it stands expired if earlier is repealed or is disapproved by the National Assembly or by afflux of time. In this regard, the extension for 120-days can be made only once.

12. Learned counsels for the petitioners have argued that since the respective Ordinances of 2014 & 2015 were disapproved and lapsed therefore same amount to repeal of the same, reviving the position of law before the amendments were made. In this behalf, reliance was placed on Article 264 of the Constitution where-under, when a law is repealed or is deemed to have been repealed, the repeal should not except as otherwise provided in the Constitution, effect the previous operation of law or anything

done or suffered under the law. In support of their contentions, learned counsels placed reliance on cases reported as 'Government of Punjab through Secretary, Home Department Vs. Ziaullah Khan & two others" (1992 SCMR 602), 'Muhammad Arif & Another Vs. The State & Another' (1993 SCMR 1589), 'Muhammad Naeem Vs. The State' (1992 SCMR 1617), 'Peer Sabir Shah Vs. Federation of Pakistan and others' (PLD 1994 SC 738), 'Syed Fayyaz Hussain Qadri Vs. The Administrator (PLD 1972 Lah. 316).

13. In case reported as 1992 SCMR 602 supra, the august Apex Court held that where a law is repealed or deemed to have been repealed by under or by virtue of the Constitution, the repeal shall not except as otherwise provided in the constitution, affects the previous operation of law. It was further observed that Ordinances, if not approved by both the Houses before expiry of four months from its promulgation, shall stand repealed. Similarly, in case reported as 1993 SCMR 1589 supra, the august Apex Court observed that Article 264 of the Constitution indicates that it lays down that the repeal shall not, except as otherwise provided in the Constitution, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation etc. The Hon'ble Supreme Court observed that Article 264 of the Constitution is couched in more or less identical words as Section 6 of the General Clauses Act, 1897. It was further held that there is a marked distinction between the temporary enactment and a permanent one. The rules of interpretation of temporary statute

are different from those which are permanent. It was observed that general rule with regard to a temporary statute is that in the absence of special provision to the contrary, proceedings taken under it, would terminate ipso facto. In case reported as 'Peer Sabir Shah Vs. Federation of Pakistan and others' (PLD 1994 SC 738), the earlier decisions of the august Apex Court was followed and it was observed that Political Parties Amendment Ordinance, 1973, being the temporary piece of legislation, proceedings initiated by the Parliamentary Party against Members of Provincial Assembly, could not be saved by virtue of Section 264 of the Constitution. Finally, in case reported as 'Fayyaz Hussain Qadri Vs. The Administrator' (PLD 1972 Lah. 316), the effect of repeal of an Act was exhaustively discussed.

14. Conversely, learned counsel for Pakistan Medical & Dental Council as well as learned Deputy Attorney General, *inter alia*, contended that where textual amendment i.e. insertion, omission and substitution is made in some enactment, the same remains alive despite repeal of the amending law. Reliance in support of contention was made on the case law mentioned hereinabove.

15. In case reported as AIR 1960 SC 89, the Hon'ble Supreme Court of India held that Section 6(1)(a) of General Clauses Act, 1897 continued to be on the statute book, even after the amending Act of 1949 was repealed and that it was in force, when offence was committed by the appellant. The Hon'ble Supreme Court of Pakistan in case reported as 'Government of Punjab

through Secretary, Home Department Vs. Ziaullah Khan & two others" (1992 SCMR 602) held that when an amending Act, whereby the text of a central Act or regulation was amended, is repealed unless different intention appears, the repeal is not to effect the continuation of any such amendment by the amending enactment when the same was repealed. It was observed that effect of Section 6-A of General Clauses Act, 1897 is that inspite of the repeal of the amending Act, the amendment if it was in the text of any Act or regulation, was to continue. Similar observations were made in case reported as 'Abdul Majid Vs. the Custodian of Evacuee Property West Pakistan and others' (PLD 1962 West Pakistan Karachi 306). In case reported as 'Abdul Shakoor Vs. State' (1995 P.Cr.LJ 2477), it was held that by virtue of Section 6-A of General Clauses Act, 1897, Section 249-A Cr.P.C. was still on statute book notwithstanding the fact that Ordinance, by which the said section was inserted, had been repealed. It was observed that object of a repealing and amending Act is only to strike out unnecessary acts or exclude dead matters from the statute books in order to lighten the burden of ever-increasing spate of legislation. In case reported as 'Seema Farid Vs. Ali Hakim Din' (2006 YLR 611), similar observations were made regarding section 489-F PPC and it was observed that Section 489-F PPC was inserted through Ordinance which ceased/expired/repealed after four months, but the same continues as it did not take away with it the amendment implanted in PPC. It was observed that under section

6-A of the General Clauses Act, 1897, the amended was protected. In case reported as 'M/s Arif Marble Industries Vs. WAPDA (1994 CLC 2419), it was observed that repeal of an enactment would not affect the continuation of any such amendment effected by any amendment where a different intention is expressly stated in the enactment by which that amendment was made. Same is the ratio of the judgment in case reported as 'Syed Mahtab Butt Vs. Government of Punjab' (1998 PLC (CS) 535). In case reported as 'Zameer Ahmad Sheikh Vs. Pakistan Railways' (PLD 2000 Lah. 181), it was observed that orders made and actions taken during period of Ordinance would remain intact. Same is the ratio of cases reported as 'Mahmood Hassan Harvi Vs. Federation of Pakistan through Secretary Interior, Government of Pakistan, Islamabad and three orders' (PLD 1999 Lah. 320) as well as (PLD 1994 Karachi 173). In case reported as 'Lal Buksh Vs. The State' (PLD 2004 Karachi 532), it was held that Code of Criminal Procedure through amendment Ordinance, 2002 served its purpose after promulgation and publication and having effect such amendments, repeal or expiry of the Ordinance would not undo the amendment already made which continue to remain operative and become a part of Criminal Procedure Code and would continue to remain in force. In case reported as 'Muhammad Afzal Khan Vs. Excise & Taxation Officer and two others' (PLD 1984 Peshawar 215), it was held that under section 6-A of General Clauses Act, 1897, the repeal of amending law does not affect continuation of amendment made by

an enactment repealed unless repealing law intends otherwise. Similar observations were made in case reported as 'Khadim Hussain & Another Vs. District Council, Lyalpur (PLD 1976 Lah. 1044).

16. The careful examination of the arguments advanced by learned counsels for the parties, shows that the principle of law that can be derived is that when a temporary statute i.e. Ordinance expires, the effect of it is that the same is repealed and consequence of the same follow i.e. it vanishes/disappears from the statute book. However, under section 6-A of the General Clauses Act, 1897, where any Act or regulation made after the commencement of the Act of 1897, any enactment by which the text of any central act or regulation was amended by the express omission, insertion or substitution of any law then unless a different intention appears, the repeal shall not affect the continuation of any such amendment made by the enactment so repealed and any operation at the time of such repeal. The bare reading of Section 6-A of General Clauses Act, 1897 and the interpretation of the same by the case law mentioned above, shows that where text of a statute is amended, *inter alia,* by way of substitution, the amendment survives despite lapse of the amending law.

17. In the instant case, various provisions of 1962 Ordinance were substituted through Ordinances of 2014 & 2015. Though both the Ordinances have lapsed/expired/repealed, however by virtue

of section 6-A ibid and the case law on the subject, amendments/substitutions made therein have survived. In this regard, last substitution made in 1962 Ordinance was through 2015 Ordinance and though the 2015 legislation stands repealed but the amendments/substitutions made by it in 1962 Ordinance are still alive and are part of 1962 Ordinance.

18. In view of the above position of law, actions taken by the existing Council of Pakistan Medical & Dental Council are valid and the petitioner in W.P. No.2975-2016 is no longer the Member of the Council and/or the President.

19. The petitioners have also challenged the legislation made in 2014 & 2015 on the basis that since PM&DC is a regulator and performs duties pertaining to medical profession therefore legislation with respect to the same by the federal legislature falls in Part-II of 4th Schedule to the Constitution. It was further contended that under Article 154 of the Constitution, the matters falling in Part-II of the Federal Legislative List, the Council of Common Interests shall formulate and regulate policies. On the referred basis, it was contended that the legislation and the change in the Constitution of PM&DC fall within the domain of Council of Common Interests therefore before promulgation of the Ordinances the same should have been approved by the Council of Common Interests as provided in Article 154 of the Constitution.

20. On the other hand, learned counsel for the respondent Council submitted that under the Constitution, it is only the

policies that are to be placed before the Council of Common Interests with respect to the subject matters falling under Part-II of Schedule 4 to the Constitution however this does not extent to the law.

21. In case reported as 'Federation of Pakistan through Secretary Ministry of Petroleum, National Resources and others Vs. Durrani Ceramics and others' (2014 SCMR 1630), it was observed that no enactment could be declared invalid on the ground that the same was not approved by the Council of Common Interests prior to its enactment. Similarly, in case reported as 'Flying Cement Company Ltd. and others Vs. Government of Pakistan through Secretary Ministry of Water & Power and Others' (PLD 2015 Lah. 146), it was observed that no illegality had been committed by the Local Council while imposing surcharge without intervention of Council of Common Interests and no enactment could be declared ultra vires just for the reason that the same was promulgated without intervention of the Council of Common Interests, provided the same otherwise stood justified. Similarly, in case reported as 'M/s Gadoon Textile Mills and 814-others Vs. WAPDA and others' (1997 SCMR 641), it was observed that Article 154 of the Constitution vests power in the Council of Common Interests to formulate and regulate policies and exercise supervision and control over institutions related to the matters in Part-II of the Federal Legislative List including WAPDA. The Council, it was observed, is

to formulate and regulate policies viz-a-viz the matters falling in Part-II of Schedule-IV of the Constitution.

22. In view of above case law, it is clear that the functions and powers of the Council of Common Interests under Article 154 of the Constitution, is to formulate and regulate policies with respect to the subject falling in Part-II of Schedule-IV to the Constitution; it is nowhere provided that any legislation is to be placed before CCI before its enactment viz-a-viz the subject matters falling in Part-II ibid therefore the Ordinances of 2014 & 2-15 cannot be held to be invalid on the ground that those were not laid before the Council of Common Interests before promulgation.

23. The petitioners also challenged the validity of 2014 & 2015 Ordinances on the basis that in light of the judgment of Hon'ble Supreme Court of Pakistan in case reported as 'M/s Mustafa Impex, Karachi & others Vs. Government of Pakistan through Secretary Finance, Islamabad and others' (PLD 2016 SC 808) inasmuch as the Federal Government i.e. the Prime Minster and the Cabinet has to accord approval for promulgation of an Ordinance. It is trite law that the operation of the judgment is prospective and not retrospective hence the principles of law laid down in reported case referred supra are not applicable in the instant case. Reliance is placed on case reported as 'Peer Buksh represented by his legal heirs and others Vs. The Chairman Allotment Committee and others". The Ordinances of 2014 & 2015 are, therefore, not hit by the judgment of the august Apex Court.

24. The petitioner, in the instant petition as well as W.P. No.2389-2016, was terminated from service vide notification dated 16.05.2016. The disciplinary action against the petitioner was initiated by PM&DC under the Removal from Service (Special Powers) Ordinance, 2000 (RSO). The referred law was applicable to institutions like PM&DC and remained applicable till its repeal on 06.03.2010. The President, being the competent authority, initiated the disciplinary proceedings and an inquiry was ordered on 30.05.2009, whereby an Inquiry Committee was constituted and the petitioner was served with charge sheet as well as statement of allegations. The inquiry was duly conducted and a report was submitted, whereby the petitioner was found to be liable. The President, being the competent authority, issued show cause notice dated 25.01.2010 to the petitioner, which was challenged before Lahore High Court, Rawalpindi Bench, Rawalpindi through W.P. No.400-2010. The said petition was dismissed in limine vide order dated 01.02.2010. On 06.02.2010, the petitioner was dismissed from service with immediate effect. The petitioner preferred appeal/representation against dismissal order under section 9 of RSO before Secretary, Ministry of Health, Government of Pakistan, Islamabad. The petitioner was afforded personal hearing in the representation and the same was dismissed vide order dated 18.06.2010. The petitioner filed a petition before Lahore High Court, Rawalpindi Bench, Rawalpindi (W.P. No.2031-2010) challenging the dismissal order dated 06.02.2010. The said

writ petition was disposed of by this Court vide order dated 21.05.2013 in light of the fact that a fresh inquiry was conducted and the Inquiry Committee recommended reinstatement of petitioner into service. The interim setup which came in PM&DC, after the amendment of law in 2012, ordered holding of another inquiry against the petitioner and the Inquiry Committee recommended reinstatement of petitioner into service on 02.04.2013 and on the basis thereof, the Council/Executive Committee ordered reinstatement of the petitioner into service on 02.06.2013. The said reinstatement was recalled vide notification dated 16.05.2016, which has been assailed before this Court.

25. On merits, it has been contended by the petitioner that reinstatement into service could not have been revoked, whereas learned counsel for respondent No.1 contended that there is no provision in law for holding of second inquiry and revocation of the earlier dismissal order.

26. As is clear that the petitioner was dismissed from service by the competent authority and the referred order was acted upon and even the matter was decided by the appellate authority against the petitioner which attained finality.

27. Despite queries from the Court, learned counsels for the petitioner were unable to show any law on the basis of which, after the implementation of the dismissal order, second inquiry could have been ordered and dismissal from service could be withdrawn.

28. Under section 10 of RSO, the appeal against the order in representation lies before Federal Service Tribunal. The petitioner argued vehemently that the remedy of appeal before Federal Service Tribunal was not available to the petitioner in light of the decision of the Hon'ble Supreme Court of Pakistan in Mubeen-ul-Islam's case reported as (PLD 2006 SC 602) & 'Muhammad Idrees Vs. Federation of Pakistan' (PLD 2007 SC 681). Be that as it may, the order passed in representation was challenged through petition under Article 199 of the Constitution, but that petition was subsequently withdrawn and the order was passed accordingly. The order of removal from service was not set aside by this Court but was only withdrawn by the then Council/Executive Committee of PM&DC. It is an established principle that authority, which passes the order, has the power to withdraw the same as well till such time same is acted upon. In case reported as 'The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another Vs. Jalaluddin' (PLD 1992 Supreme Court 207), it was observed as follows: -

> *"Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field"*

The order of dismissal from service was acted upon and could not have been withdrawn by the then Council, as it has become *functus officio*, especially when the issued was also decided by the appellate authority. Reliance is placed on cases reported as 'Peer Mukaram-ul-Haq Vs. Federation of Pakistan and others' (2014 SCMR 1457) & 'Muhammad Sharif through legal heirs and 4-others Vs. Sultan Humayun and others' (2003 SCMR 1221), wherein the august Apex Court observed that needless to say that the right of a party to claim a review of final judgment or order of a Court, judicial or quasi-judicial Tribunal, in a substantive matter, is not available in the absence of a provision in the relevant statute except in cases of fraud, malafide or defect of jurisdiction. Since the Council had no power to pass order of reinstatement of petitioner into service, the same was without lawful authority and could be withdrawn by the competent authority. The then Council and the Executive Committee were to be incharge under section 36(B) of 1962 Ordinance as inserted under section 39 of Medical & Dental Council Amendment Act, 2012 for holding of elections and till new Council was elected. In light of dictum laid down by the Hon'ble Supreme Court of Pakistan in case reported as 'Khawaja Muhammad Asif Vs. Federation of Pakistan and others' (2013 SCMR 1205), the interim setup being the transitory body, does not have the authority to take policy decisions or long term actions. Moreover, it is an established principle that no right can be gained on the basis of illegal order. Reliance is placed on case reported as 'Abdul Haq

Indhar and others Vs. Province of Sindh through Secretary, Forest, Fisheries & Livestock Department, Karachi and 3-others' (2000 SCMR 907) & 'Muhammad Sadiq through LRs Vs. Punjab Service Tribunal, Lahore & others' (2007 SCMR 318). Despite the above position of law, the petitioner was entitled to a right of hearing and service of notice as he was reinstated in 2013 and impugned action was taken in 2016, this being so, especially when the respondent Council initially issued order for transfer of the petitioner from Islamabad to Quetta. The right of leaving is based on principles of natural justice which hinges upon fairness and is not to be excluded unless such is the express intention. In case reported as 'Mrs. Anisa Rehman Vs. PIAC and another' (1994 SCMR 2232), it was observed as follows: -

> *"7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No.1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991 reverting her to Grade VI from Grade VII was passed. In this view of the matter there has been violation of the principles of natural justice. The above 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 of that Master and Servant will not negate the application of the above Maxim audi alteram partem. The above view, which we are inclined to take is in accordance with the Islamic Injunctions as highlighted in the case of Pakistan and others v. Public at Large (supra), wherein, it has been held that before an order of retirement in respect of a civil servant or an*

employee of a statutory Corporation can be passed, he is entitled to be heard"

In case reported as 'Union of India and other Vs. Tulsiram Patel etc.' (AIR 1985 Supreme Court 1416), it was observed as follows:-

"The principles of natural justice have come to be recognized as being a part of the guarantee contained in Art. 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article. A violation of a principle of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. Not only can the principle of natural justice be modified but in exceptional cases they can even be excluded. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can be a provision of the Constitution, for a constitutional provision has a far greater and all-prevailing sanctity than a statutory provision. Clause (2) of Art. 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a Constitutional provision, namely, the second proviso to clause (2) of Art. 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. To hold that once the second proviso is properly applied and clause (2) of Art. 311 excluded, Art. 14 will step into take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitutional makers who inserted it in Art. 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply"

In case reported as 'A.K. Kraipak and others Vs. Union of India and others' (AIR 1970 Supreme Court 150), it was observed as under: -

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law

validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past only two rules were recognized but in course of time many more subsidiary rules came to be added to these rules. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

29. The petitioner is an employee of Statutory Body; the wedlock policy is not applicable to PMDC. This Court in case titled 'Muhammad Masroor-ul-Haq Vs. Federation of Pakistan through its Secretary, M/o Overseas Pakistan & HRD Islamabad and others' (W.P. No.2604 of 2016) laid down parameters of wedlock policy and it was observed as follows: -

"17. It is indeed no pleasant for a husband and wife with school going children to be working in different provinces. But the law cannot be circumvented to bring them to the same station. The question that crops up in the mind is that whether a person posted on deputation at a particular station can claim

to remain so posted for all the period during which his or her spouse remains posted at such a station, regardless of decision of the borrowing department to repatriate the deputationist to the parent department. I would think not. To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts that no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department. Interestingly, the petitioner was not sent on deputation for any specific period. In the case of Mst. Robia Ayub Vs. Federation of Pakistan, (2013 PLC (CS) 915), the petitioner had challenged the repatriation to the parent department on the ground that it was contrary to inter-alia the wedlock policy. The petitioner in that case had also prayed for a direction to the borrowing department to absorb her. This Court dismissed the writ petition by inter-alia holding that the petitioner's claim on the basis of the wedlock policy was not justifiable. Furthermore, it was held as follows:-

> *"10. The law on the subject is very much clear. The petitioner is a civil servant and remained on deputation for a fixed term and was returned to her parent department in consequence of terms and conditions of her deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. While taking this view, I am fortified by a judgment rendered by the Hon'ble Apex Court in this case of Dr. Shafi-ur-Rehman Afridi v. CDA Islamabad through Chairman and others (2010 SCMR 378)."*

18. Additionally, in the case of Asma Shaheen Vs. Federation of Pakistan (2013 PLC (C.S.) 391, this Court spurned the plea that a deputation cannot be repatriated due to the wedlock policy. At paragraph 13 of the said judgment, it has been held as follows:-

> *"13. From the plain reading of above said wedlock policy, it is obvious that the word "may" has been used in the said letters and not "shall". It has never been stressed that all the deputationists whose spouses are working at Islamabad shall must be absorbed or will continue to serve at Islamabad. As regards the contention that some of deputationists have been absorbed, the same cannot be taken into consideration, for the simple reason that it was the discretion of the competent authority to absorb some of deputationists according to requirement of department, capabilities, know how, performance, qualification, general reputation and on the basis of annual confidential reports. The others cannot claim the same treatment as of right. The deputation is a contract and if borrowing department does not need the services of a deputationist, he or she must go back to parent department and thus no fundamental rights of the petitioners have been infringed and no provisions of Constitution have been violated. Learned counsel for the petitioner have failed re*

> *rebut the contention of learned Deputy Attorney-General that at present no deputationist is being absorbed. There appears no political element with regard to repatriation of the petitioners to their parent departments."*

The transfer order cannot be struck down on basis of wedlock policy. Moreover, vide letter dated 23.05.2016, PM&DC referred the matter to FIA for criminal investigation. Learned counsel for the petitioner failed to point out any illegality in the same.

30. For the foregoing reasons, instant petition and W.P. No.2975-2016 are without merit and are dismissed. Writ Petition No. 2389-2016 is allowed and notification dated 16.05.2016 is set aside on the basis that no right of hearing was provided before issuance of the same, however, Respondent No.1 may withdraw reinstatement order or take appropriate action after providing an opportunity of hearing to the petitioner.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 28.08.2016

JUDGE

Zawar