

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik

CIVIL PETITION NOS. 767 OF 2022, 857 TO 868 OF 2022, 1272 TO 1274 OF 2022, 1416 OF 2022, 6616 OF 2021, 4545 TO 4549 OF 2022, 4665 OF 2022 & 4666 OF 2022 AND C.M.A. NOS.1631 OF 2022, 104 OF 2023, 2237 TO 2248 OF 2022 & 3503 OF 2024

[On appeal against the judgments dated 03.02.2022, 20.08.2021 passed by the Islamabad High Court in ICA No. 527/2016 & WP Nos. 3573, 3427, 3428, 3421, 3222, 3145, 3237, 3254, 3893, 3647, 3756 & 3422/2021 and 2949/2021]

1. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Ednan Syed and others CPLA 767/2022 & CMAs 1631/2022, 104/2023 & 3503/2024
2. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Fazal Subhan and others CPLA 857/2022 & CMA 2237/2022
3. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Umar Farooq and another CPLA 858/2022 & CMA 2238/2022
4. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Najeeb ur Rehman Abbasi and another CPLA 859/2022 & CMA 2239/2022
5. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Naeem Ullah Bhatti and others CPLA 860/2022 & CMA 2240/2022
6. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Muhammad Abdul Basir and another CPLA 861/2022 & CMA 2241/2022
7. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Shahid Anwar Khan and another CPLA 862/2022 & CMA 2242/2022
8. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Muhammad Tariq Saeed Hijazi and others CPLA 863/2022 & CMA 2243/2022

9. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Mian Shabbir Anwer and others CPLA 864/2022 & CMA 2244/2022
10. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Muhammad Aslam and others CPLA 865/2022 & CMA 2245/2022
11. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Shair Bahadur Khan and another CPLA 866/2022 & CMA 2246/2022
12. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Muhammad Siddique Sajid and others CPLA 867/2022 & CMA 2247/2022
13. Federal Government Employees Housing Authority through its Director General, Islamabad Vs. Ms. Razia Sultana Taher and another CPLA 868/2022 & CMA 2248/2022
14. Umer Farooq Vs. Federation of Pakistan through Secretary Ministry of Housing and Works, Govt of Pakistan, Islamabad and another CPLA 1272/2022
15. Mian Shabbir Anwer Vs. Federation of Pakistan through Secretary Ministry of Housing and Works, Govt of Pakistan, Islamabad and another CPLA 1273/2022
16. Ms. Razia Sultana Taher Vs. Federation of Pakistan through Secretary Ministry of Housing and Works, Govt of Pakistan, Islamabad and another CPLA 1274/2022
17. Muhammad Tarik Saeed Hijazi Vs. Federation of Pakistan through Secretary Ministry of Housing and Works, Govt of Pakistan, Islamabad and another CPLA 1416/2022
18. Mohsin Raza and others Vs. Director General Federal Government Employees Housing Authority Islamabad and others CPLA 6616/2021

19. Manzar Hafeez Mian and others Vs. Federal Government Employees Housing Foundation, Islamabad and others CPLA 4545/2022
20. Tariq Bajwa and others Vs. Federal Government Employees Housing Foundation, Islamabad and others CPLA 4546/2022
21. Irfan Jahangir Vs. Ednan Syed and others CPLA 4547/2022
22. Muhammad Salim Sheikh Vs. Federal Government Employees Housing Foundation (Now Authority) through its Director General, Islamabad and others CPLA 4548/2022
23. Shahzadah Tahir Zaman (deceased) through LRs Vs. Ednan Syed and others CPLA 4549/2022
24. Sohail Akram and another Vs. Federal Government Employees Housing Foundation, Islamabad CPLA 4665/2022
25. Muhammad Saeed Akhtar Vs. Federal Government Employees Housing Foundation, Islamabad and others CPLA 4666/2022

For the Petitioners / Applicants : Mr. Uzair Karamat Bhandari, ASC
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(in CPs.767 and 857 to 868 of 2022)

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In CMA 4843/24: : Raja Muhammad Farooq, ASC

Respondent No.1 in : Mr. Asim Shafi, ASC
CP.859 of 2022

Respondent No.1 in : Barrister Umer Aslam Khan, ASC
CP.862 and 4665/ 2022

Respondent No.1 in : Mr. Sher Bahadur Khan, Advocate
CP.866 of 2022 (In-person)

Respondent No.1 in : Mian Abdul Rauf, ASC
CP.4545 of 2022

Respondent No.1 in : Ch. Riasat Ali Gondal, ASC
CP. 4546 of 2022

Respondent (FGEHA) : Mr. Niaz Ahmed Rathore, ASC
in CP.4549 of 2022

Applicant in : Mrs. Ali Begum Jan, in person
CMA.104 of 2023

Respondent No.1 in : Rana Abid Nazir, ASC
CPs.1272 and 1274 Mr. Tariq Aziz, AOR
and CMA 4803/2022

Respondents in M/s Nasrullah, Khumar Gul,
person Muhammad Asif, Zafran Ahmad

In CMA 1179/23 : Mr. Asad Iqbal Siddiqui, AHC

In CP 859/21 and : Mr. Najeeb-ur-Rehman Abbasi
CMA 2239/21 (in person)

Date of Hearing : 21.05.2024

JUDGMENT

Ayesha A. Malik, J.- These Civil Petitions are directed against judgment dated 03.02.2022 (**Impugned Judgment**) and interlocutory order dated 20.08.2021 (**Impugned Order**) passed by the Islamabad High

Court, Islamabad (**High Court**) whereby the intra-court appeal and the writ petitions filed by the Petitioners were dismissed.

2. The main Petitioner before this Court is the Federal Government Employees Housing Authority (**FGEHA**) being a statutory authority established under the Federal Government Employees Housing Authority Act, 2020 (**Act**), which develops housing schemes for serving and retired employees of the federal government. The other Petitioners before this Court are primarily members who seek allotment of property, and are aggrieved by the Impugned Judgement, hence, have filed Civil Petitions¹ challenging the same.

3. The basic facts in this case are simple. In 2009, FGEHA launched a housing society called Green Enclave-I in Bara Kahu, Islamabad, wherein plots were allotted to members, referred to as Phase 1 Membership Drive (**Drive I**) where the allotment was based on the policy of *first come, first serve*, which meant the order of priority for allotment was from the time a member applied for securing a plot. FGEHA then acquired additional land for establishing the Bara Kahu Extension Scheme (**Extension Scheme**) being an extension of the Green Enclave-I. For the purposes of the Extension Scheme, FGEHA decided to change its policy from *first come, first serve* to *age-wise seniority*, which meant that priority for allotment was given to applicants based on their age and seniority in service. Thereafter, in 2015, FGEHA launched another housing scheme² in Sectors F-14/15, Islamabad, referred to as the Phase II Membership Drive (**Drive II**), for which allotment was again based on the principle of *age-wise seniority*. As per FGEHA, one of the reasons for adopting the *age-wise seniority* criteria was to give preference to employees who had retired or were close to their retirement so as to facilitate them. FGEHA also clarified in its Civil Petitions that Drive I members were considered for allotment in the Bara Kahu Schemes (that is Green Enclave-I and Extension Scheme), whereas Drive II members were considered for the F-14/15 Scheme.

4. In the meanwhile, a dispute arose with respect to the acquisition proceedings of the F-14/15 Scheme under the Land Acquisition Act, 1894 (**LAA**). Accordingly, Writ Petition No.308 of 2016 (**1st WP**) was filed by the landowners of village Thallah Syedan, who claimed that the acquisition

¹ Civil Petitions No.1272 of 2022, 4545 to 4549 of 2022 and 4665 and 4666 of 2022.

² The F-14/15 Scheme.

proceedings should have been initiated under the Capital Development Authority Ordinance, 1960 (**CDA Ordinance**) and that the land acquisition procedure framed thereunder should have been applied. They also challenged the acquisition on the ground that the development of a housing scheme was not for a public purpose, hence, the acquisition proceedings were illegal. These matters were decided by the Single Judge of the High Court in the *Bashir Ahmad Judgment*³ by declaring the acquisition proceedings for Sectors F-14/15 as unlawful as it was not acquired under the CDA Ordinance. The *Bashir Ahmad Judgment* was challenged through an intra-court appeal wherein the Division Bench of the High Court dismissed the same on 25.09.2018 and upheld the decision of the Single Judge.⁴ The judgment of the Division Bench was then challenged before this Court in the *Ghulam Mustafa Judgment*⁵ wherein this Court set aside both the judgments of the High Court on 08.10.2020 and declared that the acquisition proceedings for the housing scheme in Sectors F-14/15 under the LAA were in accordance with law as the acquisition of property in Islamabad can be done either under the CDA Ordinance or LAA. This Court also ruled that the acquiring land for a housing scheme is for a public purpose, and the doctrine of regulatory capture was not applicable to FGEHA.⁶ Therefore, the dispute related to the acquisition of land and the public purpose argument came to an end as the same attained finality in the *Ghulam Mustafa Judgment*.

5. Thereafter, another round of litigation started with the filing of the *Ednan Syed Petition*⁷ before the High Court where the allotment letters for plots in the Extension Scheme were in dispute, and the *Ednan Syed Petition* was filed by praying that no action be taken against the allottees by cancelling their allotment letters and further a declaration was sought that Drive I members be allotted plots in the F-14/15 Scheme. The grievance of these petitioners in the *Ednan Syed Petition* was that Drive I was based on a *first come, first serve* principle whereas allotment in Drive II was based on an *age-wise seniority* principle, and such change in policy was prejudicial to their rights. They also challenged the fact that as Drive I members have priority in allotment of plots in the Drive II ballot and that they be offered plots in the F-14/15 Scheme and not the Extension

³ Bashir Ahmad v. Federal Government of Pakistan (PLD 2018 Islamabad 68) (**Bashir Ahmad Judgment**).

⁴ Federal Government Employees' Housing Foundation v. Ghulam Mustafa (PLD 2019 Islamabad 1).

⁵ Federal Government Employees Housing Foundation v. Ghulam Mustafa (2021 SCMR 201) (**Ghulam Mustafa Judgment**).

⁶ *Id.* at 257 and 260.

⁷ Ednan Syed v. Federal Government Employees Housing Foundation (WP No.2233 of 2016) (**Ednan Syed Petition**).

Scheme. The High Court partly allowed the *Ednan Syed Petition* on 28.09.2016 by holding that the members of Drive I had a superior right to be accommodated in Drive II which would include allotment in the F-14/15 Scheme and the same could not be offered to members under Drive II unless and until the lists of Drive I members were totally exhausted. The *Ednan Syed Judgment* further ruled that those Drive I members who have refused a plot in the Extension Scheme forfeited their rights and they may register afresh in Drive II. The said judgment was challenged through the *Ednan Syed Appeal*⁸ filed by FGEHA before the High Court. Along with the said intra-court appeal, *Subsequent WPs*⁹ were filed by Drive I and Drive II members before the same Division Bench of the High Court who raised different claims, which mainly sought that the Drive II balloting be declared illegal and that the allotments thereof in Drive II be declared unlawful; that Drive I members have a superior or preferential right over Drive II members and that Drive I members should be entitled to allotment in the F-14/15 Scheme. The main issue in these *Subsequent WPs* was that the policy with reference to allotment in Drive II should not have changed from *first come, first serve* basis to *age-wise seniority*. The Drive II members challenged the fact that they duly participated in a valid ballot in Drive II and had been allotted plots in the F-14/15 Scheme for which payment had been made, therefore, there was no basis to either cancel their allotment or cause a delay in handing over possession of the plots. Their grievance was against FGEHA wherein they claimed that their right had matured by way of payment and the allotment letters, hence, they should be given possession of their plots in the F-14/15 Scheme. These *Subsequent WPs* along with *Ednan Syed Appeal* were dismissed by the Impugned Judgment and are now before this Court by way of the Civil Petitions.

6. For the purposes of Civil Petition No.6616 of 2021 wherein the Impugned Order has been challenged, by way of background, on 17.08.2021, WP 2949¹⁰ was filed by the affectees whose land was acquired in 2005 by FGEHA and their grievance was that they may be allotted plots as per the Built-Up Property (**BUP**) Awards and restrain FGEHA from demolishing the property situated in Thallah Syedan, Islamabad. Vide the Impugned Order, the High Court suspended the allotments made in favour

⁸ Federal Government Employees Housing Foundation v. Ednan Syed (ICA No.527 of 2016) (**Ednan Syed Appeal**).

⁹ Writ petitions No.3573 of 2021, 3427 and 3428 of 2021, 3421 of 2021, 3222 of 2021, 3145 of 2021, 3237 of 2021, 3254 of 2021, 3893 of 2021, 3647 of 2021, 3756 of 2021, 3422 of 2021 (**Subsequent WPs**).

¹⁰ Writ Petition No.2949 of 2021 (**WP 2949**).

of judicial officers and further directed the Ministry of Housing and Works to seek instructions from the federal government regarding its *policy* and criterion, pursuant whereof, State land is distributed amongst *a few classes*. The Impugned Order is challenged by the Drive II members before this Court in Civil Petition No.6616 of 2021 as their allotments were suspended as a consequence of the said order.

7. Another challenge was brought to the Drive II allotment where in light of the directions in the Impugned Order as well as compliance with the earlier *Noman Ahmad Judgment*,¹¹ the federal government approved the Revised Policy on 02.11.2021 (**Revised Policy**) which replaced the original policy. Briefly, the allotment process in the Revised Policy was based on *age-wise seniority*, not *first come, first serve* basis but Drive I members would be accommodated in Sectors F-12 and G-12. Further 20 percent quota on *age-wise seniority* basis was allocated for retired employees; a minimum ten years' service eligibility criteria was fixed and as per the Revised Policy, judges of the Supreme Court, Islamabad High Court and district judiciary in Islamabad were made eligible for allotment in Drive II.

8. The main argument by the counsels for FGEHA and both the Drive 1 and II members is that the Division Bench of the High Court exercised *suo motu* jurisdiction while deciding the matter. They argued that the High Court did not consider the case on its merits nor did it consider the arguments made rather of its own motion decided the case in the context of the Revised Policy which issue was not before the Court. Counsel for FGEHA emphasized that the High Court does not enjoy such powers as stated by this Court in several judgements. The counsels for FGEHA and the Drive members as well as counsels for the interveners¹² argued that the Division Bench did not hear the affected parties nor the necessary parties which violates the right to be heard and principles of natural justice. Hence, they pray that since the Impugned Judgment and Impugned Order are in conflict with the settled law and judgments of this Court, they be set aside.

9. We have heard the contentions of the parties and the interveners as well as gone through the available record. It is important to understand

¹¹ Noman Ahmad v. CDA (PLD 2021 Islamabad 75) dated 14.06.2021 (**Noman Ahmad Judgment**).

¹² Intervenors have filed CMAs No.104 of 2023, 3503 of 2024 and 4843 of 2024 in CP No. 767 of 2022.

first what was precisely challenged and prayed for by FGEHA, Drive I and Drive II members in their respective appeal and petitions before the Division Bench and Single Judge:

FGEHA's Prayers:¹³

- The *Ednan Syed Judgment* may be set aside as the same restrains FGEHA to allot plots in Sectors F-14/15 or in any other subsequent housing schemes to persons other than the Drive I members till their list is fully exhausted or they declined their offer letters, in particular, findings of Paragraph No.36 of the said judgment.

Drive I Member's Collective Prayers:¹⁴

- Direct FGEHA to implement the *Ednan Syed Judgment* by ensuring that Drive I members shall have a superior right in the allotment of plots in the F-14/15 Scheme;
- Declare that the plots in the F-14/15 Scheme be not offered to Drive II members unless the list of Drive I members is exhausted;
- Declare that the decision of the Executive Board of FGEHA, which fixed quota for the said board members in the scheme, is illegal; and
- Declare that the allotment made, on the basis of balloting, is illegal.

Drive II Member's Collective Prayers:¹⁵

- Declare that the actions on the part of FGEHA for not allotting plots to Drive II members despite making some payment is illegal;
- Declare that the impugned allotment of plots in F-14/15 is against the law, principles of seniority and legitimate expectancy;
- Declare that the balloting result of F-14/15 Scheme is unlawful;
- Direct FGEHA to allot plots to Drive II members in F-14/15;
- Direct FGEHA to initiate afresh allotment process;
- Declare that the quota policy is based on unreasonable classification; and
- Direct FGEHA to prepare the *age-wise seniority* list and initiate allotment as in Drive II in accordance with the law.

WP 2949 Petitioners' Prayers:

¹³ Ednan Syed Appeal, *supra* note 7.

¹⁴ Writ Petition No.3573 of 2021.

¹⁵ Writ Petitions No.3427 and 3428 of 2021, 3421 of 2021, 3222 of 2021, 3145 of 2021, 3237 of 2021, 3254 of 2021, 3893 of 2021, 3647 of 2021, 3756 of 2021, 3422 of 2021.

- Directions may be issued to handover the allotments of due plots to individuals/petitioners as per their respective acquired BUP Awards; and
- Restrain FGEHA from demolishing the property situated in Thallah Syedan, Islamabad.

10. The afore-noted prayers show that the main dispute between the parties was the allotment to Drive II members in the presence of Drive I members who had not been allotted any plot. Also, another issue was the scheme in which allotment was sought by the Drive I and Drive II members who all wanted plots in the F-14/15 Scheme as opposed to what they were being offered in the Extension Scheme. In terms of what has been argued before us it appears that everyone is interested in plots in the F-14/15 Scheme and seek interference from the court for this purpose. As per the record, their contentions were not addressed in the Impugned Judgment or the Impugned Order. The High Court's Impugned Judgment stresses on the content of the Revised Policy which primarily is based on allotment on *age-wise seniority* criteria and further it added some more categories such as judges for the purposes of allotment of plots. The Impugned Judgment has focused on the Revised Policy and set it aside by declaring it unconstitutional. The record clearly reflects that the Revised Policy was not challenged by any party, neither in intra-court appeal nor in the writ petitions. As per the record, the Revised Policy came into force on 02.11.2021 whereas the Division Bench concluded the hearing of the *Ednan Syed Appeal* and *Subsequent WPs* and reserved the cases for judgment on 22.11.2021. The Revised Policy was submitted before the Division Bench of the High Court by the Additional Attorney General for Pakistan on 22.11.2021 being the day when the judgment was reserved. Consequently, there has been no hearing with reference to the Revised Policy, no comments or reply was sought from the federal government, the FGEHA and the affected parties were not heard. In this context, affected parties include those who had been allotted plots under the Revised Policy as well as those who sought inclusion of their names in the allotment process under the Revised Policy. Also to note is the fact that the Revised Policy was made pursuant to *Noman Ahmad Judgment*. This aspect was also not considered. The Impugned Judgment refers to the Revised Policy as one formulated such that it enables elite capture and windfall gains of a few individuals but is not in the public interest. Further that the Revised Policy benefits incompetent, corrupt or convicted employees of the federal government. And finally that the Revised Policy has undermined the

independence of the judiciary by allotting plots to the members of the judiciary. We find that these matters were neither before the Court nor challenged in any manner before the Court. In a similar manner, the Impugned Order also suspended the allotment of plots to judicial officers and directed the federal government to revise its policy, which again was not challenged or prayed for in WP 2949.

11. Hence, the basic crux of the Petitioners' arguments before us is that the Impugned Judgment has decided against the Revised Policy *suo motu*, which was not within the jurisdiction of the High Court as the said Policy was never challenged. Hence, the question is whether the High Court has the power to on its own declare the Revised Policy as unlawful and illegal.

12. This Court has consistently ruled that the High Courts do not have *suo motu* jurisdiction and as such the constitutional scheme never intended to confer such powers on the High Courts.¹⁶ This Court in the *Abdullah Jumani* judgment, authored by one of us (Muhammad Ali Mazhar, J.), has held that the High Court cannot assume *suo motu* jurisdiction by overreaching or overstretching its constitutional limits.¹⁷ It is constitutionally impermissible for the courts to expand and enlarge their jurisdictional domain, which is neither allowed by the Constitution nor by the law. In the *Taufiq Asif* case, this Court has held that the High Court cannot grant a relief, which is not even sought in the petition.¹⁸ As per the *Akhtar Abbas* case, '*it is settled law that in writ proceedings, the relief must be confined to the prayer made in the writ petition and the High Court cannot issue a writ suo motu*'.¹⁹ Hence, in view of the dictum laid down by this Court, the High Court cannot on its motion declare the policy as unconstitutional and illegal.

13. The scope and ambit of the proceedings before the Division Bench in the *Ednan Syed Appeal* and *Subsequent WPs* were, therefore, limited to the extent of the prayers made as mentioned above. The Impugned Judgment has not attended to any of stated prayers nor decided the matter on its merits. The Impugned Judgment in its entirety appears to only focus on the Revised Policy. As the Revised Policy had not been challenged, the

¹⁶ Sadiq Poultry (Pvt.) Ltd. v. Government of Khyber Pakhtunkhwa (PLD 2023 SC 236), Mian Irfan Bashir v. Deputy Commissioner, Lahore (PLD 2021 SC 571) (**Irfan Bashir**), Raja Muhammad Nadeem v. The State (PLD 2020 SC 282), Jahanzaib Malik v. Balochistan Public Procurement Regulatory Authority (2018 SCMR 414), Imran Khattak v. Sofia Waqar Khattak (2014 SCMR 122) and Mian Muhammad Nawaz Sharif v. Muhammad Habib Wahab Al-Khairi (2000 SCMR 1046).

¹⁷ Abdullah Jumani v. Province of Sindh (2024 SCMR 1258) (**Abdullah Jumani**).

¹⁸ Taufiq Asif v. General (Retd.) Pervez Musharraf (PLD 2024 SC 610) (**Taufiq Asif**).

¹⁹ Akhtar Abbas v. Nayyar Hussain (1982 SCMR 549) (**Akhtar Abbas**).

High Court exceeded its authority by declaring the Revised Policy as unconstitutional. It goes without saying that an appeal is the continuation of the same proceedings that allows the appellate court to consider all those aspects which were even challenged before the forum of the first instance. So, the Impugned Judgment should have confined itself to the grounds and prayers of the *Ednan Syed Petition* and nothing beyond that. Similarly, the WP 2949 did not challenge the allotments or balloting made in favour of judicial officers. However, the Impugned Order suspended the allotments made in favour of such judicial officers and even, on its own, directed the federal government to make a policy and criteria wherein the land is not distributed 'amongst a few classes'. Therefore, the Impugned Judgment and the Impugned Order have clearly exceeded their authority and decided the matter beyond their jurisdictional domain.

14. Furthermore, Article 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard.²⁰ The principle of '*audi alteram partem*' is one of the foundational principles of natural justice. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a *notice* and then be allowed a *hearing*.²¹ These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution. In this matter, it appears that the Impugned Judgment and Impugned Order have not given an opportunity of hearing to the concerned parties which includes the federal government and the affectees of the Revised Policy. This amounts to a violation of their basic right to be heard and suggests that the decision was made without following due process.

15. In these cases, the timeline of events is critical and highlights the plight of the Petitioners before us. The Revised Policy came into force on 02.11.2021, whereas the Division Bench concluded the hearing of the *Ednan Syed Appeal* and *Subsequent WPs* by reserving the said matters for judgment on 22.11.2021. It is interesting to note that as per the case history available on the High Court's website, the last date of hearing

²⁰ Article 10A of the Constitution of Pakistan, 1973 (**Constitution**) states, For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

²¹ Provincial Police Officer v. Muhammad Nawaz (2011 SCMR 689) and Karachi Electric Supply Corporation v. Abdul Jabbar Channa (2003 PLC(CS) 500).

(before 22.11.2021) was 18.11.2021, which was when the matter was cancelled due to the non-availability of the bench. Before 18.11.2021, the matter was fixed for hearing on 14.10.2021. It appears that the Revised Policy was submitted before the High Court by the Additional Attorney General for Pakistan (as mentioned in the Impugned Judgment) on 22.11.2021, which was the very day when the judgment was reserved. No comments or reply were sought from the federal government, FGEHA or Drive I or Drive II members. Similarly, the beneficiaries of the Revised Policy were neither put to notice nor impleaded in the proceedings. Consequently, they were caught by surprise when the Revised Policy was struck down by the High Court. Given that these cases involve the rights of retiring or retired government employees who have invested their lifetime savings for the allotment of property under the different FGEHA schemes, it was mandatory to hear all affectees and beneficiaries before any decision was taken, which prejudiced their rights. Hence, this ground alone is sufficient to remand the matter to the High Court to hear the appeal and petitions afresh giving everyone an opportunity to respond to the challenges made.

16. The Constitution does not envision that the courts are bestowed with unfettered powers that can be exercised within the disguise of judicial review. The judicial power is the power that is defined by the Constitution and law. It may vary from one institution to the other, such as this Court's jurisdiction is distinct from that of the High Court. However, the underlying principle remains that the judicial review of legislative and executive actions is not an unlimited or unbridled authority of the courts but the one circumscribed or confided by the Constitution and the law. The gateway to invoke judicial review of the High Court is only when there is an application or appeal by the aggrieved or affected party.²² In the absence of any such application, the High Court may enter into the domain of judicial overreach, which is the exercise of power without any legal basis and the same falls within the ambit of interference and encroachment on the legislative and executive domain.²³ Consequently, such absolute judicial expansionism offends the principle of separation of powers. Therefore, the Impugned Judgment and the Impugned Order clearly fall within the scope of judicial overreach and infringe the Constitution.

²² Irfan Bashir, *supra* note 15.

²³ *Id.*

17. In light of the above, we are of the view that any findings, conclusions or rulings in the Impugned Judgment and the Impugned Order were beyond the constitutional mandate and authority of the High Court. Therefore, these Petitions are converted into appeals and are allowed in the following terms:

- i. The Impugned Judgment and the Impugned Order are set aside as being in violation of the Constitution and the law;
- ii. The *Ednan Syed Appeal* and *Subsequent WPs* are restored to their original numbers, which shall be deemed pending before the Division Bench of the High Court and shall be decided afresh within a period of ninety (90) days from the receipt of a certified copy of this judgment;
- iii. The WP 2949 is also restored to its original number which shall be deemed pending before the Single Judge of the High Court and shall be decided afresh within a period of ninety (90) days from the receipt of a certified copy of this judgment;
- iv. Anyone, who has filed the petitions before this Court but was not a party before the Division Bench or the Single Judge, may file appropriate impleadment applications before the respective benches of the High Court in these matters which shall be decided by the High Court in the first instance; and
- v. Any observations made herein are only to the extent of the Impugned Judgment and Impugned Order and without prejudice to the rights of any parties before the Division Bench in the *Ednan Syed Appeal* and the *Subsequent WPs* as well as the WP 2949 before the Single Judge.

18. All the CMAs are disposed of accordingly.

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'APPROVED FOR REPORTING'
Azmat | Kehar Khan Hyder/-

Announced on _____ at _____.

JUDGE