**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**PRESENT:**
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

**CIVIL APPEAL NO.1474 OF 2021**
(On appeal against judgment dated 01.06.2021 passed by the Khyber Pakhtunkhwa Medical Teaching Institutions, Appellate Tribunal, Peshawar in MTI Appeal No.25/2021.)

Dean / Chief Executive, Gomal Medical College, Medical Teaching Institution, D.I. Khan ... Appellant

*vs*

Muhammad Armaghan Khan and others ... Respondents

For the Appellant : Mr. Mansoor Tariq, ASC

For Respondent No.1 : Mr. Ahmed Ali, ASC

On Court notice : Mr. Khalid Javed Khan, Attorney General for Pakistan
a/w Mr. Sajid Ilyas Bhatti, Additional Attorney General

Mr. Shumail Ahmed Butt, Advocate General, KPK
a/w Mian Shafaqat Jan, Addl. AG, KPK and Mr. Zia Ullah, D.S. Health, KPK.
Barrister Qasim Ali Chohan, Addl. AG, Punjab.
Mr. Fouzi Zafar, Addl. AG, Sindh.
Mr. Ayaz Khan Swati Addl. AG, Balochistan.

Dates of hearing : 14.03.2022 and 09.06.2022

**JUDGMENT**

**Munib Akhtar, J.**: This matter, presented as a leave petition under Article 212(3) of the Constitution in which leave was granted vide order dated 01.11.2021, raises a short but important question: does an appeal lie to this Court under Article 212(3) against an order of a tribunal created by a Provincial law to which the proviso to clause (2) of the said Article has not been made applicable? The question arises in the following circumstances.

2. In 2015 the KPK Assembly enacted the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 ("2015 KPK Act"). The preamble set out the purpose and objectives of the Act in the following terms:

> "WHEREAS it is expedient to provide autonomy to the Government owned Medical Teaching Institutions and their affiliated teaching hospitals in the Province of the Khyber Pakhtunkhwa and to regulate on sound physical and technical footings the service being rendered by these institutions and to improve performance, enhance effectiveness, efficiency and responsiveness for the provision of quality healthcare services to the people of the Khyber Pakhtunkhwa and other matters ancillary and incidental thereto;..."

As presently relevant, this Act applies to the employees of Medical Teaching Institutions (both terms being defined in the Act).

3. In 2020, the 2015 KPK Act was modified by an amending Act and, in particular, provision was made for an Appellate Tribunal by the insertion of s. 16A therein. The said section, insofar as presently relevant, provides as follows:

> "**16A. Appellate Tribunal**.--- (1) Government shall, by notification in the official Gazette, establish an Appellate Tribunal to hear appeals under sub-section (7) of section 5 and sub-section (8) of section 16 of this Act and other matters related to or arising from the provisions of this Act...."

Of the two specific provisions referred to it is only the second that is relevant for present purposes. As substituted by the amending Act of 2020, it states as follows:

> "**16. Service of the Medical Teaching Institution**.--- ...
>
> (8) All employees of a Medical Teaching Institution shall have the right to file an appeal in the manner as may be prescribed by rules, against any penalty, termination of their employment or any order in connection with the terms and conditions of their service to the Appellate Tribunal established under section 16A of this Act."

4. The respondent No. 1 before us was an employee (being an accounts officer) of the Gomal Medical College, a medical teaching institution. On or about 01.10.2020 he was terminated from service. He filed an appeal before the Appellate Tribunal. The appeal was allowed by order dated 01.06.2021, and Gomal Medical

College was directed to reinstate him with back benefits. It is against this order that a petition was filed under Article 212(3) of the Constitution and leave to appeal granted.

5. When the appeal came up for hearing on 04.03.2022 an issue as to its maintainability was raised by the Court in the following terms:

> "At the very outset, a question has been raised as to how a direct appeal before this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 is competent in this matter. It appears that this appeal arises out of a judgment passed by Khyber Pakhtunkhwa Medical Teaching Institutions Appellate Tribunal ***("KPMTIAT")*** which has been constituted by virtue of Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 as amended by Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2020 *(XXIV of 2020)*.
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> 2. It is clear from the proviso to Article 212(2) of the Constitution that a direct appeal to this Court lies only from a judgment, decree, order or sentence of an Administrative Court or Tribunal constituted under Article 212 of the Constitution. In order for a Provincial Law to contain a provision for direct appeal before this Court, the aforenoted proviso envisages that where an Administrative Court or Tribunal is established under the Act of a Provincial Assembly (which is the case before us), the provisions of Article 212 of the Constitution would apply only if a request of the Provincial Assembly is made in the form of a Resolution and the Majlis-e-Shoora (Parliament) by law extends the provisions of Article 212 of the Constitution to include a Court or Tribunal established under a provincial law. In this context, it appears that in order to extend the provisions of Article 212 of the Constitution, the Provincial Service Tribunals *(*Extension of Provisions of the Constitution*)* Act*,* 1974 *(Act No.XXXII of* 1974) was promulgated. No such Act has been promulgated in the present case in which *prima facie* it appears that a direct appeal to this Court against a judgment, decree or final order passed by Khyber Pakhtunkhwa Medical Teaching Institutions Appellate Tribunal does not lie.
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> 3. Since this is a case of first impression involving interpretation of the Constitution and law needs to be settled in this regard, let notice be issued to the learned Attorney General for Pakistan in terms of Order XXVII-A, CPC as well as learned Advocate General, Khyber Pakhtunkhwa to assist us on this point of law. Let the matter be relisted on **09.03.2022**."

6. We initially had the benefit of submissions made by the learned Attorney General for Pakistan, the learned Advocate General for KPK Province and learned counsel for Gomal Medical College. Those submissions are noted below. At present it may be

noted that the learned Advocate General submitted that the point in issue could apply also to the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991 ("1991 KPK Act"). As the short title indicates, this tribunal has been set up to hear service appeals in relation to members of the subordinate (or District) Judiciary of the Province. It was submitted that although the proviso to Article 212(2) did not apply to the said tribunal, appeals from its decisions were being filed regularly in this Court under Article 212(3). The learned Advocate General further submitted that, to his information, similar tribunals had also been set up by both the Federation (in relation to the Islamabad Capital Territory) and the other Provinces, and appeals against their decisions were also being filed under Article 212(3). Clearly, any judgment in the present appeal could potentially have an effect in relation to such appeals. It was therefore considered appropriate, by order dated 14.03.2022, to issue notices also to the Advocates General of the remaining Provinces. They were heard on 09.06.2022 and judgment reserved.

7. It will be convenient to begin by setting out Article 212 of the Constitution and the aforementioned Federal law, the Provincial Service Tribunals (Extension of Provisions of the Constitution) Act, 1974 ("1974 Act"). Article 212 provides as follows:

> "**212. Administrative Courts and Tribunals**. (1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—
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> (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
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> (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
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> (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.
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> (2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court

> or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court, shall abate on such establishment:
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> **Provided** that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal.
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> (3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal."
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> The relevant provisions of the 1974 Act are as follows:
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> "WHEREAS the Provincial Assemblies for Baluchistan the North-West Frontier Province, the Punjab and Sind have made in the form of resolutions the request that the provisions of clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan be extended to the Service Tribunals respectively established under Acts of those Assemblies;
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> AND WHEREAS it is expedient to extend the said provisions to the said Service Tribunals;..."
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> "**2. Provisions of Article 212 (2) to extend to Provincial Service Tribunals**. The provisions of clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan shall extend to the Service Tribunals respectively established under Acts of the Provincial Assemblies for Baluchistan, the North-West Frontier Province, the Punjab and Sind."

The Provincial Service Tribunals to which the 1974 Act applies are those set up by the respective Provincial laws, all of 1974, being the Balochistan Service Tribunals Act, the Khyber Pakhtunkhwa (previously NWFP) Service Tribunals Act, the Punjab Service Tribunals Act and the Sindh Service Tribunals Act.

8. Submissions before us were, in the main, made by the learned Advocate General, KPK, ably assisted by the learned Additional AG. The learned Attorney General and the learned Law Officers of the other Provinces made similar submissions and we will therefore, without intending any disrespect, focus on the submissions made by the learned Advocate General, KPK. Reference was made to the Federal Legislative List in the Fourth Schedule to the Constitution and, in particular, our attention was drawn to entry No. 55 thereof. Reference was also made to entry

No. 46 of the erstwhile Concurrent Legislative List. The learned Advocate General did not take issue with the basic fact, that the tribunals set up under the 2015 KPK Act and the 1991 KPK Act were not covered by any resolution or Federal law as envisaged by the proviso to Article 212(2). The main thrust of his case was the right to appeal provided by clause (3) of Article 212 was independent of what was provided in clause (2) thereof. In other words, regardless of whether the proviso was resorted to, the right to file an appeal under clause (3) subsisted at all times. There could therefore be no cavil with the present appeal, or any appeal filed under the 1991 KPK Act. As noted, the Law Officers for the other Provinces took similar positions. The relevant laws for those Provinces are the Punjab Subordinate Judiciary Service Tribunal Act, 1991 ("1991 Punjab Act") and the Balochistan District Judiciary Act, 2021 ("2021 Balochistan Act") (which repealed and replaced earlier legislation in this regard, being the Balochistan Subordinate Judiciary Service Tribunal Act, 1989). The position in Sindh is somewhat different. There, the tribunal in relation to the subordinate judiciary was set up by the Sindh Service Tribunals (Amendment) Act, 1991 ("1991 Sindh Act"), a purely amending statute whereby suitable changes (by way of substitutions and insertions) were made to the Sindh Service Tribunals Act, 1974. Finally, it is to be noted that the Federation has set up a similar tribunal for the Islamabad Capital Territory by means of the Islamabad Subordinate Judiciary Service Tribunal Act, 2016 ("2016 Act"). Learned counsel for the appellant also endorsed the submissions made by the learned Advocate General.

9. We have heard learned counsel as above and considered the relevant provisions. Article 212 is placed in Part VII of the Constitution, which relates to the Judicature, and in Chapter 3 which sets out "General Provisions" relating thereto. Indeed, it is the last Article of Part VII. Clause (1) of the Article opens with a non-obstante clause which overrides "anything herein before contained", i.e., the other Articles of Part VII. The clause confers legislative competence on the Federation and each Province to create, by appropriate legislation, Administrative Courts or Tribunals to exercise exclusive jurisdiction over three distinct subject matters, which are set out in paras (a) to (c) of the clause. The first para confers such jurisdiction in relation to "matters relating to the terms and conditions of persons who are or have

been in the service of Pakistan, including disciplinary matters", service of Pakistan meaning (as defined in Article 260 and presently relevant) service in connection with the affairs of the Federation or a Province, as the case may be. The Tribunals with which we are here concerned relate to para (a) of clause (1) and we will confine our discussion accordingly. However, whatever is said here will clearly apply mutatis mutandis to any Administrative Tribunal or Court created to exercise exclusive jurisdiction over the subject matters of the other paras as well. Before proceeding further another point may be made for completeness. It may be (though we say this without finally deciding) that an Administrative Court or Tribunal set up under clause (1) can, in addition to the exclusive jurisdiction conferred upon it in terms of any of the paras thereof, be also clothed with other or further jurisdiction over a subject matter distinct and separate from the said paras. If so, then the Tribunal while exercising such other additional jurisdiction, and any decision so rendered by it, would appear to fall outside the scope of clauses (2) and (3) of Article 212. We are not confronted with this situation here, since it is (rightly) common ground that the facts and circumstances of the present case and the subject matter of the present appeal fall within the scope of para (a) of clause (1).

10. The creation of an Administrative Tribunal is at the discretion of the relevant legislature; it is not mandatory for it to do so. One point to keep in mind is that the (exclusive) jurisdiction conferred on a Tribunal created under clause (1) need not be in respect of all the matters that can come within the scope of para (a); it may be that it is exercised only in relation to some of such matters. But if such a Tribunal is created, that in any case takes the matter to clause (2). This clause also opens with an identically worded non-obstante clause, i.e., it overrides "anything herein before contained". In respect of a Tribunal created by Federal legislation it has automatic effect, mandatorily excluding the jurisdiction of any other court to "grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends". All judicial remedies are therefore closed as soon as the relevant legislation comes into force. The only such door left open is provided by clause (3), which provides for a right of appeal to this Court in terms as stated therein. Federal legislation therefore

presents no special problem. The real problem is in relation to a Tribunal created by Provincial legislation. Here, the proviso to clause (2) becomes applicable. This provides that a Provincial Assembly may (but is not required to) pass a resolution asking Parliament to extend clause (2) to the Tribunal created by it, and on such resolution Parliament may (but is not required to) enact the necessary legislation in this regard. If both these stages are crossed the proviso becomes applicable, and the effect then is the same as in the case of Federal legislation: all judicial remedies are closed and the only avenue for redress is an appeal to this Court in terms of clause (3).

11. The learned Advocate General KPK, however, argued, and this is the point now in issue in this appeal, that even if recourse is not had to the proviso the appeal in terms of clause (3) would still be available against the decision of a Tribunal created under Provincial legislation. Clause (3) as per his understanding is a standalone provision and is to be applied without reference to clause (2). Now, a necessary effect of this submission, if correct, would be to result in (at least) two remedies becoming available to the litigant. One would be to this Court under clause (3) and the other, since clause (2) would not apply, could be to the High Court concerned under Article 199 by way of a writ petition. Having considered the point we are, with respect, unable to agree. In our view the door to the judicial remedy provided by clause (3) opens if, and only if, clause (2) is applicable and not otherwise. In the case of a Tribunal set up by Provincial legislation this means that the route to clause (3) lies only through the proviso. The reasons why we come to this conclusion are set out below.

12. The first, and primary, reason for our conclusion is the federal structure of the Constitution. Our Constitution deals with and sets up the organs of the State at both the federal and provincial levels, dividing the competences, powers and jurisdictions involved in each case both horizontally (among the various organs at a given level) and vertically (between each organ at the federal and provincial levels). Insofar as the judicial branch is concerned, the Supreme Court sits at the apex of the system, and in each Province it is the High Court that is the topmost court. For present purposes the constitutional principle involved can be stated in the following terms (subject, as always, to any relevant

qualifications, conditions and exceptions which, however, need not be set out in any detail here). The legislative competence of a Provincial Assembly, insofar as the jurisdiction of the courts is concerned, can reach only up to the High Court concerned and no further. Insofar as the jurisdiction of this Court is concerned, it is only the Federation that has, or can have, any legislative competence in relation thereto. The principle just stated can also be recast as follows: of the various legislatures created by the Constitution, it is only the Parliament that can (if at all) enact legislation that acts upon or affects the jurisdiction of this Court. The Provincial Assemblies cannot do so.

13. In this country we have of course had the experience of going through four constitutional setups before the present Constitution. The constitutional principle set out above has remained constant throughout. It will not be out of place therefore to undertake a brief survey in this regard. The first constitutional setup was the one inherited at Independence, being the Government of India Act, 1935 ("GOIA"). It need not be looked at and we can start straightaway with the 1956 Constitution. Matters relating to the Supreme Court were set out in Chapter I of Part IX. Articles 157 to 159 dealt with the appellate jurisdiction of the Court on appeals from the High Courts. Article 160 then provided as follows: "Notwithstanding anything in this Part, the Supreme Court may grant special leave to appeal from any judgment, decree, order or sentence of any court or tribunal in Pakistan...". The present Constitution does not have any provision similar to Article 160, but for our purposes the point is that it was the 1956 Constitution itself that conferred the jurisdiction on the Court; it was not left to the will of any legislature, federal or provincial. The 1956 Constitution had three legislative lists and entry No. 16 of the Federal List, exclusive to Parliament, provided as follows: "The constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court) and the fees taken therein; persons entitled to practise before the Supreme Court." Entry Nos. 19 and 92 of the Concurrent and Provincial Lists respectively (in respect of which the Provinces had legislative competence) allowed for legislation in relation to the jurisdiction and powers of all courts in respect of the said lists but expressly excluded the Supreme Court. In other words, the Provinces did not

have any legislative competence in relation to the jurisdiction and powers of the Supreme Court under the 1956 Constitution.

14. Coming to the 1962 Constitution, matters relating to the Court were to be found in Chapter 5 of Part III. Article 58 set out the appellate jurisdiction as regards appeals from the High Courts. Article 60 provided as follows: “In addition to the jurisdiction conferred on it by this Constitution, the Supreme Court shall have such other jurisdiction as may be conferred on it by law.” Again, the present Constitution does not have a provision similar to this Article. It will be recalled that the 1962 Constitution had only one legislative list, exclusive to the Centre (as the Federation was then called). Entry No. 38 of this list was in terms identical to entry No. 16 of the Federal List of the 1956 Constitution. The only legislature that could make the relevant law under Article 60 was therefore Parliament; the Provincial legislatures did not have any such competence. This brings us to the Interim Constitution of 1972. The Supreme Court was placed in Chapter I of Part VII. Article 186 dealt with the appellate jurisdiction of the Court as regards appeals from the High Courts. Article 188 was, in terms, identical to Article 60 of the 1962 Constitution, i.e., allowed for the Court to “have such other jurisdiction as may be conferred on it by law”. The Interim Constitution reverted to the three list system as was to be found in the 1956 Constitution (and was, in both cases, taken from the GOIA). Entry No. 55 of the Federal Legislative List, exclusive to the Federation, provided as follows: “Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by or under the Constitution, the enlargement of the jurisdiction of the Supreme Court, and the conferring thereon of supplemental powers”. It will be seen that this entry was in fact identical to entry No. 55 of the Federal Legislative List of the present Constitution. When this entry is read with Article 180 it is clear that the exclusive competence to make a law conferring additional jurisdiction on the Supreme Court lay only with Parliament. Like the entries in the concurrent and provincial lists of the 1956 Constitution, the relevant entries in the equivalent lists in the Interim Constitution (being, respectively, entry Nos. 16 and 2) allowed for legislation in relation to the jurisdiction and powers of all courts in respect of the said lists but expressly excluded the Supreme Court. Thus, as before, the Provinces had no legislative

powers as regards the jurisdiction and powers of the Supreme Court. Finally, we may note that the Interim Constitution, in Article 216, had a provision similar to the present Article 212. However, there were some stark differences. The power to set up an Administrative Court or Tribunal with exclusive jurisdiction was only conferred, by clause (1), on the federal legislature; the provincial legislatures had no such competence. Secondly, clause (2) simply provided that where an Administrative Tribunal or Court was set up under clause (1), no other Court, including (expressly) the Supreme Court and the High Courts, could grant an injunction etc. in respect of any matter to which that jurisdiction extended. There was no equivalent to the present clause (3).

15. This brings us to the present Constitution. The similarities and differences insofar as the jurisdiction of this Court is concerned, as presently relevant, have come to the fore in the survey carried out above. It will be recalled that until the changes brought by the 18th Amendment (2010) the present Constitution had two lists, one exclusive to the Federation and the other concurrent between it and the Provinces. The relevant entry from the federal list (No. 55) has been noted above. Entry No. 46 of the concurrent list, as was the case of the other such lists in the previous constitutional setups, provided for legislative competence as regards the jurisdiction and powers of all courts but expressly excluded the Supreme Court. The position therefore is clear. It is only the Parliament that can (if at all) enact legislation that affects or acts upon the jurisdiction of this Court. The Provinces have no such legislative competence. Before proceeding further, we may note that there are some instances on the statute book of what may appear to be exceptions to what has just been said. An example that comes to mind is the Land Acquisition Act, 1894, which is regarded as being within the legislative competence of the Provinces. Section 54 thereof provides for an appeal to this Court from a decision of the High Court. However, it is to be kept in mind that the said Act was an “existing law” within the meaning of not just Article 268 of the present Constitution, but also in terms of equivalent provisions to be found in all the constitutional setups prior thereto, including the GOIA. A close examination of the said Act as an existing law shows that the apparently anomalous position has a ready explanation, if one traces the history of the legislation to its root. A full blown exercise in this regard would

take us too far afield. It must suffice to note that the said Act was enacted by the Governor-General of India in Council, a body that in its legislative capacity can, for present purposes, be taken to be akin or analogous to a federal or central legislature. As originally enacted, s. 54 had only provided for appeals to the High Courts. By an amending Act of 1921, the section was substituted such that a further appeal was also provided to “His Majesty in Council”, i.e., to the Judicial Committee of the Privy Council, which was the highest judicial forum in the British Empire. Thus, the principle as stated above is not affected; only the federal or central legislature could (if at all) enact legislation affecting or acting upon the jurisdiction of the highest appellate forum. That would, it appears, be the position insofar as existing laws are concerned. Certainly, the constitutional validity of a provincial law made after the commencement of the present Constitution, such as affected or acted upon the jurisdiction of this Court, would be in serious doubt. Notwithstanding a few apparent anomalies the constitutional principle is therefore as stated above.

16. The principle having been identified, we turn to apply it to the situation at hand. The enactment of a Federal law under clause (1), which has the automatic and immediate effect of making clause (2) operational and thereby opens the door to this Court in terms of clause (3) clearly acts, or has an affect, on the jurisdiction of the Court. The reason is that the jurisdiction of the Court has effectively been enlarged. It now has appellate jurisdiction in relation to a forum or tribunal over which it did not previously have any, a result brought about by the very act of the creation thereof. This is unexceptionable: Parliament can, if appropriately clothed with the necessary competence, make such a law. But the position is entirely different as regards an Administrative Tribunal set up under clause (1) by a Provincial law. If the learned Advocate General is correct, and clause (3) is a standalone provision, then the Provincial Assembly, by the very act of creating the Tribunal, would have the competence to act upon, or affect, the jurisdiction of this Court. But that is constitutionally impermissible. And if it had been that clause (2) would automatically become applicable in relation to Provincial legislation as it does in respect of a Federal law, then the same constitutionally impermissible result would obtain. Hence, clause (3) cannot be regarded as an independent, standalone provision, and the need for the proviso to “activate”

clause (2). Since Provincial legislation cannot of its own affect or act upon the jurisdiction of this Court there was the need for intervening Federal legislation. The necessary “bridge” is provided by the proviso. But, it must be remembered, the Federation cannot be compelled to enact the relevant law. If the Provincial Assembly wishes to shut out every judicial remedy and leave only the route to this Court, it must first pass the necessary resolution and that must then be followed up by a Federal law. It is only then, and under cover of an Act of Parliament, that the door to this Court is opened. If the Provincial Assembly does not wish to follow this route or Parliament refuses to enact the enabling legislation in terms of the proviso, then the door to this Court remains shut. Since clause (2) would not then apply the jurisdiction of the other courts (which in practical terms would mean recourse to the High Court under Article 199) would remain open. Clause (2) and, as presently relevant, its proviso is the gateway to clause (3). The two must be read and applied together and not in isolation and as standalone provisions.

17. This brings us to the second reason why in our view the submission made by the learned Advocate General cannot, with respect, be accepted. As noted, a consequence would be that (at least) two routes would be open to the litigant, one under clause (3) and the other by way of a petition under Article 199. Now, the appeal under clause (3) is not as of right. The litigant must cross a formidable barrier and satisfy this Court that his case “involves a substantial question of law of public importance”. As opposed to that a petition under Article 199 would face much softer threshold requirements, if any. The question therefore is this: confronted with two such remedies, which one would a pragmatic litigant, given proper professional advice by his lawyer, choose? Surely the question answers itself. It would be a rare litigant indeed, whose case would have to involve special facts and circumstances, who would choose to approach this Court in terms of clause (3). The much safer course would be to file a petition under Article 199, especially when an appeal to this Court under Article 185(3) (again involving relatively softer threshold requirements) would also be available in any case. Practically speaking, the “remedy” of filing an appeal under clause (3) would be a dead letter. This cannot surely be the situation envisaged by the design of Article 212.

18. Accordingly, we hold that an appeal to this Court under clause (3) of Article 212 against a decision of an Administrative Tribunal created by a Provincial law under clause (1) is possible if, and only if, clause (2) applies to the said Tribunal, i.e., it is covered by an appropriate resolution of the Provincial Assembly and consequent Federal legislation in terms of the proviso. Since admittedly this is not the case as regards the Tribunal set up by the 2015 KPK Act the present appeal is not maintainable.

19. This brings us to the other laws referred to above, setting up Tribunals in relation to the District judiciaries in the Provinces and the Federal Capital. The 2016 Act, in relation to the Islamabad Capital Territory, presents no difficulties. It is Federal legislation and clause (2) applies in relation thereto automatically. The door to clause (3) is therefore open. However, this is not so in respect of the Provincial legislation, being the 1991 KPK Act, the 1991 Punjab Act and the 2021 Balochistan Act. The position of the Tribunals set up under these laws is no different from the one set up under the 2015 KPK Act. Therefore, for the same reasons, no appeal to this Court is (at present) maintainable under Article 212(3) against decisions of the respective Tribunals. The position in Sindh requires separate consideration. As noted above, the Tribunal for the District judiciary is there set up by way of amendments to the Sindh Service Tribunals Act, 1974 ("1974 Sindh Act"). The amendments were made by the 1991 Sindh Act, a purely amending statute. Now, the 1974 Sindh Act originally set up an Administrative Tribunal that is covered by the proviso in terms of the 1974 Act. Appeals from this Tribunal do lie to this Court in terms of Article 212(3). What of the new Tribunal created by way of insertions in the said Act? Can it have, as it were, the benefit of the cover provided by the 1974 Act? Now, the general rule relating to a purely amending statute is that it effaces itself as soon as it takes force, the amendments being immediately incorporated in the text of the law being amended. It is for this reason that s. 6A of the (federal) General Clauses Act, 1897 provides (as, indeed, does s. 5 of the (provincial) General Clauses Act, 1956) that where "the text of any [Act] was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal [of the amending Act] shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal". We have

considered the point. The proviso to clause (2) of Article 212 applies not as such to the law creating the Tribunal, or to the subject matter of the (exclusive) jurisdiction conferred on the Tribunal in terms of any of the paras of clause (1), but to the Tribunal itself. This is made clear by the use of the words "extends the provisions to *such* a *Court or Tribunal*", with which the proviso closes. Therefore, the 1974 Act applies not in relation to the 1974 Sindh Act as such, nor the subject matter of the jurisdiction that was thereby conferred, but to the Tribunal set up by that law at the time that Parliament enacted the 1974 Act. The Tribunal set up by the 1991 Sindh Act came much later. It is of no relevance for purposes of the proviso that the jurisdiction conferred upon it is but carved out from that conferred on the Tribunal originally set up. The Tribunal set up by the amendments is hence not covered by the proviso. Put differently, the 1991 Sindh Act, even though a purely amending statute, must for purposes of the proviso to clause (2) be regarded as a separate and distinct law in its own right inasmuch as it sets up a new Tribunal. No appeal therefore lies to this Court in terms of clause (3) of Article 212 from the said Tribunal.

20. The conclusions arrived at above require certain directions to be given, keeping in mind that leave petitions and appeals under clause (3) of Article 212 may well be pending from Tribunals not covered by the proviso to clause (2), and many such petitions and appeals appear to have been decided and disposed of in the past. We are of the view that matters must therefore be regularized in the following terms:

a. It is held that no appeal lies to this Court in terms of Article 212(3) against the decision of a Tribunal created by a Provincial law to which the proviso to clause (2) has not been applied. Any such leave petitions and appeals as are pending, being not maintainable, must be returned forthwith by the Office and no such leave petitions are to be entertained in future;

b. Nothing in sub-para (a) above applies in relation to the following:

i. Leave petitions and/or appeals that already stand decided or disposed of (including by way of having been withdrawn or remanded or otherwise dealt with), whether by way of a detailed judgment or a short order whether announced orally or in writing and regardless of whether in respect of any such matter detailed reasons are awaited, all such matters being regarded as past and closed;

ii. Leave petitions and/or appeals in which judgment is reserved, unless the concerned Bench directs otherwise;

iii. Leave petitions and/or appeals that are part heard, unless the Bench concerned directs otherwise;

iv. Such pending leave petitions and/or appeals as may be directed by the Hon'ble Chief Justice.

c. A litigant to whom a leave petition or appeal has been returned in terms of sub-para (a) or by reason of anything contained in sub-para (b), and who chooses or wishes to avail another remedy before any other forum as may be available under law shall have the benefit of s. 14 of the Limitation Act, 1908 if any question of limitation arises or (as the case may be) equivalent equitable relaxations if any question of delay or laches arises.

d. The Registrar shall ensure that a copy of this judgment is forthwith sent to the registrars of all Tribunals to which sub-para (a) applies and the said registrars shall immediately bring it to the attention of the Chairpersons and members of the said Tribunals. It shall be the responsibility of each Chairperson to ensure that till such time as the proviso to clause (2) of Article 212 becomes applicable to the Tribunal, the following (or similar) legend is suitably incorporated in the title page of each decision thereof for the benefit of all litigants:

> "This Tribunal is not covered by the proviso to clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan and therefore no leave petition or appeal lies to the Hon'ble Supreme Court of Pakistan in terms of clause (3) of the said Article."

21. The Office is directed to forthwith return the instant appeal to the present appellant.

Judge

Judge

Islamabad, the
6th June, 2022
Naveed/*
Approved for reporting

Announced in open Court on 15.11.2022 at Islamabad

Judge