

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

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE AMIN-UD-DIN KHAN  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**C.M.As NO. 3837 TO 3845 OF 2022 IN  
CIVIL PETITIONS NO. NIL OF 2022**

**AND**

**CIVIL PETITIONS NO.1874, 1987 TO  
2001, 2091, 2605, 2477 AND 2478 OF  
2022.**

(Against the judgment dated 11.02.2022 passed by the  
Federal Service Tribunal, Lahore in Appeal No.185 (L), 159-  
L, 160-L, 161-L, 163-L to 173-L, 179-L, 146-L, 184-L, 174-  
L, 162-L/2020 respectively)

Divisional Superintendent Postal Services Faisalabad	(CP.1874/2022)
Accounts Officer Lahore G.P.O	(CP.1987-1989,2001/2022)
Divisional Superintendent Postal Services "L" Division Lahore	(CP.1990-2000 & 2478/2022)
Senior Postmaster Sheikhpura, G.P.O.	(CP.2091/2022)
Divisional Superintendent Postal Services Sialkot	(CP.2477/2022)
Chief Postmaster Lahore, G.P.O.	(CP.2605/2022)
Assistant Account Office Sialkot G.P.O	(CMAs.3837-3841/2022)
Divisional Superintendent Postal Services Gujranwala	(CMA.3842/2022)
Chief Postmaster Gujranwala G.P.O	(CMAs.3843/2022)
Assistant Account Office Sialkot G.P.O	(CMAs.3844-3845/2022)
...Petitioners	

**VERSUS**

Khalid Mahmood & others	(CP.1874/2022)
Syed Pervaiz Hussain & others	(CP.1987/2022)
Junaid Ahmed & others	(CP.1988/2022)
Talat Shaheen & others	(CP.1989/2022)
Zulfiqar Ali & others	(CP.1990,1999/22)
Muhammad Athar Qayyum & others	(CP.1991/2022)
Tariq Mahmood & others	(CP.1992/2022)
Muhammad Shabbir & others	(CP.1993/2022)
Muhammad Akram & others	(CP.1994/2022)
Muhammad Abid Siddique & others	(CP.1995/2022)
Muhammad Imran Yasin & others	(CP.1996/2022)
Muhammad Arshad & others	(CP.1997/2022)
Muhammad Abdullah Sialvi & others	(CP.1998/2022)
Abdullah & others	(CP.2000/2022)
Murtaza Khan & others	(CP.2001/2022)
Naeem Akthar & others	(CP.2091/2022)

Sikandar Ijaz & others	(CP.2477/2022)
Naeem Hussain Khan & others	(CP.2478/2022)
Syed Amir Hussain Kazmi & others	(CP.2605/2022)
Muhammad Riaz & others	(CMA.3837/2022)
Muhammad Zahid & others	(CMA.3838/2022)
Tariq Mehmood Anjum & others	(CMA.3839/2022)
Abdul Ghafoor & others	(CMA.3840/2022)
Tikka Khan & others	(CMA.3841/2022)
Muhammad Azam & others	(CMA.3842/2022)
Abdul Jabbar & others	(CMA.3843/2022)
Muhammad Javed Iqbal & others	(CMA.3844/2022)
Nasir Altaf & others	(CMA.3845/2022)

...Respondents

For the Petitioners: Ch. Amir Rehman, Addl. AGP  
Mr. Anis Muhammad Shahzad, AOR  
  
Mr. M Naeem, Asst. Account Officer;  
Mr. M. Zaman, Asst. Superintendent;  
Mr. M. Salman, Asst. Superintendent,  
GPO, Lahore;  
Mr. M. Imran, Asst. Superintendent, GPO,  
Faisalabad;  
Mr. M. Tahir, Deputy Senior Postmaster,  
Shaikhupura;  
Mr. Amjad Ali, Asst. Superintendent, GPO,  
Faisalabad

For Respondents: N.R.

Date of Hearing: 06.10.2022

### **JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** The aforesaid Civil Petitions for leave to appeal are directed against the common Judgment dated 11.02.2022, passed by the Federal Service Tribunal, Lahore ("**Tribunal**") in Appeal Nos.185 (L), 159-L, 160-L, 161-L, 163-L to 173-L, 179-L, 146-L, 184-L, 174-L and 162-L/2020. By means of 09 C.M.As No.3837 to 3845 of 2022 in some of the Civil Petitions for leave to appeal which were not allotted Civil Petition numbers by the Office, the petitioners also applied for an exemption from filing a certified copy of the impugned judgment of the learned Tribunal, but the similar order is attached in some other petitions therefore, the applications are allowed for the reasons mentioned in the aforesaid applications and Office is directed to allot numbers to such civil petitions also. We have also noted that out of the bunch of these civil petitions, a few of these petitions are time-barred, but

the rest of the petitions are within time, therefore, instead of non-suiting the petitioners on a technical ground, we have condoned the delay so that the entire bunch of petitions, in which the impugned judgment is one and the same, may be taken up and all the Civil Petitions may be decided compositely.

2. The transitory features of the litigation as resonated from the impugned judgment passed by the learned Tribunal are as under:

Service Appeals were filed by the respondents (employees) for grant of back benefits pursuant to their regularization for that they had also filed departmental appeals which remained undecided by the competent authority. The respondents (employees) sought the directions of the learned Tribunal against the petitioners to grant the arrears of pay and allowances as earlier directed by the Tribunal vide orders dated 29.10.2020, 31.01.2020 and 06.02.2020 in the identical cases filed by the similarly placed employees of the Department.

3. The Additional Attorney General for Pakistan ("**AAGP**") argued that impugned Judgment of the learned Tribunal is not sustainable under law which has resulted in a grave miscarriage of justice and is also based on misreading and non-reading of material available on the record. It was further contended that it was the duty of the Tribunal to decide the legal questions raised before it. He further averred that the learned Tribunal failed to appreciate that the daily wages officials whose services have been regularized are not admissible for any arrears/back benefits, but their service shall be counted for calculating pension. He further avowed that the Finance Division has clarified *vide* letter dated 25.01.2022 that no policy exists for protection of daily wages service at present with reference to applicability of the Tribunal's judgment dated 09.09.2020 and the period of such officials shall be counted for pension from the date on which they have been regularized. He further added that the Finance Division clarified *vide* letter dated 20.09.2016 that no arrears/back benefits are admissible prior to 07.04.2015.

4. Heard the arguments. The nitty-gritties of the *lis* demonstrate that the respondents (employees) approached the learned Tribunal, not for their regularization in service with immediate effect, or with effect from initial appointment, but they approached the learned

Tribunal for seeking directions against the petitioners for releasing their back benefits pursuant to regularization in service for which they also preferred departmental appeals which remained unresponded to by the competent authority. The impugned judgment of the Tribunal divulges that, while hearing the appeals, the petitioners were represented by the learned AAGP, with the assistance of departmental representatives M/s Amjad Ali, Syed Dastagir, Aziz-ur-Rehman, Safdar Iqbal, Touqeer Ahmad, Babar Mahmood and Muahmmad Naeem, Assistant Superintendents, Post Offices. It is also translucent from the impugned judgment of the learned Tribunal that the parties were not at issue and the claim of the respondents (employees) were accepted without any demur or reservation which is clearly reflected from the findings of the learned Tribunal jotted down in paragraphs 2 and 4 of the impugned judgment which are reproduced as under:

“2. The respondents in their detailed parawise comments have admitted the fact that the services of the appellants have been regularized from their initial appointment and the service books have also been verified from the Director of Postal Accounts, Lahore. The arrears of pay and allowances will be paid with the availability of funds from the Finance Division.

4. Indeed the respondents have acknowledged the fact that the services of the appellants were regularized from the date of their initial appointments and only hitch is availability of funds. The Finance Division is responsible to carry out the task of availability funds which has already been requested by the respondent-Department. The respondents are directed to manage for grant of arrears to the appellants within a period of three months positively.”

5. The whys and wherefores of the impugned judgment leads us to an irresistible conclusion that the learned Tribunal has not decided anything by its own, rather it was the petitioners who never defended the case vigorously and submitted their own comments in which they have admitted the fact that the services of the respondents (employees) have been regularized from the date of initial appointment, and not only their service books have been verified from the concerned Department, but also a commitment was made that the arrears of pay and allowances will be paid on the availability of funds from the Finance Division. After this clear

statement, nothing was within the dominion and purview of the Tribunal to decide when there was no bone of contention between the parties, except that the learned Tribunal, keeping in view the financial scarcity or crunch, allowed the petitioners to arrange the funds for discharging liability of arrears within the period of three months.

6. When we confronted the learned AAGP with regard to their comments filed in the Tribunal conveying a consensual statement, he could not controvert the same. We also asked that before the Tribunal, while the *lis* was taken up for hearing, at least seven representatives/assistant superintendents of post offices were present, but nobody took any exception to the comments/statement reproduced in the impugned judgment but yet again, the learned AAGP could not satisfy our query as well. We also called upon him to enlighten us if the comments were filed under some misunderstanding, or due to any reckless or fraudulent conduct of any official, and/or whether the comments before filing were not vetted by the competent authority, and/or whether there was any lack of proper sanction, then what action was taken against any such delinquent, but nothing was argued or placed before us to rebut the admission made in the comments filed before the learned Tribunal, nor the team of officers from the Department present before us while hearing these civil petitions could controvert or suggest anything contrary to the views of the Tribunal.

7. It is somewhat strange and astonishing for us that the petitioners have assailed the judgment of the learned Tribunal which was simply disposed of with the concurrence of the petitioners on the basis of their comments, and nothing was decided by the Tribunal, except recording the consensual statement made in the comments. The factual position encapsulated in the comments cannot be challenged by the petitioners due to their acquiescence that the services of the respondents (employees) have been regularized and their Service books have also been verified with a further promise to pay arrears on the availability of funds, hence at this stage the petitioners' plea is also hit by the doctrine of approbate and reprobate, which

means to approve and disapprove. This doctrine is founded on the maxim '*quod approbo non reprobo*' which translates to "that which I approve, I cannot disapprove". It is also known as principle of equitable doctrine of election.

8. The acumen and perspicacity of establishing the Service Tribunal under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") is to expeditiously decide appeals with regard to the terms and conditions of service of Civil Servants and, according to the command of Section 5 (2) of the Service Tribunals Act, 1973, the Tribunal is deemed to be a Civil Court and have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 ("**CPC**") including the powers of enforcing the attendance of any person and examining him on oath; compelling the production of documents and issuing commission for the examination of witnesses and documents. The Tribunal may on appeal, confirm, set aside, vary or modify the order appealed against to do complete and substantial justice between the parties. The learned Tribunal passed the judgment basically on the admission made by the Department in the comments presented to the Tribunal and, even on the date of hearing, the presence of at least seven officers is marked and they did not raise anything to the contrary which amounts to an admission to the written comments filed in response to the appeal. Under Section 5 of the Service Tribunals Act 1973, the Tribunal is deemed to be a Civil Court and have the same powers as are vested in such court under the CPC, including certain other powers mentioned in the Section, but not excluding or disregarding other powers of the Civil Court provided in the CPC, therefore, the learned Tribunal while exercising powers of Civil Court enshrined under the CPC had rightly looked into the admission made by the petitioners in their comments. It is worthwhile to reiterate that the respondents (employees) neither approached the learned Tribunal for any relief of regularization of their contractual services which could have been decided in view of the dictums laid down by this Court, nor in view of any special law promulgated for the regularization of contractual employees, nor in view of any Government policy or cabinet decision. On the contrary, their

services were already regularized by the Department. In such an eventuality, if the Department of its own will and volition decides to initiate any action for regularizing the services of contractual employees, the said action cannot be termed or declared illegal or unconstitutional unless the rights of similarly placed persons or employees are contravened or exploited due to such regularization which is altogether missing in the case and does not require any indulgence.

9. The analogy and/or *raison d'être* of the provision for decreeing the suit by the civil court as encapsulated under Order XII, Rule 6, CPC is quite applicable in the present circumstances of the case which empowers and qualifies the civil court to dispose of the *lis* with regard to which there is no dispute between parties, but for this purpose the entire plaint or written statement is required to be read for the purposes of finding out the nature of the admission, whether it is clear, specific, unambiguous, definite and categorical and the Court is bound to examine the plaint and written statement with diligent application of mind to ascertain the nature of admission. The elemental characteristic of an admission is that it should be a condensed and cautious act. The precondition and benchmark of an admission is that it should be unconditional, unambiguous and intend the same to be read and construed as an admission. The legislative intent is clear that it should be unambiguous and clear. The Black's Law Dictionary (Tenth Edition) at page 56 explains the word "Admission" means "any statement or assertion made by a party to a case and offered against that party; an acknowledgment that the facts are true". The admission within the bounds of law would discernibly have the aftermath of wrapping up the case without the determination of any further question and evidence. The legislative purpose of Order XII, Rule 6, CPC is to cut short the length of litigation with forward-thinking comprehension and without the imposition of any irrational constraint, rather the court should consciously and judicially look into the fundamental constituents of the admission for its satisfaction whether the *lis* can attain finality or not in the facts and circumstances of each case. In the event of any ambiguous, conditional or unclear admission, the court cannot be

left to interpretative determination, but the proper course would be that the case should be decided on merits after denouement of a full-fledged trial. The cumulative upshot is that there should be an unambiguous and unequivocal admission by the other side of his liability and commitment towards other side of the *lis*.

10. In the wake of the above discussion, we do not find any illegality or perversity in the judgment of the learned Tribunal warranting any interference by this Court. The Civil Petitions are therefore dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the  
6<sup>th</sup> October, 2022  
Khalid  
Approved for reporting.