

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL APPEAL NO. 508 OF 2020**

(On appeal against the judgment dated  
25.08.2018 passed by the High Court of  
Balochistan, Quetta, in C.P. No. 136/2014)

Divisional Superintendent, Quetta Postal Division and others  
...Appellants

**VERSUS**

Muhammad Ibrahim and others  
...Respondent(s)

For the Appellants: Moulvi Ejaz ul Haq, DAG  
Syed Rifaqat Hussain Shah, AOR  
Mr. Hamid ul Haseeb, Asst. Director  
(Investigation), Quetta

For the Respondent (1): Ms. Sarwat Mukhtar, ASC  
(Through video link from Quetta)

Amicus curiae: Hafiz Muhammad Tariq Nasim, ASC

Date of Hearing: 10.06.2021

...  
**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** The appellants through this appeal by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, have called in question the judgment dated 25.09.2018 passed by the High Court of Balochistan, Quetta, whereby the Constitution Petition assailed by the appellants was dismissed and the orders of Labour Court maintained by Labour Appellate Court were upheld.

2. Briefly stated the facts of the matter are that respondent No. 1 was appointed as Postman on 04.07.1987. During the service tenure, he was assigned as officiating postmaster at Killa Abdulah, District Quetta. During the subsistence of the said assignment, the respondent was alleged to

*have misappropriated public money belonging to exchequer while making bogus payments in Benazir Income Support Program especially designed to help the poor people as a gesture of goodwill by the Government. There was a mechanism designed to make payments through money orders. However, the requisite formalities were ignored intentionally with ill design and as such fake vouchers were prepared to show payments resulting into misappropriation of an amount to the tune of Rs.5,78,232/-. The respondent was proceeded against the said accusation resulting into registration of a case bearing FIR No. 14/2011 under Sections 409, 468, 471, 477-A PPC read with Section 5(2) of Prevention of Corruption Act, 1947. He was also proceeded against by the department by way of issuing a charge sheet on 20.06.2011 wherein the charges of misappropriation, corruption and inefficiency were leveled. The department appointed Assistant Superintendent (Field), Post Office, Loralai as Inquiry Officer to probe into the allegations contained in the charge sheet. The respondent did not join inquiry proceeding, hence, it was carried on ex-parte. The Inquiry Officer while attending to all facts and circumstances and all other material placed before him found the allegations against the respondent as correct and held him guilty of the charge. The competent authority i.e. Divisional Superintendent, Postal Service, Quetta while relying upon the inquiry report coupled with the conduct of the respondent imposed penalty of dismissal from service upon the respondent vide order dated 14.07.2012. On the other hand on completion of the investigation, challan was submitted in the Court of Special Judge, Anti Corruption who after completion of the trial found the accusation against the respondent to be correct and as such he was convicted and sentenced vide judgment dated 28.02.2014 to suffer two years RI in each Section and to pay fine of various amounts under different sections. The respondent assailed the order of conviction before the High Court of Balochistan through Criminal Appeal No. 10/2014, which was allowed and the respondent was acquitted vide judgment dated 24.09.2018. In the meantime, the respondent served grievance notice upon the appellants and thereafter filed grievance petition on 13.08.2012*

*before the Labour Court-I, Balochistan, Quetta. The appellants did not join proceedings before the Labour Court, hence, the grievance petition was accepted vide judgment dated 20.11.2012 and the respondent was reinstated into service. The judgment of the Labour Court was upheld by the Labour Appellate Tribunal vide judgment dated 02.01.2014. Being aggrieved, the appellants filed Constitution Petition No. 136/2014 before the High Court of Balochistan against the concurrent findings but the same was dismissed vide impugned judgment dated 25.09.2018. The appellants then filed CPLA 4630/2018 before this Court wherein leave to appeal was granted by this Court vide order dated 08.05.2020, out of which the present appeal has arisen. The appeal was heard on 18.12.2020 and it was ordered to be allowed. However, before the order could be signed, it was found that certain aspects of the matter were not properly assisted, therefore, the matter was fixed for re-hearing to address the following law points for determination:-*

- “(a) Whether a postman is a civil servant in terms of Section 2(b) of the Civil Servants Act, 1973, entitling him to avail remedy before the Service Tribunal?*
- (b) Whether the respondent is a workman, if so, under which law he will have remedy i.e. the Balochistan Industrial Relations Act, 2010 or the Industrial Relations Act, 2012, which provides for its application to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province?*
- (c) Whether the respondent had any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force, for violation of which the grievance petition could be filed by him in the Labour forum?*
- (d) Whether the Industrial Relations Act, 2012, where it has been applied to workmen employed in Postal Service will override the provisions of the Balochistan Industrial Relations Act, 2010 or even Section 1(4)(b) of the Act of 2010? And*

- (e) *Whether Section 1(4)(b) ibid in so far as it deals with the workmen of Pakistan Post, has become ultra vires the Constitution and the Act of 2012?"*

3. *To assist on the above noted questions of law raised, we had appointed Hafiz Muhammad Tariq Nasim, learned ASC, as amicus curiae. While opening his arguments, learned amicus curiae read various provisions of law including Section 2(1)(n) and clause 'xiii' of Schedule-II of the Workmen's Compensation Act, 1923 and also Section 2(1)(b)(iii) of the Civil Servants Act, 1973 to contend that the postman does not fall within the definition of 'civil servant' as he is ousted from the definition of civil servant, rather keeping in view the nature of duties performed by the postman in view of the definition of 'workman', he fully qualifies to be considered as workman; that the Pakistan Post is a trans-provincial department having its offices in each Province and also in the Federal Capital, therefore, the provisions of Industrial Relations Act, 2012, will be applicable on the respondent postman and for redressal of any grievance, the right forum would be National Industrial Relations Commission (NIRC) as per the domain of the said Act of 2012; that being a trans-provincial authority, the workmen of Pakistan Post are to be dealt with by the Industrial Relations Act, 2012 and Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010 is subservient to the provisions of Industrial Relations Act, 2012, as far as the workmen of Pakistan Post are concerned and the same is ultra vires of the Constitution of Islamic Republic of Pakistan; that according to proviso to Section 1(4)(c) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, it shall not apply to Industrial and commercial establishments carried on by or under the authority of the Federal or any Provincial Government where statutory rules of service are applicable to the workmen but as the postman is not subject of Civil Servants Act, therefore, the Standing Orders Ordinance, 1968, is applicable to the respondent postman.*

4. *Learned Deputy Attorney General adopted the arguments of learned amicus curiae so far as the applicability of law is concerned, however, differed on sole point that the postman*

*is a workman. He added that after the exclusion of the Telegraph department from the definition of the workman in Schedule-II of the Workmen's Compensation Act, 1923 since its abolition, the respondent is no more a workman. He also added that the job description of a postman is multi dimensional and he can be transferred to an indoor job, working in a room etc, therefore, on this score alone he cannot be considered a workman.*

5. *Learned counsel for the respondent No.1 mainly contended that the respondent is not a civil servant and the Civil Servant (Efficiency & Discipline) Rules, 1973 are not applicable to him, rather the Standing Orders Ordinance, 1968 applies to him, therefore, the respondent was fully justified to file grievance petition before the Labour Court. She further argued that this aspect of the case was fully attended to by the courts below and there are concurrent findings on this aspect, which makes it as a close transaction.*

6. *We have heard the arguments of the learned amicus curiae, learned Law Officer and the learned counsel for the respondent at length and have perused the relevant law.*

7. *Before proceeding with the case, it would be in order to discuss as to what is the job description of a postman. The main job duty of a postman is to sort mail on a sorting frame, getting it into address order, operate automated equipment, deliver mail on foot, by a bicycle/motorcycle or by van, get customer signatures for registered post and recorded deliveries, pick up mail from post boxes, post offices and businesses and deal with wrongly addressed or returned mail. Although, a postman performs indoor work but the main work of a postman relates to outdoor. Now we will deal with the question of foremost importance, whether the respondent is a civil servant in terms of Section 2(1)(b) of the Civil Servants Act, 1973 entitling him to avail remedy before the Service Tribunal, if falls within the ambit of a civil servant as contained in the Act. It is not disputed that the Service Tribunals Act, 1973, applies to all "civil servants" wherever they may be and it has exclusive jurisdiction in respect of matters relating to the terms and conditions of service of 'civil servants' including disciplinary matters. The term "civil servant" includes a person who is or has*

been a civil servant within the meaning of the Civil Servants Act, 1973, so we will have to see as to what the term 'civil servant' means under the Civil Servants Act, 1973. It reads as under: -

2. **Definitions.**-(1)(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include-

(i) a person who is on deputation to the Federation from any Province or other authority;

(ii) a person who is employed on contract, or on work-charge basis or who is paid from contingencies; or

(iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workman's Compensation Act, 1923 (VIII of 1923);

8. The plain reading of the above-referred definition of 'civil servant' brings us to the conclusion that a civil servant is one whose characteristics/qualifications are given in sub clause (b) above and the Civil Servants Act, 1973 applies to all "civil servants" wherever they may be but sub clause 'iii' excludes a person who is a "worker" as defined in the Factories Act, 1934 or "workman" as defined in the Workman's Compensation Act, 1923. In the instant case sub-clauses (i)(ii) are not relevant as the respondent postman is neither a contract employee nor on deputation and, therefore, sub-clause 'iii' would be applicable. Now, we would find out as to whether the respondent postman is a 'worker' or a 'workman'. The term "worker" as defined in the Factories Act, 1934 is as under: -

"2. Definitions.- (h) "worker" means a person employed directly or through an agency whether for wages or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever, incidental to or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on";

8. From the above definition, it is clear that the postman does not fall within the definition of "worker" as defined in Section 2(h) of the Factories Act, 1934. Now we will consider the term "workman" as defined in the in the Workman's Compensation Act, 1923, which reads as under: -

2. (1)(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i) ... .. , or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of naval, military or air forces; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

The relevant portions of Schedule II thereof read as under: -

#### SCHEDULE II [See section 2(1)(n)]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n), ARE INCLUDED IN THE DEFINITION OF WORKMEN

The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is-

(xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Posts and Telegraphs Department;

9. The term "workman", as defined in Section 2(1)(n) read with Second Schedule of the Workman's Compensation Act, 1923, includes any person who is employed in any occupation ordinarily involving outdoor work in the 'Posts and Telegraphs Department', meaning thereby that such person will be excluded

*from the definition of "civil servant" and the Service Tribunal shall not have jurisdiction in respect of such person. It is important to consider the evolution of the Post and Telegraphs Department. The Post Office Department is one of the oldest departments of the Sub-Continent working under the Post Office Act, 1898. After the independence of Pakistan in 1947, the Post Office started functioning as the Department of Posts & Telegraph in the Ministry of Communications. In 1962, the Pakistan Post was separated from the Pakistan Telephone & Telegraph Department and started working as an independent attached department under the Ministry of Communications. Later on, the Pakistan Post was separated from the Ministry of Communications and was made an independent Corporation under the Ministry of Postal Services. As a result of reforms introduced in Civil Services structure in the year 1972, the Postal Group was formed. The Post Office Department provides postal and financial services to the people. It also performs other functions which inter-alia include (1) Post Office Savings Bank, (2) Postal Life Insurance, (3) Civil & Military Pension Payments, (4) Collection of Utility Bills, (5) Renewal of Driving and Arms Licences, (6) Issuing PTV Licence, etc. Later, an autonomous High Powered Postal Services Management Board was established through Pakistan Postal Services Management Board Ordinance, 2002. Under the Rules of Business, 1973, as per Serial No.27 of list of Ministries and Divisions provided in the Schedule under Rule 3(1) thereof, 'the Postal Service Division' falls under 'the Ministry of Postal Service'. As per Entry No.31A of the Schedule II under Rule 3(3) thereof, which provides 'Distribution of Business among the Divisions', the Postal Service Division has been mandated to deal with the business of 'Posts, including Saving Bank and Postal Life Insurance' and 'Agency functions on behalf of other Divisions such as military pensions, etc.'. As per Entry No.70 of the Schedule III under the Rule 4(4) thereof, 'Pakistan Post Office Department' has been declared as an attached Department of 'Postal Services Division'. Now the question remains whether, in view of the changed status of 'Posts and Telegraphs Department', a person employed in any occupation ordinarily involving outdoor work in*



*the Posts would be excluded from the definition of "civil servant" provided in Section 2(1)(b)(iii) of the Civil Servants Act, 1973, bringing such person out of the jurisdiction of the Service Tribunal in terms of the Civil Servants Act, 1973, or in the changed circumstances, a person involving outdoor work (which includes a postman) working in the Pakistan Post Office under the Postal Services Division, which is an attached Division of Ministry of Postal Services, is still subject to the jurisdiction of the Service Tribunal. In this regard, it would be appropriate to consider the objects and purposes of the Civil Servants Act, 1973 as well as the Workmen's Compensation Act, 1923. The object of the Civil Servants Act, 1973 as mentioned therein is "to regulate the appointment of persons to, and the terms and conditions of Service of persons in, the service of Pakistan". The preamble thereto provides that "Whereas it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons, in the service of Pakistan, and to provide for matters connected therewith or ancillary thereto". Whereas, the object of the Workmen's Compensation Act, 1923, as provided therein, is to "provide for the payment by certain classes of employers to their workmen of compensation for injury by accident". Likewise, the preamble of the Workmen's Compensation Act, 1923 provides that "Whereas it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident". In the 'Statement of Objects and Reasons' given at the time of enacting the Workman's Compensation Act, 1923 it was stated, inter alia, that "the growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accidents. The general principle is that the compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment, which directly relates to nature of job assigned to them. Compensation will also be given in certain limited circumstances for disease. The actual rates of*

compensation payable are based on the unanimous recommendation of the committee ...". Thus, the objects of both the laws are different, in that, the object of the Civil Servants Act, 1973 is to regulate the appointment of persons to, and the terms and conditions of service of persons in the service of Pakistan and the object of the Workmen's Compensation Act, 1923, is to protect the workman, as far as possible, from hardship arising from accidents and provide for the payment by certain classes of employers to their workmen of compensation for injury by accident as they are exposed due to description of job. The definition of one law may not be relevant for the purpose of other law but as the definition of workman has been borrowed by the Civil Servants Act, 1973 from the Workmen's Compensation Act, 1923, it would have same meaning as given in the Workmen's Compensation Act, 1923. As mentioned above, the Postal Department was established under the Post Office Act, 1898. Later, an autonomous High Powered Postal Services Management Board was established through Pakistan Postal Services Management Board Ordinance, 2002. However, Section 29 of the Pakistan Postal Services Management Board Ordinance, 2002 provides, inter alia, that nothing in the said Ordinance shall derogate/affect the provision of the Post Office Act, 1898. The Post Office Act, 1898 having remained in force and the Pakistan Post Office being functioning under the Act of 1898, notwithstanding the fact that the Post Office is an attached Department of Postal Service Division working under the Ministry of Postal Services, the employees of Post Office employed in any occupation ordinarily involving outdoor work shall remain included in the term "workman" as defined in the Workman's Compensation Act, 1923 and are excluded from the term "civil servant" as defined in the Civil Servants Act, 1973. It would be in fitness of things to refer to a judgment of this Court in the case of Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others (PLD 2006 SC 602) wherein it has been held as under: -

"37. Thus, in view of ratio decidendi of the above judgments, it can be held that a worker or a workman

as defined in Factories Act, 1934 or the Workmen's Compensation Act, 1923, notwithstanding the fact that the controlling share in the industry vests in the Federal Government, shall not be treated as civil servant. Similarly, persons on contract, even though discharging their functions in connection with the affairs of the Federation and likewise, as well as the deputationists from the Provinces to the Federal Government have not been granted protection of CSA, 1973, therefore, they were excluded from the definition of 'civil servant' and as per terms and conditions of the person of later category, laid down in CSA, 1973 they shall not be entitled to approach the Service Tribunal, established under Article 212 of the Constitution. It may be noted that this Court in the case of Qazi With Muhammad (ibid), has crystallized the proposition, leaving no ambiguity in respect of 'civil servant' or other persons, as per section 2(1)(b)(i), (ii) and (iii) of the CSA, 1973 to avail remedy before the Service Tribunal in respect of their terms and conditions, being in the service of Pakistan, including disciplinary matters, as per the mandate of Article 212(1) of the Constitution.

**(Underlined to lay emphasis)**

10. Now, we will advert to the questions (i) whether the respondent is a workman, if so, under which law he will have remedy, i.e., the Balochistan Industrial Relations Act, 2010 or the Industrial Relations Act, 2012, (ii) whether the Industrial Relations Act, 2012, where it has been applied to workmen employed in Postal Service will override the provisions of the Balochistan Industrial Relations Act, 2010 or even Section 1(4)(b) of the Act of 2010, and (iii) Whether Section 1(4)(b) of Balochistan Industrial Relations Act, 2010 in so far as it deals with the workmen of Pakistan Post has become ultra vires of the Constitution and the Industrial Relations Act, 2012. To resolve these questions, we will firstly examine Section 1 of the Industrial Relations Act, 2012, which reads as under: -

"1. Short title, extent, application and commencement.—(1) This Act may be called the Industrial Relations Act, 2012.

(2) Subject to sub-section (3), it extends to the whole of Pakistan.

(3) It shall apply to all persons employed in any establishment or industry, in the Islamabad Capital

*Territory or carrying on business in more than one province, but shall not apply to any person employed,--*

- (a) in the Police or any of the Defence Services of Pakistan or any services or installations exclusively connected with the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government;*
- (b) in the administration of the State other than those employed as workmen;*
- (c) as a member of the Security Staff of the Pakistan International Airlines Corporation or drawing wages in pay group not lower than Group V in the establishment of that Corporation as the Federal Government may, in the public interest or in the interest of security of the Airlines, by notification in the official Gazette, specify in this behalf;*
- (d) by the Pakistan Security Printing Corporation or the Security Papers Limited; and*
- (e) by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis.*

*(4) It shall come into force at once.*

11. *From the perusal of above provision, it is clear that the Industrial Relations Act, 2012 is applicable to all persons employed in any 'establishment' or 'industry', in the Islamabad Capital Territory or any trans-provincial authority carrying on business 'in more than one province' but shall not apply to any person inter alia employed in the administration of the State, other than those employed as 'workmen'. Prior to Industrial Relations Act, 2012, Section 1(3)(b) of the Industrial Relations Ordinance, 2008, provided that it shall not apply to any person employed "in the administration of the State other than those employed as workmen by the Railway and Pakistan Post". In Section 1(3)(b) of the Industrial Relations Act, 2012, the words "by the Railway and Pakistan Post" have been deleted, therefore, now all the persons in the administration of the State employed as workmen have*

been made subject to Industrial Relations Act, 2012, instead of only workmen of Railway and Pakistan Post. The terms "establishment" and "industry" as defined in Industrial Relations Act, 2012 read as under: -

2. (x) "establishment" means any office, firm, factory, society, undertaking, company, shop or enterprise, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches in the Islamabad Capital Territory or falling in more than one province, whether situated in the same place or in different places and except in Section 62 includes a collective bargaining unit, if any, constituted by any establishment or group of establishments;

(xvii) "industry" includes any business, trade, calling, employment or occupation for production of goods or provisions of services in the Islamabad Capital Territory and falling in more than province, and excluding those set up exclusively for charitable purposes;

12. The "Pakistan Post Office Department" is an Attached Department of "Postal Services Division" which falls under the "Ministry of Postal Services" in terms of the Rules of Business, 1973, therefore, the employees of Pakistan Post Office Department, being employed in the administration of the State are excluded from the operation of Industrial Relations Act, 2012. However, only those employees of Post Office are subject to the Industrial Relations Act, 2012 who are employed as workmen. The term 'workman' has been defined in Industrial Relations Act, 2012, as under: -

(xxxiii) "worker" and "workman" mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is

*employed mainly in managerial or administrative capacity.*

13. *Thus a "workman" means a person not falling within the definition of employer who is employed in an establishment or industry for hire or reward either directly or through a contractor. The Postman does not fall within the definition of employer, therefore, it is included in the definition of workman and is subject to the Industrial Relations Act, 2012. As per Section 33 of the Industrial Relations Act, 2012 a 'worker' may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises. Under Section 54(h) of the Industrial Relations Act, 2012, the functions of the Commission include, to deal with cases of individual grievance in the manners prescribed in Section 33. Now we shall consider the relevant provisions of the Balochistan Industrial Relations Act, 2010. Section 1 thereof reads as under: -*

*1. Short title, extent, application and commencement.- (1) This Bill may be called the Balochistan Industrial Relations Act, 2010.*

*(2) It extends to the whole of Balochistan excluding tribal areas.*

*(3) It shall come into force at once.*

*(4) It shall apply to all persons employed in any establishment or industry to the extent of Balochistan, but shall not apply to any person employed-*

*(a) in the Police or any of the Defense Services of Pakistan or any services or installations exclusively connected with or incidental to the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government except those run on commercial basis;*

*(b) in the administration of the State other than those employed as workmen by the Railway and Pakistan Post;*

*(c) .....*

(d) .....

14. From the perusal of Section 1(4) above, it is clear that the Balochistan Industrial Relations Act, 2010 shall apply to all persons employed in any establishment or industry to the extent of Balochistan only, but shall not apply to any person employed in the administration of the State other than those employed as workmen by the Railway and Pakistan Post. Under Section 2(dd) of the Balochistan Industrial Relations Act, 2010, "worker" and "workman" have been defined in almost similar terms as defined in the Industrial Relations Act, 2012. As noted above, Industrial Relations Act, 2012 is applicable to all persons employed in any establishment or industry, in the Islamabad Capital Territory or to any other establishment or industry, which being trans-provincial is carrying on business in more than one province, whereas, the Balochistan Industrial Relations Act, 2010 shall apply to all persons employed in any establishment or industry to the extent of province of Balochistan. The Pakistan Post Office Department is managed by the Pakistan Postal Services Management Board established under the Pakistan Postal Services Management Board Ordinance, 2002, and rendering services not only in the Islamabad Capital Territory but also in all the four Provinces, therefore, it is squarely covered by Section 1(3) of the Industrial Relations Act, 2012. Section 54(i) of the Industrial Relations Act, 2012, specifically provides that it shall be the function of the Commission "to exercise exclusive jurisdiction over the establishment or group of establishments situated in the Islamabad Capital Territory and trans-provincial". As by virtue of Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, applicability of provincial statute extends to trans-provincial department i.e. Post Office, therefore, it is inconsistent with the Federal Legislation i.e. Industrial Relations Act, 2012, wherein the Preamble, Section 2(xxxiii) as well as Section 54(i) deals with the trans-provincial matters. Entry No. 13 of Part II of Federal Legislative List empowers the Parliament to enact on any matter which is related to inter-provincial matters and co-ordination, however, while enacting Section 1(4)(b) of the Balochistan

*Industrial Relations Act, 2010, the Provincial Legislature went beyond its competence/power to enact. Article 142 of the Constitution is very important, which commands that "Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List". This Court in the case of Sui Southern Gas Company Vs. Federation of Pakistan (2018 SCMR 802) has candidly held that "under the command of Entry No. 13 in Part-II of the Federal Legislative List, the Federation has competence to enact laws relating to inter-provincial matters, Entry No. 18 thereof further enlarges the scope of said entry, therefore, the Federal Legislature has legislative competence to legislate in this regard." In such a situation, Article 143 of the Constitution of Islamic Republic of Pakistan, 1973, also becomes relevant. For the ease of reference, it reads as under:-*

*"143. If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void."*

15. Article 143 of the Constitution envisages that in the event of provision of a statute being repugnant to Federal Statute, provision contained in the latter would prevail and provision of Provincial Statute to the extent of repugnancy would be void. From the combined reading of Section 1(3) of the Industrial Relations Act, 2012, Section 1(4) of the Balochistan Industrial Relations Act, 2010 and Article 143 of the Constitution, it is clear that Section 1(3) of the Industrial Relations Act, 2012, where it has been applied to workmen employed in the administration of the State (which includes the Postal Service Department) will override the provisions of Section 1(4)(b) the Balochistan Industrial Relations Act, 2010. This Court in the case of PTCL Vs. Member NIRC (2014 SCMR 535) has held that provisions of Industrial Relations Act, 2012, have overriding effect on all provincial labours laws. It would be in order to reproduce the relevant portion of the judgment, which reads as under:-



*"13. Even otherwise under the provision of Article 143 of the Constitution of Pakistan, 1973, laws enacted by the Parliament have been given overriding and superimposing effects over the laws enacted by a Provincial Assembly of any of the Provinces and in case of any clash or repugnancy between the two, the laws enacted by the Parliament shall prevail. Thus, on the touchstone of the provision of Article 143 of the Constitution, the Act of Parliament has been placed on the high pedestal and any Provincial Law enacted by the Provincial Assembly shall give way to the Federal Law, enacted by the Parliament, if the former is inconsistent or repugnant to the latter. Therefore, it is held that the provision of Act X of 2012 (the IRA 2012) has overriding effect on all Provincial Labour Laws. Judged from this angle, we are of the firm view that in the present case, the learned Judge in Chamber of the Lahore High Court, Lahore while drawing the impugned judgment dated 26-11-2012 could not properly comprehend the intents and objects of the above provisions of law, rather misconstrued and misinterpreted the same, resulting into miscarriage of justice, the impugned judgment being not sustainable in the eye of law is liable to be set at naught."*

***(Underlined to lay emphasis)***

*16. This Court in the case of Federal Government Employees Housing Foundation Vs. Ghulam Mustafa (2021 SCMR 201) while dealing with the similar question candidly held that "where legislative instruments in competition, one promulgated by the Federal and the other by the Provincial legislature, or any provisions contained therein, are pitched against each other, the test to determine the legislative supremacy or dominance is comparatively simple and provided by Article 141 and Article 142 of the Constitution, 1973 which clearly demarcates the legislative edges, competency and supremacy test. In case of conflict between Federal and Provincial enactments, privilege of overriding supremacy is conceded to the Parliament/Federal legislature under Article 143." Thus, we have no doubt in holding that the workmen of the Post Office Department are subject to the Industrial Relations Act, 2012 and not the Balochistan Industrial Relations Act, 2010. In view of the above finding, Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, insofar as it deals*

*with the workmen of Pakistan Post, is repugnant and void in terms of Article 143 of the Constitution and the Industrial Relations Act, 2012.*

17. *Finally, the question which remains to be seen is whether the respondent had any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force for violation of which the grievance petition could be filed by him in the labour court. A broad survey of the Industrial Relations Act, 2012, reveals that it specifically lays down a condition to agitate grievance before the labour court if a guaranteed or secured right of a workman under law or any award or settlement is violated. The first proviso to Section 1 of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, specifically bars its application to industrial and commercial establishments carried on by or under the authority of the Federal or any Provincial Government where statutory rules of service, conduct or discipline are applicable to the workmen employed therein. Undeniably, the Postal Services Department is an attached department of Postal Services Division, which falls under the Ministry of Postal Services in terms of the Rules of Business, 1973, and is managed and controlled by the Federal Government and as such the employees of the Post Office are governed by Civil Servants (Efficiency and Discipline) Rules. Though the respondent postman was proceeded under the said Civil Servants (Efficiency and Discipline) Rules, which are statutory in nature, however, it would not be hit by the above-said proviso of Standing Orders Ordinance, 1968, as the said Rules are promulgated under Section 25(1) of the Civil Servants Act, 1973, which authorizes the President or any other person authorized by him in this behalf to make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act and we have already held in the preceding paragraphs that the postman being a workman, he is excluded from the definition of a civil servant. Hence, the Rules framed under the Civil Servants Act, 1973, would not be applicable to workman/postman and the Standing Orders Ordinance, 1968 is applicable on the workman/postman. Reliance is placed on*

Pakistan Post Office Vs. Nadeem Ahmed Khan (1995 PLC (Labour) 205).

18. For what has been discussed above, the appeal is allowed and the impugned judgment dated 25.08.2018 is accordingly set aside by holding and declaring as under:-

(i) The postman is not a civil servant rather he is a workman and remedy for redressal of his grievance lies before the National Industrial Relations Commission;

(ii) The postman has a guaranteed right under Standing Orders Ordinance, 1968;

(iii) The Industrial Relations Act, 2012, will override Balochistan Industrial Relations Act, 2010, therefore, Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, to the extent as it deals with the workmen/employees of Pakistan Post, being a trans-provincial subject/entity is declared repugnant and void in terms of Article 143 of the Constitution of the Islamic Republic of Pakistan, 1973, being the sole and exclusive prerogative of the Federal Legislature to enact laws falling in the Federal Legislative List.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad,

Announced on **07.12.2021**

Approved For Reporting

**Khurram**