IN THE SUPREME COURT OF PAKISTAN
(Original/Appellate Jurisdiction)

Present
Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Muhammad Sair Ali
Mr. Justice Ghulam Rabbani

Constitution Petition No.24 of 2011

Air League of PIAC Employees through its President
Muhammad Usman Khan

...Petitioner

Versus

Federation of Pakistan,
M/o Labour and Manpower Division Islamabad etc.

....Respondents

For the petitioner	:	Mr. Abdul Hafeez Amjad, ASC Mr. Mehmood A. Sheikh, AOR
On Court Notice	:	Maulvi Anwar-ul- Haq, Attorney General
Amicus Curiae	:	Mr. Mehmood Abdul Ghani, Sr. ASC
Date of hearing	:	10.5.2011

O R D E R

Iftikhar Muhammad Chaudhry, CJ.— Instant petition has been filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, in which following prayer has been made:-

> It is, therefore, respectfully prayed that this Honourable Court may kindly be pleased to hold that IRA, 2008 stand protected up till 30th June, 2011 by virtue of Article 270AA of 18th Amendment of Constitution of Islamic Republic of Pakistan and respondents No.3 and 4 be directed to continue with the proceedings for holding of secret ballot for the determination of CBA in accordance with law.

2. Briefly stating facts of the case are that the petitioner, Air League of Pakistan International Airline Corporation Employees is an Industry-wise trade union registered under the Industrial Relations Laws with respondent No.3, National Industrial Relations Commission (NIRC). In the year 1969, to amend and consolidate the laws relating to the formation of trade unions, the regulation of

relations between employers and workmen and to avoid and settle any differences or disputes arising between them or matters connected therewith or ancillary thereto and in the national interest of country, to achieve the uniformity through Federal legislation, the Industrial Relations Ordinance, 1969 [hereinafter referred to as "IRO, 1969"] was issued whereby the East Pakistan Trade Unions Act, 1965, the East Pakistan Labour Disputes Act, 1965, the West Pakistan Industrial Disputes Ordinance, 1968 and the West Pakistan Trade Unions Ordinance, 1968 were repealed in terms of section 67 of the said Ordinance. However, the trade unions existing at the time of commencement of IRO, 1969, registered under the said repealed laws were deemed to be registered under IRO, 1969 and continued to be in force until altered or rescinded. Later on by means of Labour Laws (Amendment) Ordinance, 1972, section 22A of IRO, 1969 was inserted whereby National Industrial Relations Commission (NIRC) was constituted for settlement of disputes between the employers and the workers. In order to provide the mechanism for the functioning of NIRC, in terms of Section 22F of IRO, 1969, the National Industrial Relations Commission (Procedure and Functions) Regulations, 1973 were framed. The IRO, 1969 was repealed by means of section 80 of the Industrial Relations Ordinance, 2002 [hereinafter referred to as "IRO, 2002]. However, it was provided that without prejudice to the provisions of sections 6 and 24 of the General Clauses Act, 1897 every trade union registered under the repealed Ordinance would be deemed to be registered under IRO, 2002 and would continue until altered or rescinded. Subsequent thereto, the Industrial Relations Act, 2008 [hereinafter referred to as "IRA, 2008"] was promulgated whereby the IRO, 2002 was repealed. In terms of section 87 of the said Act, the trade unions registered under the repealed ordinance were deemed to be registered under the said Act and continued in force until altered and rescinded. Clause (3) of the said section provided that the Act would, unless repealed earlier, stand repealed on 30th April, 2010.

3. It is interesting to note that until 30th April, 2010 no legislation was made either to supercede the IRA, 2008 or to extend the period, for which the Act would remain operative. In the

meantime, the parliament passed the Eighteenth Constitutional Amendment on 20.4.2010 whereby concurrent legislative list was omitted and all the matters mentioned therein came within the jurisdiction of the provinces for the purpose of making legislation and dealing with the said laws. Clause (6) of newly inserted Article 270AA, provided that the laws with respect to the matters enumerated in the said list (including Ordinances, Orders, rules, bye-laws, regulations and notifications and other legal instruments having the force of law) in force in Pakistan immediately before the commencement of the said amendment would continue to remain in force until altered, repealed or amended by the competent authority. Later on the Provincial Assemblies of all the four provinces made legislation in respect of the Industrial Relations, repealing the IRA, 2008. Province-wise detail of the same is as under:-

(a) *On 13th June, 2010 the Punjab Industrial Relations Ordinance, 2010 [PIRO, 2010] was issued. The Ordinance was to expire on 10th September, 2010, however, the life of the Ordinance was extended for a further period of ninety days through a Resolution passed by the Assembly on 23rd July, 2010. Same was repealed by the Punjab Industrial Relations Act, 2010 [PIRA, 2010] on 9th December, 2010.*

(b) *On 5th July, 2010, Industrial Relations (Revival and Amendment) Act, 2010 was promulgated by the province of Sindh, whereby the IRO, 2008 was revived w.e.f. 1st May, 2010 as if it had never been repealed.*

(c) *On 14th July, 2010 the Khyber Pukhtunkhwa Industrial Relations Ordinance, 2010 [KIRO, 2010] was promulgated.*

(d) *On 22nd July, 2010, Balochistan Industrial Relations Ordinance, 2010 [BIRO, 2010] was issued, however, said Ordinance was repealed by*

the Balochistan Industrial Relations Act, 2010 on 15th October, 2010.

4. After 30th April, 2010 the Labour Courts, Labour Appellate Tribunal as well as National Industrial Relations Commission (NIRC) stopped its functions for the reason that no legislation was promulgated at Federal Level. This question came up before NIRC, Islamabad, which held that in terms of 18th Constitutional Amendment, the IRA, 2008 is intact and fully operative till altered or amended or repealed by the competent authority.

5. As the Labour Courts as well as the Labour Appellate Tribunal stopped functioning, therefore, the Chief Justice, Lahore High Court initiated suo moto action and writ petition No.10746/2010 was disposed of on the basis of report submitted by the Chief Secretary, Government of Punjab wherein it was stated that IRA, 2008 stood protected upto 30.06.2011 in accordance with the protection provided under Article 270AA of the Constitution.

6. The same controversy came before the High Court of Sindh by means of Constitution Petition No.D-1432 of 2010, wherein it was held that IRA, 2008 stood repealed on 30th April, 2010 by force of its section 87(3), whereas the IRO, 1969 came back into operation from the said date.

7. The Lahore High Court, Rawalpindi Bench while deciding ICA, 200/2008 held that IRA, 2008 has been protected till 30th June, 2011in view of Article 270AA.

8. It is important to note that learned Islamabad High Court in writ petition No.4917/2010 titled as Tufail Ahmad v. Zaka Ullah Khalil, has held that in view of section 87 (3) of IRA, 2008, it stood repealed on 30.04.2010. As such the instant petition has been filed.

9. Learned counsel for the petitioner submitted that in view of protection provided under Article 270AA of the Constitution as substituted by the Eighteenth Constitutional Amendment and in presence of section 6 of the General Clauses Act, the IRA, 2008

would remain operative and section 87(3) of IRA, 2008 would become redundant, inoperative and would be deemed to have never existed. Learned counsel further argued that section 87(3) was in conflict with Article 17 and 264 of the Constitution, therefore, provisions of Constitution would prevail. He stated that the law did not recognize vacuum in legislation and the NIRC, which was one of the important functionaries of the State could not be stopped from functioning rendering thousands cases of workers/labourers to be directly affected. He next contended that in *Industrial Relational Advisors' Association's case* the High Court of Sindh, though declared the IRA, 2008 to be repealed w.e.f. 30.4.2010 but relying upon section 6 of the General Clauses Act, restored the IRO,1969. The Islamabad High Court in *Tufail Ahmad's case* while relying upon *Industrial Relational Advisors' Association's case* held that the IRA, 2008 had repealed in terms of section 87(3) but the latter part of the judgment whereby the IRO, 1969 was restored was ignored. In order to substantiate his arguments he submitted that before declaring a Federal Statute to be non-existent and in order to arrive at just and proper decision, it was necessary for the Court to issue notice to the Federal Government, particularly under the circumstances, where the Ministry of Law and Parliamentary Affairs had opined that the IRA, 2008 stood extended till 30.6.2011 in terms of protection provided under clause (6) of Article 270AA of the Constitution.

10. Learned Attorney General has submitted that after the 18th Constitutional Amendment matter relating to welfare etc. is the subject of the Provinces and the legislation has to be made by the Provinces and in view of the fact that the IRA, 2008 has lost its operation on account of in built provision of section 87(3), therefore, the NIRC cannot function any further.

11. Mr. Mahmood Abdul Ghani, learned ASC appearing as Amicus Curiae contended that the IRA, 2008 was repealed by means of section 87(3) and after its repeal the IRA, 2002 or IRO, 1969 could not revived as earlier the matters relating to welfare of labour and trade unions were mentioned in the Concurrent Legislative List, which have become provincial subject after the

Eighteenth Constitutional Amendment and the authority to legislate had been transferred to the provinces. He further contended that after such repeal the NIRC as envisaged under IRA, 2008 (earlier under IRO, 2002 & IRO, 1969) would be deemed to have ceased to exist.

12. We have heard the learned counsel and have gone through the relevant provisions of the Statute as well as the case laws cited at the bar.

13. It is to be noted that initially the matters relating to welfare of labour and Trade Unions were mentioned in the Concurrent Legislative List at Items No.26 & 27, as such the Federal Government as well as the Provincial Governments both were competent to make legislation in that behalf. The Federal Government promulgated the IRO, 1969, which was repealed by the IRO, 2002 and same was also repealed by IRA, 2008. Section 87(3) of the IRA, 2008 provided that the said Act shall unless repealed earlier, stand repealed on 30.4.2010, hence, it was a temporary legislation, which was to die on 30.4.2010 automatically if it was not extended by legislative measure. Before the repeal of IRA, 2008, on 20.4.2010 Eighteenth Constitutional Amendment was passed, whereby the Concurrent Legislative List was abolished and the matters relating to labour and Trade Unions were transferred to legislative competence of the Provincial Governments. However, clause (6) of Article 270AA of the Constitution provided that notwithstanding omission of Concurrent List by the Eighteenth Constitutional Amendment, all laws with respect to any of the matters enumerated in the said Lists in force, immediately before the commencement of the said amendment would continue to remain in force, until altered, repealed or amended by the competent authority. In terms of said clause the IRA, 2008 continued to be in force notwithstanding the abolition of the Concurrent Legislative List till 30.4.2010 when in terms of section 87(3) it stood repealed.

14. Now the question for consideration is what would be implication of section 87(3) of the IRA, 2008, especially after the Eighteenth Constitutional Amendment; would it continue to be in

force even after 30.4.2010 in view of clause (6) of Article 270AA. It is to be mentioned here that the temporary law is also called "sunset law". The sunset law has been defined in "World Book Dictionary" as "a law requiring a government regulatory agency to undergo periodic review for its continued usefulness; a law providing that state agencies created by a governor or a legislature be terminated after a specified period." In "Advanced Law Lexicon: 3rd Edition" the term sunset law has been defined as "a statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally reviewed". The High Court of Sindh, in *Industrial Relations Advisors' Association's case* has thoroughly dealt with the implication of sunset law and the repeal of a temporary legislation. Relevant paras from the said judgment are reproduced hereinbelow:-

> *"19. The first question is whether the Act of 2008 is a temporary law or whether it is a permanent law. Mr. Khalid Anwar called it a "sunset" legislation. We have already quoted above section 87(3) of the Act of 2008. In Black's Law Dictionary "Sunset law" is defined in the following words:--*
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> > *"Sunset law.--A statute or provision in a law that requires periodic review of the rationale for the continued existence of the particular law or the specific administrative agency or other governmental function. The legislature must take positive steps to allow the law, agency, or functions to continue in existence by a certain date or such will cease to exist." (Underlining added)*
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> *20. Craies on Statute Law 7th Edition, on the subject of temporary and perpetual statutes, says as under:--*
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> > *"Acts are also classified, by reference to their duration, as temporary or perpetual.*
> >
> > *(a) Temporary.--Temporary statutes are those on the duration of which some limit is put by Parliament. The Standing Orders of the House of Commons require a time clause to be inserted in such Acts. The Expiring Laws Continuance Acts always contain a specific date for the expiry of the continued Acts.*
> >
> > *(b) Perpetual.--Perpetual Acts are those upon whose continuance no limitation of time is expressly named or necessarily to be understood.*

They are not perpetual in the sense of being irrevocable."

21. Crawford's Interpretation of Laws at page 103 states as under:--

"71. <u>Permanent, or Perpetual, and Temporary Acts</u>.---A permanent, or perpetual Act, is one whose operation is not limited to a particular term of time but which continues in force until it is duly altered or repealed. A temporary Act, on the other hand, is one whose life or duration is fixed for a specified period of time at the moment of its enactment and continues in force, unless sooner repealed, until the expiration of the time fixed for its duration.

22. Mr. S.M. Zafar, in his Book Understanding Statutes primarily quoted from Crawford in respect of temporary Acts. A law may be temporary because of nature of Legislative power. For example power to legislate through Ordinances is quasi legislative powers: power is legislative but exercise is executive. The Constitution itself fixes life of such enactment. Then there may be Acts of Parliament which may also be temporary because either the Act itself or any other law provides for a terminal moment for the enactment. Since section 87(3) clearly stipulated a death knell moment for the Act of 2008, notwithstanding it having been enacted as an Act of Parliament it has to be treated as a temporary law and has to be given effect accordingly."

15. We are in full agreement with the conclusion given by the learned High Court on the question of repeal of IRA, 2008 w.e.f. 30.4.2010. It is pertinent to mention here that clause (6) of Article 270AA provides that notwithstanding the omission of Concurrent Legislative Lists all laws with respect to any of the matters enumerated in the said lists shall continue to remain in force until altered, repealed or amended by the competent authority. It is clear from the language that as the Concurrent Legislative List was abolished, therefore, protection was provided to all the permanent laws enacted by the Parliament on the subjects mentioned in the said list. Although the protection was provided to IRA, 2008 by the said clause but it did not have any effect on section 87(3), which remained operative in its full force. Therefore, it killed the said Act on 30.4.2010.

16. The High Court of Sindh, while forming an opinion regarding the effect of repeal of a temporary legislation and revival

of the previous law has relied upon various judgments. To arrive at a just and proper conclusion it would be appropriate to have a glance on the said case-laws to make comparison of the facts of those judgments with that of instant case.

(i) Commissioner of Income Tax v. Ebrahim D. Ahmad (1992 PTD,1353)
In the year 1959 section 15BB of the Income Tax Act was enacted whereby certain exemptions were provided from 1.4.1959 to 13.6.1965. Later on by means of Finance Ordinance, 1972, subsection (4AA) was added to section 15BB and was given effect from 1st April, 1959 the date of insertion of 15BB. The said Ordinance was laid before the Assembly but subsection (4AA) was not approved and hence it lapsed. The President under Article 297(1) of the Interim Constitution, 1972 promulgated the Post-Constitution President's Order 5 of 1972, whereby the Ordinances issued by the President before 31st December, 1972 were provided permanence. The matter came before this Court when this Court held "In the effort to revive and revitalize the Finance Ordinance XXI of 1972 in fact subsection (4AA) of section 15BB was made effective from 1-4-1959, a date far more in retrospect than was the limiting date prescribed in the Constitution. All these defects made the post Constitution President's Order No.5 of 1972 of no avail so far as revival of subsection (4AA) is concerned."

(ii) Pir Sabir Shah v. Shad Muhammad Khan (PD 1995 SC 66)
At the instance of Parliamentary Party, References under section 8-B of the Political Parties Act, 1962 were filed against the members of the Provincial Assembly of NWFP (Khyber Pakhtunkhwa). The Election Commission of Pakistan by majority of 2 to 1 dismissed the said References. The matter came up before this Court when the effect of repeal of Ordinance XXX of 1993 whereby some amendments were made in Section 8-B, was considered. This Court held that *in view of the above discussed legal position there is no doubt in my mind that on the repeal of Ordinance XXX of 1993, which was never placed before the Assembly for approval and which stood repealed on the expiry of 4 months period from the date of its promulgation in accordance with the provisions of Article 89 ibid, the amendment introduced in section 8-B by Ordinance, XXX of 1993 stood removed from the statute book with the consequence the original provisions of section 8-B of the Act stood revived on such repeal.*

(iii) Federation of Pakistan v. M. Nawaz Khokhar (PLD 2000 SC 26):

On 18th November, 1996 Ehtesab Ordinance (CXI), 1996 was promulgated which was further amended by Ordinance (CXXIII), 1996, Ordinance VII of 1997 and Ordinance XI of 1997. Ordinance CXI amended as aforesaid was repealed and replaced by Ordinance XX of 1997, which was repealed by Ehtesab Act, IX of 1997. The said Act was amended through Ordinance II of 1998, which stood repealed on 3rd June, 1998 as it was not passed by the Parliament. Writ petitions were filed before the Lahore High Court challenging the vires of these Ordinances/Acts. The writ petitions were disposed

of and the matter came up before this Court when it was held that "t*he contention appears to be correct. Ordinance II of 1998 was promulgated on 4-2-1998. It is not disputed that Ordinance II of 1998 was not passed by Majlis-e-Shoora. Under Article 89 of the Constitution, this Ordinance stood repealed on 3-6-1998. We have already held that an. Ordinance promulgated under Article 89 of the Constitution is a temporary legislation, therefore, the amendments made in the Act by Ordinance II of 1998 stood obliterated and original provisions in the Act stood revised on repeal of Ordinance II of 1998.".*

(iv) State v. Muhammad Sharif (PLD 1960 Lah. 236)

The Essential Commodities (Control of Distribution) Order, 1953 was promulgated under the Essential Supplies (Temporary Powers) Act of 1946. The said Act was to remain in force for a particular period but was subsequently extended by a number of statutes. By means of Ordinance X of 1955, the Essential Supplies (Temporary Powers) Act was repealed, however, under section 17 of the said Ordinance, orders made under the Essential Supplies (Temporary Powers) Act were protected. Later, the Ordinance X of 1955 was repealed by Essential Supplies Ordinance IV of 1956, which was repealed and substituted by Ordinance V of 1956. This Ordinance was repealed and substituted by Ordinance XXI of 1956. Subsequently, the Ordinance XXI of 1956 was replaced by the Essential Supplies Act, containing the same provisions as the Ordinance. The respondent was charged for an offence under section 6 of the Control of Essential Commodities Ordinance (V) of 1956 read with section 4 of the Essential Commodities (Control of Distribution) Order, 1953. The Magistrate, acquitted him on the ground that the Ordinance V of 1956, under section 6 of which he was being prosecuted, had expired six weeks after the meeting of the National Assembly in September 1956, i.e., on the 18th of November 1956, and as the Ordinance was only a temporary statute, there could not be any prosecution under an expired Ordinance. An appeal before this Court was filed by the State against the acquittal of respondent. The Curt observed that in view of Full Bench Judgment in *Crown v. Haveli* (PLD 1949 Lah. 550) a prosecution under Essential Commodities Ordinance V of 1956 could not be continued after the date of expiry, i.e. the 18th of November 1956. The Court ultimately held that "*if the Ordinance was to expire on the 18th of November 1956 and the effect of its expiry was to make it non-existent, except for transactions past and closed, the mere repeal of it a day before its expiry could not have given it greater effect than it could originally have. There does not seem to be any objection to the proposition that by a repeal a statute will not have effect for a longer term than it would otherwise have had. All that section 6 of the General Clauses Act means is that in spite of the repeal a statute is deemed to be in force in respect of the particular matters enumerated in that section, i.e., its original life would continue in spite of the repeal, but section 6 certainly does not mean that by the repeal it would be in force even after the period for which it was legally to be in force as enacted. We are not inclined, therefore, to accept the argument that on account of the repeal, this prosecution could have continued.".*

(v) The Sargodha Bhera Bus Service Limited v. The Province of West Pakistan (PLD 1959 SC 127)

Facts of the case were that up to 17th December 1956 taxes were realised under the Punjab Motor Vehicles Taxation Act (IV of 1924). Later, the Governor of West Pakistan promulgated Ordinance No. XXXV of 1956 under Article 102 of the Constitution 1956. The West Pakistan Provincial Assembly met on the 28th of January 1957 and the Ordinance was actually laid before it on the 8th of March 1957, but the Assembly was itself suspended by the President under Article 193 of the late Constitution. The Ordinance, therefore, was only valid for six weeks beyond the 28th January 1957 under Article 102 of the Constitution, and ceased to operate on the 11th March 1957. The Act in which the Ordinance was embodied in the form of a statute (Act XXXII of 1958) was passed by the Legislative Assembly and the assent thereto of the Governor was first published in the Official Gazette on the 24th April, 1958. Appeals before this Court were filed against orders of High Court of West Pakistan, Lahore, for an order restraining the collection of payment of taxes under the Motor Vehicles Taxation Act, 1924. This court held that "*the powers of legislation of the Governor, therefore, were of a transitory, temporary and contingent nature. They are, no doubt, co-extensive with those of the Provincial Assembly, as argued by Mr. Brohi, but this can be said only with regard to the field of legislation as regards the Provincial list and the concurrent list of subjects as given in the Fifth Schedule to the late Constitution. But it is evident that the powers of the Assembly are more extensive„ inasmuch as it was empowered to enact permanent Acts at all times not subject to any limitations as the Governor's powers are meant to be by Article 102, which are to C be exercised in emergency and with temporary effect only, and carry with them the implication that when a permanent Act is repealed by an Ordinance, the Act will revive on the expiry of the Ordinance."*.

(vi) Gooderham & Worts v. C.B.Corporation (Air 1949 PC 90)

The Canadian Radio Broadcasting Act, 1932 was amended on 23rd May, 1933 by virtue of Act, 1933 whereby requirement of the consent of Governor in Council to a lease provided. The Act, 1933 was temporary and was to expire on 30th April, 1934 by virtue of section 4 of the same. By two successive Acts passed in 1934 and 1935 the date of expiry of the Act of 1932 was extended to 30th April, 1934 and 30th June, 1935. Finally by the Act of 5th July, 1935 its operation was further extended to 31st Mary, 1936. The Court held as under:-

> *"The result is that on 31st March 1936, the temporary legislation contained in the first Act of 1933 repealing provisions of the principal Act of 1932 and substituting other provisions came to an end not by repeal of the temporary legislation but by the efflux of the prescribed time. No question as to the revival of the temporarily repealed provisions of the principal Act of 1932 by the repeal of repealing legislation arises. The repeal effected by the temporary legislation was only a temporary repeal. When by the fiat of Parliament the temporary repeal expired the*

> *original legislation automatically resumed its full force. No re-enactment of it was required. This is what subsection (3) of the Act of 5th July 1935, was designed to make clear. The principal statute of 1932 is to be read on and after 1st April 1936, as if the temporary legislation had never been enacted; it is to be in force as if there had been no temporary legislation affecting its provisions."*

(vii) State Of Orrissa vs Bhupendra Kumar Bose (AIR 1962 SC 945)

During December, 1957 to March, 1958, elections were held for the Cuttack Municipality under the provisions of the Orissa Municipal Act, 1950 Orissa (XXXIII of 1950). The elections were challenged before the High Court which were set aside and orders of injunction were issued. As a result of the findings made by the High Court during the course of the said judgment the validity of elections to other Municipalities were exposed to the risk of challenge, therefore, the Governor of Orissa promulgated the Ordinance I of 1959, on January 15, 1959. Sections 4 and 5(1) of the said Ordinance were declared unconstitutional by the High Court. The matter came up before the Indian Supreme Court when the issue was raised that the Ordinance having lapsed on 1st April, 1959, the appeals themselves had become infructuous. The Court observed that "*it is true that the provisions of s. 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J., as he then was, in S. Krishnan v. The State of Madras(1) the general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the Legislature can and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of s. 6 of the General Clauses Act. Incidentally, we ought to add that it may not be open to the Ordinance making authority to adopt such a course because of the obvious limitation imposed on the said authority by Art. 213(2) (a).".* It was further observed that "in other words, this decision shows that in some cases the repeal effected by a temporary Act would be permanent and would endure even after the expiration of the temporary Act. We have referred to this aspect of the matter only by way of analogy to show that no inflexible rule can be laid down about the effect of the expiration of a temporary Act. …… In our opinion, having regard to the object of the ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived.".

(viii) Qudrat Ullah vs Municipal Board, Barelly (AIR 1974 SC 396)

The U.P. (Temporary) Control of Rent and Eviction Act, 1947 was a temporary law. Its operational period was extended from time to time by frequent amendments, till at last it was to expire on September 30, 1972. Some time before this date, the Uttar Pradesh

Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972, a permanent statute, was put on the Statute Book which by s. 43 repealed the Act of 1947 and by s. 2 excluded from the scope of the protection of the Act accommodation belonging to local bodies. The question of applicability of section 6 of General Clauses Act in case of a temporary law was considered by the Indian Supreme Court. The Court ultimately held as under: -

> "25. We may mention as an additional reason for our conclusion that the provisions of S. 6 of the General Clauses Act in relation to the effect of repeal do not ordinarily apply to a temporary Act. Stating this proposition, Gajendragadkar, J. as he then was indicated the consequence of repeal of a temporary Act. In State of Orissa v. Bhupendra Kumar, AIR 1962 SC 945, the learned Judge continued:
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> > "As observed by Patanjali Sastri, J, as he then was in S. Krishnan v. State of Madras, 1951 SCR 621 (AIR 1951 SC 301), the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the Legislature can and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of S.6 of the General Clauses Act."

(ix) Ameer-Un-Nissa Begum v. Mahboob Begum (AIR 1955 SC 352)

In the said case various 'Firmans' issued by the Nizam were challenged. The Court assuming the 'Firmans' issued by the Nizam in the nature of legislative enactments determining private rights somewhat on the analogy of private Acts of Parliament held as under: -

> “24. The result will be the same even if we proceed on the footing that the various 'Firmans' issued by the Nizam were in the nature of legislative enactments determining private rights somewhat on the analogy of private Acts of Parliament. We may assume that the 'Firman' of 26-6-1947 was repealed by the 'Firman' of 24-2-1949, and the latter 'Firman' in its turn was repealed by that of 7-9-1949. Under the English Common Law when a repealing enactment was repealed by another statute, the repeal of the second Act revived the former Act 'ab initio'. But this rule does not apply to repealing Acts passed since 1850 and now if an Act repealing a former Act is itself repealed, the last repeal does not revive the Act before repealed unless words are added reviving it: vide Maxwell's Interpretation of Statutes, p. 402 (10th Edition).
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> It may indeed be said that the present rule is the result of the statutory provisions introduced by the Interpretation Act of 1889 and as we are not bound by the provisions of any English statute, we can still apply the English Common Law rule if it appears to us to be reasonable and proper. But even

according to the Common Law doctrine, the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary. In the present case the 'Firman' of 7-9-1949, does not repeal the earlier 'Firman' of 24-2-1949, 'simpliciter' but makes a further provision providing for fresh enquiry and report which presupposes the continuance of the repeal of the original 'Firman' of 26-6-1947."

(x) Hansraj Moolji v. The State Of Bombay (AIR 1957 SC 497)

The India and Burma (Emergency Provisions) Act, 1940, was passed on June 27, 1940 , and was an Act to make emergency provisions with respect to Government of India and Burma. On April 1, 1946, the India and Burma (Termination of Emergency) Order, 1946 was issued. By the said order the period of emergency referred to in s. 3 of the India and Burma (Emergency Provisions) Act, 1940, was extended from June 27, 1940, to April 1, 1946. The Ordinance in question was promulgated on January 12, 1946, and was therefore within the said period. The question came up before the Indian Supreme Court as to whether the High Denomination Bank Notes (Demonetisation) Ordinance, 1946 (Ordinance No. III of 1946), was in operation on July 11, 1953, when the offence under s. 7 read with s. 4 thereof was committed by the appellant therein. The Court held as under: -

"Even though the Governor-General's Acts and the Ordinances promulgated by him were thus equated with the Acts passed by the Federal Legislature or the Indian Legislature as the case may be, the period of duration thereof had to be determined. Every statute for which no time is limited is called a perpetual Act, and its duration is prima facie perpetual. It continues in force until it is repealed. (Vide Craies on Statute Law, 5th Ed. p. 374; Halsbury's Laws of England, Hailsham Ed., Vol. XXXI, p. 511, para. 664). If an Act contains a proviso that it is to continue in force only for a certain specified time, it is called a Temporary Act. This result would follow not only from the terms of the Act itself but also from the fact that it was intended only as a temporary measure. This ratio has also been applied to emergency measures which continue during the subsistence of the emergency but lapse with the cessation thereof. It was therefore contended that Ordinances promulgated under the emergency powers vested in the Governor-General would be in operation during the period of emergency but would cease to be in operation once the emergency was declared to have ended. In the instant case before us the Ordinance in question was promulgated in exercise of the emergency powers vested in the Governor-General under s. 72 of the 9th Sch. of the Government of India Act, 1935, and it was urged that the Ordinance thus promulgated would cease to be in operation after the emergency was declared to have ended on April 1, 1946, by the India and Burma (Termination of Emergency) Order, 1946, in spite of the words of limitation " for the space of not more than six months from its promulgation " having been

> omitted from s. 72 by s. 1(3) of the India and Burma (Emergency Provisions) Act, 1940."

It is pertinent to mention here that in the above noted case-law although the question was with regard to revival of the repealed law after the expiry of temporary law but in all the said cases except in the Gooderham & Worts's case, the amending law was not repealed by virtue of in built mechanism as provided in section 87(3) of IRA, 2008. In Gooderham & Worts's case certain amendments were made in the original law by virtue of an Act which ultimately expired leaving the original legislation to resume its full force but in the instant case the IRO, 1969 was repealed by the IRO, 2002, which then was repealed by IRA, 2008. Thus, the said cases have no consonance with the facts of the instant case. Further, as we are testing the case at the touchstone of Article 264, therefore, law laid down in the above said judgments is also not applicable for the reasons that under Article 264 only action has to be survived and not the law. On the other hand facts of the case in *Muhammad Arif v. State* (1993 SCMR 1589) are somewhat similar to the instant case. In the said case, the Special Courts for Speedy Trials Ordinance (II of 1987) was promulgated by the President of Pakistan on 26-7-1987. The said Ordinance was repealed and replaced by the Special Courts for Speedy Trials Act, 1987 which was to remain in force for a period of one year. Later, by means of Special Courts for Speedy Trials (Amendment) Ordinance, 1988, subsection (2) of section 1 of the Act was amended by substituting the words "two years" for the words "one year". The said Ordinance was not placed before the National Assembly in terms of clause (2) of Article 89 of the Constitution and, therefore, it stood expired on the expiry of four months from its promulgation i.e. on 12-2-1989. However, the President issued identical Ordinance No. XXXVIII of 1991 and Ordinance No.II of 1992. The court held as under: -

> 12. At this stage it may be appropriate to point out that there is a marked distinction between a temporary enactment and a permanent enactment. In the case in hand, the Act was a statute of a temporary nature as subsection (2) of section 1 of it provided that it was to operate for a period of one year from the date on which it was assented to by the President. The rules of interpretation of such statutes are different from those which are permanent.
>
> 16. ..... The general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which were taken under it, would ipso facto terminate. The case of Wicks v. Director of Public Prosecutor supra decided by the House of Lords has dealt with a statute where the law-maker while enacting it expressed contrary intention in section 11 (3) thereof by providing that its expiry shall not affect operation thereof as respects things previously done or omitted to be done. There is nor similar provision in the Act in issue. It was to operate only for one year from the date on which it was assented to by the President in terms of section 1(2) thereof unless it was extended by the Parliament. The effect of promulgation of Ordinance XIX of 1988 was that the life of the Act was extended for a period of four months i.e. up to 12-2-1989.

> Since in the present case the Special Court recorded conviction on 11-4-1989 when the Act and Ordinance XIX of 1988 already stood lapsed, the judgment of the Special Court was coram non judice as has been held by the High Court.

17. Next question, which has cropped up is that what would be effect of repeal of IRA, 2008. Learned counsel for the petitioner has vehemently argued that in terms of section 6 of General Clauses Act and Article 264 of the Constitution, the IRO, 1969, which was permanent legislation, would be revived. It is to be noted that section 6 of the General Clauses Act applies to the cases where any enactment is repealed by the General Clauses Act or any other Central Act, therefore, the same is not applicable in the instant case because of reason that IRA, 2008 was not repealed by any other legislation rather it stood repealed on the expiry of period mentioned in section 87(3) of the Act. Similarly, Article 264 of the Constitution provided that where a law is repealed or is deemed to have been repealed, by, under, or by virtue of Constitution, the repeal shall not affect the previous operation of law or anything duly done or suffered under the law; affect any right, privilege, obligation or liability acquired, accrued or incurred under the law; affect any penalty forfeiture of punishment incurred in respect of any offence committed against the law; or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment. However, it shall not revive anything not in force or existing at the time at which the repeal takes effect. Article 264 of the Constitution shall not be applicable in the instant case firstly; for the reason that the IRA, 2008 was not repealed by, under, or by virtue of the Constitution, rather it died on expiry of the statutory period. Secondly; the purpose of Article 264 of the Constitution is to provide protection to the operation of law, rights, liabilities accrued, and penalties incurred in respect of any repealed law and does not state that it would provide protection to the laws previously in force. Article 264 of the Constitution is in a language that deals with the effect of repeal of laws and, unless the Constitution provides otherwise, nothing will be revived which was not in force or existing at the time when the repeal takes effect. The IRA, 2008, was repealed by its own force in terms of section 87(3). Had it been an Ordinance

issued under Article 89 of the Constitution, on the expiry of its statutory period the repealed law would have been revived but the provisions of this Article would not be applicable here because IRA, 2008 is not an Ordinance and has been enacted by the Act of Parliament, therefore, no sooner did it lapse on 30.4.2010, no other law earlier repealed including IRO, 1969 could occupy the field. In addition to it, the mandate of section 6 of General Clauses Act and Auricle 264 of the constitution had not provided that on account of repeal, the law previously in field would stand revived as these provisions in broader sense had attached finality to the actions which were already done. The finding given by the High Court of Sindh that the after the repeal of IRA, 2008, the IRO, 1969 came back in operation, is not tenable. Thus it is held that the IRO, 1969 would not be revived after the repeal of IRA, 2008.

18. As already stated above, the IRO, 1969 was repealed by the IRO, 2002, which then was repealed by IRA, 2008. However, the IRA, 2008 stood repealed after the completion of its statutory period provided in section 87(3) and not by any other legislation, federal or provincial, therefore, neither the IRO, 2002 nor the IRO, 1969 could revive on the strength of section 6 of the General Clauses Act or Article 264 of the Constitution. Furthermore by means of Eighteenth Constitutional Amendment the Concurrent Legislative List was abolished and the Federal Government had lost the power to legislate regarding Labour Welfare and Trade Unions, which subject devolved upon the provinces. It is to be noted that presently, no Federal Legislation can be made on the Labour matters except recourse to the provisions of Article 144(1) of the Constitution, which provide that if one or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated in the Federal Legislative List in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any Act so passed may, in respect to the Province to which it applies, be amended or repealed by Act of the Assembly of that Province. The Trade Unions, which are operating within one province, can be dealt with under the Labour Laws enacted in that province and the

workman can also avail the appropriate remedy provided under the said legislation.

19. In view of the declaration so made hereinabove, the next question arises that after expiry of IRA, 2008 on 30.4.2010, which provision of law would take effect for the interregnum period? It is to be noted that as stated earlier after the Eighteenth Constitutional Amendment, the Provincial Assemblies enacted the respective laws on the subject of labour and Trade Unions after about two months of expiry of IRA, 2008 and there is a vacuum for the said period. This Court had dealt with the issue of applicability of laws during the interregnum period when any law was repealed or declared ultra vires. In the case of *Government of NWFP v. Said Kamal Shah* (PLD 1986 SC 360) certain provisions of the NWFP, Preemption Act, 1950, alongwith some other laws were declared repugnant to Injunction of Islam and recommendations were made to bring the said laws in conformity with the Injunction of Islam, till 31st July, 1986. In pursuance of the decision of the Court, the NWFP Preemption Act, 1987 was promulgated on 28th April, 1987. In terms of its section 35 the NWFP Preemption Act, 1950 was repealed however, the judgments and decrees passed by the Court under the Repealed Act of 1950 were saved. When the legality of a decree passed by the Civil Judge on 15th April, 1987 was questioned on the ground that the same was passed after the cut off date i.e. 31st July, 1986 and before the promulgation of NWFP Preemption Act, 1987 this Court in the case of *Sarfraz v. Muhammad Aslam Khan*(2001 SCMR 1062) held that on 28th April, 1987 in pursuance of the directions of this Court the Act was promulgated and till then the NWFP Preemption Act, 1950 was holding the field as it was repealed from the commencement of the Act, therefore, any proceedings conducted and decree passed during this period would not be rendered without jurisdiction and void; Article 203-D(3)(b) of the Constitution of Islamic Republic of Pakistan did not provide that if any law had been declared against the Injunctions of Islam the proceedings instituted under the said law would also come to an end on the date fixed by the Court for making such law in consonance with the Injunctions of Islam; at the best its effect would be that the fresh suits of preemption after the stipulated date would not be

instituted under the law which has been found contrary to the Injunctions of Islam but the claimants would be entitled for the enforcement of their rights under the Muhammadan Law, like the Provinces of Sindh and Balochistan where no statutory laws governing preemption suits were applicable. It was further observed that undoubtedly a right of preemption is a substantial right of an individual and it could not be taken away merely due to repeal of law under which suit for its enforcement was filed; at the best such newly enacted law would be deemed to have retrospective effect by necessary implication because such change would only be deemed to be procedural.

20. Next question is as to whether the Industrial Relations Laws made by the provinces would have retrospective effect or not? At this stage it would be appropriate to have a glance on the definition of “workman” as provided in various Labour Laws. As per the Industrial Disputes Act, 1947, the “workman” means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown. The definition of “workman” remained almost the same in the subsequent Ordinances/Acts with a little addition or alteration. The same definition of “worker” and “workman” have been provided in the Provincial Legislation made on the subject, which is holding the field. Interestingly, almost the same definition of “workman” has been provided in the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, namely, “workman” means any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward. As the same definition of workman has been provided in the Industrial Relations Laws as well as Standing Orders, therefore, both the laws are applicable to the persons falling within the definition of “workman”. Order 12(3) of the said Orders provides that in case a workman is aggrieved by the termination of a service or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of

section 25-A of the IRO, 1969. It is clear that the West Pakistan (Standing Order) Ordinance, 1968 provides rights to the workmen/labourers whereas the Provincial Industrial Relations Laws provide mechanism for the enforcement of the said rights and unless otherwise provided or intended, the Industrial Relations Laws are procedural in nature.

21. The question of applicability of any law with retrospective effect has been dealt with by this Court in the case of *Gul Hassan and Co. v. Allied Bank of Pakistan* (1996 SCMR 237) wherein after examining plethora of case law, Mr. Justice Saleem Akhtar, as he then was, observed that Statute providing change of forum, pecuniary or otherwise, is procedural in nature and has retrospective affect unless contrary is provided expressly or impliedly or it effects the existing rights or causes injustice or prejudice. The relevant para from the said judgment is reproduced hereinbelow:-

> *"7. It is well-settled principle of interpretation of statute that where a statute affects a substantive right, it operates prospectively unless "by express enactment or necessary indictment" retrospective operation has been given. (Muhammad Ishaq v. State PLD 1956 SC (Pak.) 256 and State v. Muhammad Jamil, PLD 1965 SC 681). This principle was affirmed in Abdul Rehman v. Settlement Commissioner (PLD 1966 SC 362). However statute, which is procedural in nature, operates retrospectively unless it affects an existing right on the date of promulgation or causes injustice or prejudice the substantive right. In Adnan Afzal v. Capt. Sher Afzal (PLD 1969 SC 187). same principle was re-affirmed and it was observed:-*
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> > *"The next question, therefore, that arises for consideration is as to what are matters of procedure. It is obvious that matters relating to the remedy, the mode of trial, the manner of taking evidence and forms of action are all matters relating to procedure. Crawford too takes the view that questions relating to jurisdiction over a cause of action, venue, parties pleadings and rules of evidence also pertain to procedure, provided the burden of proof is not shifted. Thus; a statute purporting to transfer jurisdiction over certain causes of action may operate retrospectively. This is what is meant by saying that a change of forum by a law is retrospective being a matter of procedure only. Nevertheless, it must be pointed out that if in this case process any existing rights are affected or the giving of retroactive operation cause inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favour an interpretation giving retrospective effect to the statute. On the other hand, if the new procedural statute is of such a character that*

> *its retroactive application will tend to promote justice without any consequential embarrassment or detriment to any of the parties concerned, the Courts would favourably incline towards giving effect to such procedural statutes retroactively."*
>
> *The same view was expressed in Ch. Safdar Ali v. Malik Ikram Elahi and another (1969 SCMR 166) and Muhammad Abdullah v. Imdad Ali (1972 SCMR 173), which was followed in Bashir.v. Wazir Ali (1987 SCMR 978), Mst. Nighat Yasmin v. N.B. of Pak. (PLD 1988 SC 391) and Yusuf Ali Khan v. Hongkong & Shanghai Banking Corporation, Karachi (1994 SCMR 1007).*
>
> *From the principle enunciated in these judgments it emerges that statute providing change (if forum pecuniary or otherwise is procedural in nature and has retrospective effect unless contrary is provided expressly or impliedly or it affects the existing right or causes injustice or prejudice."*

22. At the cost of repetition, it is to be noted that the IRA, 2008 stood repealed on 30.04.2010 by virtue of its section 87(3), whereas, the provincial legislation was made on 13th June, 2010; 5th July, 2010; 14th July, 2010; and 22nd July, 2010 for the provinces of Punjab, Sindh, Khyber Pukhtunkhwa and Balochistan, respectively. Therefore, there was a period of about two months for which there was no legislation, Federal or Provincial, in force. The Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions and establishment of Forum for the redressal of grievance of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well-settled principles of interpretation of Statutes as mentioned above, the procedural law has retrospective effect unless contrary is provided expressly or impliedly, the same would thus be applicable retrospectively w.e.f. 1.5.2010. Further, in the Province of Sindh, the Industrial Relations (Revival and Amendment) Act, 2010, the IRA, 2008 has been revived w.e.f. 1st May, 2010, therefore, the interregnum period has already been catered for.

23. On the question of remedy before the NIRC, which was provided in terms of section 25 of the IRA, 2008 it is to be noted that the provision of NIRC was added for the first time in 1972 by making amendment in the IRO, 1969 by means of Ordinance IX of 1972 whereby section 22A was inserted. The same was provided in IRO, 2002 and IRA, 2008. Now, in the province of Punjab, by means of section 47 of the PIRA, 2010 remedy has been provided before

the Labour Appellate Tribunal. Similarly, in the province of Balochistan, under section 25 of the BIRA, 2010 remedy before the Industrial Relations Commission and in the province of Khyber Pakhtunkhwa, in terms of sections 48 and 51 of KIRO, 2010 the remedy of appeal has been provided before the Labour Court and Labour Appellate Tribunal. In the province of Sindh, as the IRA, 2008 has been revived, therefore, in terms section 25 of the same, the provision of NIRC has been continued. In the present circumstances, after the promulgation of provincial laws dealing with the Industrial disputes, the persons having any grievance can approach the appropriate forum provided under the respective provincial laws.

24. In the Indian jurisdiction, Trade Unions and Industrial Labour Disputes are mentioned at Sr. No.22 of the List-III of the Seventh Schedule of the Constitution of India, which form the joint domain of both the State Governments and Union Territory of India as well as the Central government of India under those subjects, therefore, the trade unions Act, 1926 has been promulgated by the Parliament to deal with the matters relating to registration of trade unions and trade disputes etc., whereas, in view of the Eighteenth Constitutional Amendment, Federal Legislation is not empowered to legislate for the nationwide trade unions, except for if need be, recourse to procedure laid down in Article 144(1) of the Constitution, which provides that one or more Provincial Assemblies may by resolutions empower the Majlis-e-Shoora (Parliament) to regulate any matter not enumerated in the Federal Legislative List in the Fourth Schedule, through an Act, which may be amended by the Assembly of that Province.

25. In the Industrial Relations Laws initially the provision of NIRC was not provided till 1972 when the same was introduced by insertion of section 22A in the IRO, 1969. However, the same was provided in the subsequent legislations till IRA, 2008. Now after the promulgation of Provincial legislations in terms of Eighteenth Constitutional Amendment, the forum of Industrial Labour Commission/Labour Appellate Tribunal/ Labour Court has been provided for. Even otherwise, persons falling within the definition of

"workman" have been provided remedy in terms of West Pakistan (Standing Orders) Ordinance, 1968. Order 12(3) of the said Orders provides that in case a workman is aggrieved by the termination of a service or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of section 25-A of the IRO, 1969. However, section 80 of the PIRA, 2010 as well as the section 82 of the KIRO, 2010 provide that all cases pending before the NIRC constituted under the repealed IRA, 2008 shall stand transferred to Tribunal/Labour Court and Registrar having jurisdiction in the matter; the NIRC shall transfer the record of all the cases and trade Unions to the Tribunal/Labour Court or Registrar; the Tribunal, Labour Court or Registrar may continue the proceedings in a case transferred under this section from the stage at which it was pending before the NIRC. Similarly, section 86 of the BIRO, 2010 provides that all appeals and applications of any kind pending in any High Court immediately before the commencement of this Ordinance shall stand transferred to the Labour Appellate Tribunals from the date of the commencement of this Ordinance and it shall not be necessary for the Labour Appellate Tribunals to recall any witness or record any evidence that may have been recorded. As the NIRC has been abolished, therefore, new fora have been provided to the workers/workmen/labourers under the newly enacted Provincial Labour Laws. It is pertinent to mention here that the effect of change of forum have been discussed in the case of *Adnan Afzal v. Sher Afzal* (PLD 1969 SC 187), wherein claim for maintenance was made under section 488 of the Code of Criminal Procedure before the City Magistrate which was ultimately transferred to the Court of the District Magistrate, where the respondent moved an application that in view of the provisions of the West Pakistan Family Courts Act, 1964, published in the Gazette on the 18th of July 1964, the proceedings should be filed, as the Family Court was vested with exclusive jurisdiction under section 5 thereof. The District Magistrate on the 9th of December, 1967, accepted the plea and directed the appellant to seek his remedy before the Family Court. The matter came up before this court and this court observed that the comparison of the concerned provisions indicates that the provisions of the West Pakistan Family Courts Act

are of a more beneficial nature which enlarge not only the scope of the enquiry but also vest the Court with powers of giving greater relief with a right of appeal either to the District Court or to the High Court; Furthermore, the combined effect of sections 5 and 20 of the Act is clearly to give exclusive jurisdiction to the Family Courts without, diminishing or curtailing the rights already possessed by a litigant with regard to the scheduled matters. Ultimately the Court held that the Family Courts Act had changed the forum, altered the method of the trial and empowered the Court to grant better remedies; it has, thus, in every sense of the term, brought about only procedural changes and not affected any substantive right; according to the general rule of interpretation, therefore, a procedural statute is to be given retroactive effect unless the law contains a contrary indication; There is no such contrary indication in the West Pakistan Family Courts Act; therefore, the Act also affected the pending proceedings and the District Magistrate was right in holding that the Courts of Magistrates no longer had the jurisdiction either to entertain, hear or adjudicate upon a matter relating to maintenance; he was, however, wrong in dismissing the application, for, if he had no jurisdiction to adjudicate, the only order he could have passed on the application was to direct that the papers be returned to the applicant for presentation in the proper Court. In view of the law laid down in the said case, it is clear that mere change of forum does not affect the rights of a person.

26. Under the Frontier Crimes Regulation, 1901 Council of Elders was provided for settling the disputes of civil nature between the individuals. Revision against the order of Council of Elders was maintainable before the Commissioner. However, by means of the Balochistan Civil Disputes (Shariat Application) Regulation, 1976 the Commissioner lacked jurisdiction to hear the revision and in terms of paragraph-7 of the Regulation, the matters pending before the District Court or a Civil Court, subordinate thereto or in any Tribunal stood transferred to the Court of Qazi and Majlis-e-Shoora having jurisdiction in the matter, upon such transfer would be deemed to have been instituted therein and would be heard and determined accordingly. In the case of *Mastak v. Lal* (PLD 1991 SC 344), the validity of the order of the Commissioner passed in revision petition

after the 18th February, 1977 when the Balochistan Civil Disputes (Shariat Application) Regulation, 1976 was extended to the area in dispute, was questioned. The Court after considering the matter in detail held as under:-

> *11. Paragraph 7 of the Regulation definitely gives the impression that the Regulation was to have effect on the pending suits and appeals and to that extent it was retroactive. The only test laid down for transfer was as to whether the dispute is triable under the Regulation and if it was then it had to go to the Court competent to try it irrespective of the fact in which Court it was pending. Therefore, even appeals have to go back to the Court of Qazi for trial in accordance with Shariah and not to be transferred in the appellate jurisdiction of Majalis-e-Shura for disposal according to the law in force at the time the proceedings were instituted. To that extent, the express language of paragraph 7 of the Regulation makes the provisions of the Regulation applicable in the areas to which and when if is extended retroactive over all proceedings pending before any Tribunal, Court or District Court.*
>
> *12. In view of the reasons given for holding that appeal for the purposes of paragraph 7 includes the Revision preferred by a party invoking the power of the Commissioner under paragraph 48 of the F.C.R. and pending suits and appeals before any District Court or a Civil Court subordinate thereto, or any tribunal, in the nature of an appeal, would be liable to be transferred to the Court of Qazi for trial in accordance with the injunctions of Shariat. The fact that the appellant had instituted the Revision in the Court of Commissioner cannot stand in the way of such a transfer because at the time when he instituted the proceedings, that was the only remedy which could possibly be invoked by him.*

In the light of above case law, it is clear that during the interregnum period w.e.f. 30.4.2010, when no Industrial Relations Law was holding the field, the workers had remedy under the ordinary laws prevailing at that time, because in absence of a special law, the ordinary/general laws come forward to fill in the vacuum.

27. Now turning towards the submission of the learned Amicus curiae on the vires of Provincial Labour Laws on the ground that there are many Institutions/Corporations which have their branches all over the country and there were countrywide Trade Unions but now Trade Union can only be registered under the legislation of a specific province. It is to be noted that instant proceedings have been initiated under Article 184(3) of the

Constitution with a limited purpose of having a declaration that IRA, 2008 on the basis of Eighteenth Constitutional Amendment stood protected and continued till 30th June, 2011, therefore, the vires of the same cannot be considered in such proceedings. However, as stated earlier Article 144(1) of the Constitution has provided mechanism for making central legislation in respect of matters not covered in the Federal Legislative List.

28. Before parting with the judgment, we place our thanks on record for Mr. Mehmood Abdul Ghani, Sr. ASC who has assisted the Court to the best of his ability.

29. Thus, for the foregoing reasons, it is held that IRA, 2008 ceased to continue in force w.e.f. 30th April, 2010, as a consequence whereof petition is dismissed.

Chief Justice

Judge

Judge

Announced in Open Court
On 2.6. 2011

Chief Justice

Approved For reporting.