

55/21

**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

*AFR*  
**CIVIL APPEAL NO.97 OF 2021 AND**  
**CIVIL PETITION NO.3478/2021**

(On appeal from the judgment dated 03.09.2019 passed by the Peshawar High Court, Abbottabad Bench in W.P. No.535-A/19)

***Zarai Taraqiati Bank Limited***  
***through its President etc.***

Appellants (in C.A. 97/21)  
& Respondents (in C.P.3478/21)

**Versus**

***Sarfraz Khan Jadoon and others*** Respondents (in C.A. 97/21)  
& Petitioners (in C.P.3478/21)

For the Appellant/Petitioner :  
(in C.A. 97/21) : Syed Iqbal Hussain Shah Gillani, ASC  
(in C.P.3478/21) : Mr. Zulfiqar Khalid Maluka, ASC

For the Respondents :  
(in C.A. 97/21) : Mr. Sajeel Sheryar Swati, ASC  
(in C.P.3478/21) : Syed Rifaqat Hussain Shah, AOR

: N.R.

Date of Hearing : 10.06.2021

**ORDER**

**GULZAR AHMED, C.J.-**

**Civil Appeal No.97/2021:** The respondents had filed a writ petition in the Peshawar High Court, Abbottabad Bench making prayer that Office Memorandum dated 08.03.2019, issued to the respondents (petitioners therein) by the appellant (respondents therein), be set aside. The writ petition was heard by

a learned Division Bench of the High Court and vide impugned judgment dated 03.09.2019 it was partly allowed to the extent that the appellants will not recover/adjust financial benefits already paid to the respondents pursuant to the promotions granted to them which promotions were ultimately withdrawn by this Court through its judgment rendered in the case of Akhtar Umar Hayat Lalayka and others Vs. Mushtaq Ahmed Sukhaira and others (2018 SCMR 1218).

2. Leave to appeal was granted in this case vide order dated 02.02.2021 on the ground that Akhtar Umar Hayat Lalayka case (*supra*) has categorically set aside the promotion orders of the respondents to be not legally granted and the question regarding High Court's judgment allowing retention of benefits of such illegal orders was to be considered in the appeal by this Court.

3. Learned counsel for the appellants has relied upon the case of Akhtar Umar Hayat Lalayka (*supra*) and has specifically referred to para-76 of the said judgment. Para-76(i) of the judgment is as follows:-

"76. Keeping in view the above we hold as under:-

- i. The exception, created in para No.111 of the Shahid Pervaiz's case (*Supra*) read with para No.143 thereof, wherein the protection was extended to the category of cases "wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court", is hereby withdrawn by exercising *Suo Moto* Review Jurisdiction;

....."

The very para-76(i) states that the promotions granted to the respondents pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court is hereby withdrawn by exercising Suo Moto Review Jurisdiction. The word '**hereby**' is very significant and it shows that the learned Bench has withdrawn promotions by the very judgment delivered by it and not prior to it. The term "**hereby**" is defined in dictionaries as follows:-

1. Black's Law Dictionary:  
**Hereby**, adv. (13c) By this document; by these very words<I hereby declare my intention to run for public office>.
2. Oxford Advanced Learner's Dictionary:  
**Hereby**, adv. (in legal documents, etc.) as a result of this statement, and in a way that makes sth legal.
3. Advanced Law Lexicon:  
**"Hereby"**. By this document; by these words (I hereby declare my intention to run for public office).
4. Words and Phrases (Permanent Edition), Volume 19A:  
**"Hereby"** means by means of this.

Had the Court wanted to give effect to the judgment from the date when the promotions were granted such could have been mentioned in the judgment but it was not done purposely. In any case, it is an established legal principle of law that the judgments of the Courts always operate prospectively. In this regard reliance can well be placed on the case of Pakistan Medical and Dental Council through President and 3 others Vs. Muhammad Fahad Malik and 10 others (2018 SCMR 1956) and the case Regarding Pensionary Benefits of the Judges of Superior Courts from the date



of their Respective Retirements, Irrespective of their length of Service as Such Judges (PLD 2013 SC 829).

4. In this view of the matter, we find no illegality in the impugned judgment, the same is maintained and the appeal is dismissed.

5. **Civil Petition No.3478/2021:** This petition is barred by 581 days. An application (C.M.A. No.5970/2021) for condonation of delay has been filed but no sufficient cause at all has been given as to why the delay be condoned. Further each day of delay has not been explained and the affidavits of the parties have also not been filed. The application i.e. C.M.A. No.5970/2021, for condonation of delay is dismissed. Resultantly, Civil Petition No.3478/2021 is also dismissed as barred by time.

sdl — HCJ  
sdl — J  
sdl — J

Bench-I

Islamabad

10.06.2021

Nasir Khan/\*

'NOT APPROVED FOR REPORTING'