

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.764 OF 2021

(Against the judgment dated 24.09.2018
passed by Federal Service Tribunal,
Islamabad in Appeal No.4231(R)CS/2017
with M.P.No.1538/2018)

Syed Azam Shah

...Appellant

VERSUS

Federation of Pakistan through Secretary Cabinet
Division, Cabinet Secretariat, Islamabad and
another.

...Respondents

For the Appellant: Mr. Muhammad Ramzan Khan, ASC
Ch. Akhtar Ali, AOR

For Respondents: Mr. Sohail Mehmood, Addl. Attorney General

Date of Hearing: 19.11.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal has been brought to challenge the judgment passed by learned Federal Service Tribunal, Islamabad on 24.09.2018 in Appeal No.4231(R) (CS)/2017 with M.P.No.1538/2018 whereby the appeal filed by the appellant was dismissed.

2. Compendiously and tersely, the facts necessary for the disposal of this Civil Appeal are delineated as under:-

The appellant is a civil servant and working as a Principal (BPS-20) in the Federal Government Education C&G Institution. He was extended monetization allowance under the Monetization of Transport Facility Policy dated 12.12.2011 meant for Civil Servants in BS-20 to BS-22. However vide impugned letter dated 29.1.2016, the Monetization Allowance of the appellant was discontinued which action was challenged by the appellant in the Federal Service Tribunal, Islamabad but his appeal was dismissed.

3. Leave to appeal was granted vide order dated 03.08.2021 on the following terms:-

"Learned counsel for the petitioner contends that the petitioner was employed as Principal of Federal Government Public School, H.I.T. Taxila Cantt. He was given Monetization Allowance with effect from January, 2012 and such Monetization Allowance was paid to him until February, 2016. Contends that vide order dated 29.01.2016 payment of such Monetization Allowance to the petitioner was discontinued and no reason was assigned for discontinuation and even otherwise, the respondents could not have discontinued the allowance which they have been paying for almost four years. Further contends that no alternative facility was provided by the respondents to the petitioner replacing the Monetization Allowance. He further contends that Conveyance Allowance of Rs.5000/- being paid to the petitioner is not sufficient to meet the cost of conveyance by the petitioner and the Tribunal by the impugned judgment was not justified in dismissing the service appeal filed by the petitioner.

2. Contentions raised require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the present record with liberty to parties to file additional documents, if any, within a period of one month. The office is directed to fix appeal expeditiously, preferably, after three months".

4. The learned counsel for the appellant argued that the appellant was granted the monetization allowance from January, 2012 on fulfilling all required conditions but the said allowance was stopped vide letter dated 29.1.2016. He further contended that the action of respondents was illegal and against the principle of locus poenitentiae. He also pleaded that the impugned notification is discriminatory to the teachers, professors and principals.

5. The learned Addl. Attorney General argued that the monetization allowance was approved for those officers who were entitled to use official vehicles before the introduction of Monetization Policy. The Steering Committee on Transport discussed the admissibility of monetization allowance in its meeting to the Principals & Professors of Federal Government Institutions. It was apprised by the Educational Advisor that Principals, Professors & Teachers were not provided the official cars before the introduction of Monetization Policy, hence the Committee concluded that since the working of these officers is not of such a nature where provision of vehicles is an essential requirement, therefore, they do not fall under the category of entitled officers. He further added that monetization allowance was given to such officers by the concerned Department without any consultation with the Cabinet Division. It was decided by the Steering Committee that Principals, Professors & Teachers who are not entitled for the grant of monetization allowance shall be paid

conveyance allowance @ Rs.5000/- per month as determined by the Finance Division.

6. Heard the arguments. The Federal Government had approved the Policy for Monetization of Transport Facility to the Civil Servants in BS-20 to BS-22 on 12.12.2011 which was made effective from 1.1.2012. The basic objective of the aforesaid Policy was to eliminate any possibility of misuse of official vehicles as well as to restrict the maintenance expenditure of the vehicles to the bare minimum in line with the observance of austerity measures and this policy was made applicable across the board in all Ministries, Divisions, Attached Departments and Sub-ordinate Offices and responsibility of compliance entrusted to all Principal Accounting Officers with the mandatory condition of obtaining Certificates from each entitled officer in BS-20 to BS-22 that he is not in possession or in use of any project vehicle or the departmental operational/general duty vehicle as well as any vehicle of an organization or body corporate in his ex-officio capacity as member of its Board, except the only vehicle allocated to him through the Monetization Policy. For the ease of reference, Policy for Monetization of Transport Facility is reproduced as under:-

**"GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
(CABINET DIVISION)**

...

Subject: RULES/POLICY FOR MONETIZATION OF TRANSPORT FACILITY FOR CIVIL SERVANTS (BS-20 TO BS-22).

- (i) There will be a complete ban on the purchase of staff cars.
- (ii) Monetization of the transport facility will be compulsory for all Civil Servants in BS-20 to 22 with effect from the date of enforcement.
- (iii) Ministry/Divisions/Departments will maintain a limited Pool of vehicles (1000/800-cc) for general duties. In addition, one 1300-cc vehicle will be maintained for protocol/operational duty by the entitled officers. However, the number of 1300-cc vehicles for operational/protocol duties by the entitled officers shall be determined, keeping in view the strength and functions of the Ministry.
- (iv) The Civil Servants in BS-20 to BS-22 who have been provided the official transport may be given the first option to purchase the allocated cars on depreciated price. As per prescribed formula the depreciated price of a vehicle is calculated by depreciating the original price of the vehicle at the rate of 15%

for the first year and 10% for the subsequent year. However, keeping in view the existing condition of vehicles which are extensively used, it has been decided to allow 15% depreciation for each completed year of life of the vehicles. An illustrative example of the calculation of depreciated price of a 1300cc Car purchased in 2006 is at Appendix-I. Alternately, the market price of the new car will be taken and depreciated at 20% per annum on reducing balances. Whichever depreciated price is higher shall be adopted as the reserve price. The depreciation will start from the year of the model of the car.

(v) The depreciated price of the vehicles on the basis of above formula shall be calculated/recommended by the Condemnation/Replacement Committee already constituted in all Ministries/Divisions/Departments, in accordance with Cabinet Division's U.O No.6-7(1)/02.M.II. dated 26th June, 2007 (Appendix-II). In any case, the Committee shall not recommend the depreciated price of a 1000-cc vehicle less than Rs.200,000 and Rs.250,000 for a 1300-cc vehicle respectively. The recommendations of the Committee shall be approved by the Principal Accounting Officer, who will ensure the element of transparency in calculation of depreciated price of the vehicles as per entitlement of the officers.

(vi) The recovery installments of the depreciated price of the vehicle shall be so fixed (not less than Rs.25,000/- per month) and in such a way that the entire cost is recovered from the officers before the date of their superannuation.

(vii) No officer of BS-20 to BS-22 will be entitled and authorized to use Project vehicles or the Departmental Operational/General Duty vehicles for any kind of duty. However, they may be allowed the facility to avail the Departmental Operational/General Duty vehicles, subject to entitlement/availability of the vehicle, in case they have to undertake official/local/out station/in land country tours subject to the approval of the competent authority/the Principal Accounting Officer.

(viii) The Principal Accounting Officers shall render a certificate (Appendix-III) about the detail of vehicles presently allocated to the entitled officers (BS-20 to BS-22).

(ix) The Principal Accounting Officers shall obtain a Certificate from each of the entitled officers in BS-20 to BS-22 including himself/herself that he/she is not in possession or using any Project vehicle or the Departmental Operational/General Duty vehicle, as well as, any vehicle of an organization or body corporate in his/her ex-officio capacity as member of its Board, except the vehicle allocated to him/her through this monetization policy. The specimen of the Certificate to be rendered in this regard by each officer in BS-20 to BS-22 is at (Appendix-IV).

(x) An undertaking to sign the Transfer Deed will be submitted to the AGPR through the Ministry/Division/Department by each officer opting for the purchase of car and that he is bound to pay the total depreciated amount to the Government and allows the AGPR to recover the same from his/her salary in such a way that the total amount is recovered before the date of superannuation. AGPR will keep the record of the options exercised by the officers regarding retention of drivers and the purchase of cars on the basis of which pay slips of the officers will be revised for payment of monetized value and recovery of installments for the purchase

of staff car and Rs.10,000/- on account of driver facility. The Transfer Deed will be issued after full recovery of the depreciated amount of the vehicle.

(xi) The entitled officers who have not been provided any official vehicle or have not opted for purchase of vehicle under this monetization policy will also render a certificate specimen at (Appendix-V).

(xii) The Principal Accounting Officers will also render a Certificate on the above lines specimen at Appendix-VI that all the entitled officers in BS-20 to BS-22, working under him/her who have opted to retain the vehicles as per monetization policy against the depreciated price are not using any project vehicle or departmental operational/general duty vehicle or any other vehicle of an organization or body corporate in his/her ex-officio capacity.

(xiii) The services of the regular permanent drivers will be offered to BS-20 to BS-22 Civil Servants on optional basis (as per certificate at Appendix-VII) on deduction of Rs.10,000/- per month from the monetized value. The drivers allocated to the Civil Servants will remain on the strength of the Ministry/Division/Department for the purpose of their Pay, Allowances and Pension etc.

(xiv) No new recruitment of drivers will be made until drivers rendered surplus are adjusted in consultation with the Establishment Division.

(xv) The Ministries/Divisions/Departments needing operational vehicles shall get their authorization of such vehicles fixed from the Vehicle Committee constituted with a representative each from Cabinet Division, Finance Division and the respective Ministry /Division/Department.

(xvi) The vehicles become surplus due to enforcement of this Policy and over and above the number of entitled officers shall be intimated to the Cabinet Division with a Certificate by the Principal Accounting Officer (specimen at Appendix-VIII) that the Ministry/Division/Department is not in possession of any vehicle in excess of its revised authorized strength of operational/general duty vehicles. The vehicles become surplus shall be surrendered to the Central Pool of Cars.

(xvii) The certificates/declarations at Appendix-III to VIII shall be forwarded to the Cabinet Division, while certified copies of the Appendix-III, IV, V, VI & VII shall be furnished to the AGPR.

(xviii) The Principal Accounting Officers will be responsible for the proper use of the Government transport for operational and general duties.

(xix) On the basis of the expenditure being incurred on provision/maintenance of the official transport, allocated to the Civil Servants from BS-20 to BS-22, the entitled officers shall be eligible for following transport monetization, per month:-

BS-22	BS-21	BS-20
Rs.95,910/-	Rs.77,430/-	Rs.65,960/-

(xx) The expenditure of monetization shall be reviewed periodically or as and when required on the basis of review of POL prices etc.

(xxi) Petrol/CNG cards for the staff cars may be retained by the officers to be financed from the date of implementation of the policy at their own expenses. However, the ownership of the cards shall be transferred in the name of the officer concerned by the respective Ministry/Division/Department. Similarly, no expenditure on the repair, maintenance or replacement of parts for the vehicles opted to be allocated to the entitled officers shall be paid by the Ministries/Divisions/Departments or entertained by the AGPR from the date of enforcement of the policy.

(xxii) No green number plate will be allowed to be used for the staff cars purchased by the officers in BS-20 to BS-22. Transfer fee/taxes etc. shall be paid by the officers themselves.

(xxiii) Each Ministry/Division/Department will prepare and submit to the Cabinet Division and Finance Division every month a report on the expenditure relating to the CNG, POL and the repair/maintenance of the operational/general duty vehicles, so that the resultant financial impact/sayings of the Policy could be assessed.

(xxiv) Media reports regarding misuse of operational/general duty vehicles will be seriously looked into and corrective measures shall be taken immediately.

(xxv) No additional budget will be allocated for implementation of the policy. However, re-appropriations will be made in consultation with the FA's Organizations, from the head of account, Repair/Maintenance/POL etc. to the head of account Salary/Allowances."

(xxvi). Vigilance Committees, headed by a Joint Secretary, to be constituted by every Ministry / Division to check the misuse of vehicles for operational and general protocol duties. The Vigilance Committees should, inter alia, ensure that all the general duty vehicles are parked in the premises of their respective Ministries/Divisions, as and when they are not being used for official purposes.

(xxvii). Finance Division to complete the exercise for determining the per month expenditure of different categories of vehicles (on the basis of engine size) on priority basis and ensure that the annual budget given to the various Ministries/Division is adjusted accordingly to correspond to the number of vehicles authorized to them and the repair/maintenance cost worked out as a result of the aforesaid exercise.

7. The phrase "austerity" defines a launch of economic policies which in fact a government executes and embarks on to control public sector debts/liabilities. Austerity derives are in fact introduced for restoring financial health/stability and lowering government expenditures whereas the word "monetization" exactly and plainly connotes to transform something into money which

also expresses the transfiguration into revenue generating reformations and restructurings or conversion of something into source of income. According to "**Merriam-Webster Dictionary**", definition of the word "monetize" is to coin into money; also to establish a legal tender; to purchase (public or private debt) and thereby free for other uses moneys that would have been devoted to debt service and to utilize (something of value) as a source of profit. Ref: (www.merriam-webster.com/dictionary/monetize). In the "**Collins English Dictionary**", "monetize" means to establish as the legal tender of a country; to give a legal value to (a coin) and to make a profit from a business, process, etc. www.collinsdictionary.com/dictionary/english/monetize. Whereas in "**Concise Oxford English Dictionary**" (Eleventh Edition-Revised) at page 921, Monetize means: 1.Convert into or express in the form of currency, 2. [usu. monetized] adapt (a society) to the use of money. While in **Lexis Nexis, "Tax Laws Dictionary"** 2016 at page 495 and "**The Major Law Lexicon**", 4th Edition 2010, Volume 4, at page 4379, monetization means: method of financing a government's budget deficit by selling Treasury bills to the banking system in the UK or to the Federal Reserve in the USA.

8. The Policy for monetization of transport facility is to be read as a whole in tandem with different stipulations jot down in the Policy. All provisions have somewhat closed link and proximity; therefore for proper understanding and interpretation of its true character and substratum, no provision can be read or left in isolation or segregation. The Policy started with a condition of imposition of complete ban on purchase of staff cars and made applicable to all civil servants in BS-20 to BS-22 with effect from 01.01.2012. In pith and substance, the nucleus of the Policy encapsulates some salient features that the Civil Servants in BS-20 to BS-22, who were provided official transport were given first option to purchase the allocated cars on depreciated prices as per prescribed formula set forth in Clause (iv) of the Policy. The mechanism of recovery of installments of the depreciated price of the vehicle was described in Clause (vi) of the Policy. It was further provided that no officer of BS-20 to BS-22 will be entitled and authorized to use project vehicle or departmental operational/general duty vehicle of any kind of duty. An undertaking to sign transfer deed was to be

submitted to the AGPR through the concerned Ministry/Division/Attached Department by each officer, opting for purchase of the car so that a transfer deed may be issued to him after payment of full depreciated price of vehicle. While incorporating various conditions in the Monetization Policy, it was further mentioned in Clause (xix) that on the basis of expenditure being incurred on the maintenance of official transport allocated to a civil servants from BS-20 to BS-22, the entitled officer shall be eligible for the transport monetization allowance per month according to the table attached for accentuating the breakup/quantum of monetization allowance for each category separately with a rider in Clause (xx) that expenditure of monetization shall be reviewed periodically or as and when required on the basis of review of POL prices etc. Some appendixes are also attached with the policy but in the case in hand, the most relevant is Appendix-III which is specimen of a Certificate, required to be issued by the Principal Accounting Officer for certification that the said officer has been allocated a staff car for official use, who is not in possession of or using any Project vehicle and the only vehicle in use is the vehicle mentioned in the certificate whereas Appendix-IV is the specimen of a Certificate, required to be submitted by the officer to avail option of retaining vehicle officially allocated to him as per Monetization Policy with an undertaking that he will complete requirements of Transfer of vehicle offered to him for purchase.

9. The letter of Section Officer, Cabinet Division dated 28.10.2015, conveyed the decision of Steering Committee that the Principals, Professors and Teachers are not entitled for grant of Monetization Allowance. However, in the same decision of the Steering Committee, it was further decided that Monetization Allowance to the Doctors/Professors of the Federal Government Hospitals shall continue who fulfill the conditions and fall within the definition of civil servants and have been promoted to BS-20 on the recommendations of the Central Selection Board; they are working in Government Hospitals being attached department of the Ministry/Division of the Federal Government and they are working against posts or equivalent posts, where use of staff car was

permissible before the introduction of the transport Monetization Policy.

10. The learned counsel for the appellant argued that the decision of the Steering Committee is discriminatory as on one hand the Principals, Professors and Teachers in BS-20 and above were deprived of Monetization Allowance but on the other hand, the Doctors/Professors of the Federal Government Hospitals are still being paid the Monetization Allowance. We noted that the payment of Monetization Allowance as per break up mentioned in Clause (xix) of the Policy was in fact against the expenditure being incurred on official transport allocated to officers in BS-20 and above which was a basic requirement under the Policy for creating a right to claim the said Allowance. Neither the appellant pleaded or proved that he fulfilled all requisite conditions of Monetization Policy nor he argued that he was ever provided with an official transport for which an option to purchase the allocated car on depreciated value was submitted by him which made him entitled for the benefit flowing from the Policy. The core structure and scheme embedded in the Policy demonstrates that it devised to exterminate the misuse of official vehicles as well as to put a ceiling on the maintenance expenditure of the vehicles to the bare minimum which claim of allowance was contingent on having official car before introduction of policy and its offer to purchase the said vehicle on depreciated price for which certain lump sum allowance was fixed according to basic pay scale, leaving the said officers to bear POL and maintenance expenses in the allowance fixed as per Monetization Policy with clear condition that no expenditure on the repair, maintenance or replacement of parts for the vehicles opted to be allocated to the entitled officers shall be paid by the Ministries/Divisions/Departments or entertained by AGPR from the date of enforcement of Policy. In the same policy, the services of the regular permanent drivers were also offered to BS-20 to BS-22, Civil Servants on optional basis on deduction of Rs.10,000/- per month from the monetized value. It was further incorporated that the entitled officers who have not been provided any official vehicle or have not opted for purchase of vehicle under the Monetization Policy will also render a certificate. Nothing produced by the appellant to strengthen his case that he was

entitled for the allowance in terms of policy or he ever opted the vehicle for purchase or submitted any request to avail option.

11. The decision of the Steering Committee visibly depicts that this allowance was allowed to be continued to the Doctors/Professors of the Federal Government Hospitals provided they fall within the definition of civil servants and have been promoted in BS-20 on the recommendations of Central Selection Board and working in the Federal Government Hospitals against the posts or equivalent posts where the use of staff car was permissible before the introduction of Transport Monetization Policy. To continue the allowance to the doctors who are also performing as professors does not seem to be illogical and unreasonable, as this facility was not extended to them merely as professors but keeping in view, their primary nature of job as doctors where they need carefree conveyance with the provision of official vehicle to meet up different emergencies in the line of duty. The catchphrase "intelligible differentia" connotes dissimilarity or disparity capable of being comprehended. The classification must be based on an intelligible differentia which should distinguish the persons that are grouped together from others left out of the group and the differentia or categorization/cataloguing must have a logical and commonsensical nexus with the object sought to be achieved. The concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness. In the case of Dr. Mobashir Hassan Vs. Federation of Pakistan (PLD 2010 SC 265), this Court held that intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. The definition of classification "intelligible differentia" means differentiating between two sets of the people or objects, all such differentiations should be easily understood and should not be artificial. Whereas in the case of Secretary Economic Affairs Division, Islamabad & others. v. Anwarul Haq Ahmed & others (2013 SCMR 1687), this Court held that by now it is well settled that equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. The protection of Article 25 of the Constitution can be denied in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which must

have rational nexus to the object sought to be achieved by such classification. Reference: I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041) and Tariq Aziz-ud-Din and others (Human Rights cases Nos.8340 of 2009, etc.) (2010 SCMR 130). In the case of Muhammad Shabbir Ahmed Nasir Vs. Secretary, Finance Division, Islamabad and another (1997 SCMR 1026), the petitioner contended that the Government has meted out discriminatory treatment to the employees serving in BPS 17 to 22 and deprived them from Secretariat Allowance while Secretariat Allowance being paid to the employees serving in BPS 1 to 16 was kept intact. The Court held that the Secretariat Allowance was not payable to all the employees of the Federal Government but it was admissible to only those employees of Federal Government who were serving in the Federal Secretariat, attached departments and offices. The Court articulated the principles of reasonable classification: (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that person similarly situated or similarly placed are to be treated alike; (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis; (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes; (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances; (v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25; (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed; (vii) that in order to make a classification reasonable, it should be based (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

12. The decision of Steering Committee was not particularized or person specific to the appellant but it was made applicable across the board for all Principals, Professors and Teachers in BS-20 and above which does not seem to be discriminatory or arbitrary but on account of reasonable classification with rational nexus. The compass and magnitude of judicial review of governmental policy is now well settled and defined in which neither the court can act or represent as appellate authority with the aim of scrutinizing the rightness, fittingness and aptness of a policy nor may act as advisor to the executives on matters of policy which they are entitled to formulate. The extensiveness of judicial review of a policy is to test out whether it violates the fundamental rights of the citizens or is at variance to the provisions of the Constitution, or opposed to any statutory provision or demonstrably arbitrary or discriminately. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority more so, an executive decision may be invalidated for being unlawful and also maintains check and balance. This can be sought on the grounds that a decision arises when a decision-maker misdirects itself in law, exercises a power wrongly, or improperly purports to exercise a power that it does not have, which is known as acting ultra vires; a decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it or a failure to observe statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of constitutional structure. In the case of Abdul Hameed and others. v. Water and Power Development Authority through Chairman, Lahore and others (2021 SCMR 1230), this Court held that the roles of each organ of the State are defined within the Constitution of the Islamic Republic of Pakistan, so also in different laws. It is not the role of the Courts to interfere in policy decisions, unless it is manifest that such a policy decisions are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable. The court placed reliance on the case of Asaf Fasihuddin Khan v. Government of Pakistan (2014 SCMR 676), in which it was held that the duty of the Court is to confine itself to the question of legality, whether a decision making

authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached or abused its powers.

13. The learned counsel made much emphasis that the monetization allowance was continued to be paid to the appellant at least for four years therefore the same could not be withdrawn and the action of the respondents was contrary to the doctrine of locus poenitentiae but it was not denied that the Monetization Policy was applicable for those officers, who were entitled to use official vehicle before introduction of the Monetization Policy. The doctrine of locus poenitentiae means an opportunity to repent. An opportunity for the parties to an illegal contract to reconsider their positions, decide not to carry out the illegal act, and so save the contract from being void. Ref:www.oxfordreference.com/view/10.1093/oi/authority.20110803100111991. According to the **Black's Law Dictionary** (Ninth Edition) at page 1025, "Locus poenitentiae" [Latin- "place of repentance"] means: 1. A point at which it is not too late for one to change one's legal position; the possibility of withdrawing from a contemplated course of action, esp. a wrong, before being committed to it. The requirement of an overt act before conspirators can be prosecuted and punished exists to provide a locus poenitentiae; an opportunity for the conspirators to reconsider, terminate the agreement, and thereby avoid punishment. **People v. Zamora, 557 P.2d 75, 82 n.8 (Cal.1976)**. 2. The opportunity to withdraw from a negotiation before finally concluding the contract. This Latin phrase is connected with contractual law which expresses an opportunity to withdraw from a contract or obligation before it is completed but in our comprehension, there is no hard and fast rule that if some benefit was wrongly extended due to some misunderstanding, error, misconception of law or without sanction of competent authority, that act should be treated so sacred and sacrosanct which could not be withdrawn to retrace or redo the wrong decision or action under the guise of locus poenitentiae principle. A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of this doctrine depends on the circumstances of each and every case and

cannot apply universally or randomly without adverting to the merits of each case in its peculiar circumstances. In the case of Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another. Vs. Jalaluddin (PLD 1992 207), this Court held that the order under which the payment was made had no sanction of law. Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the case of (Contempt proceedings against Chief Secretary, Sindh and others) (2013 SCMR 1752), it was held that if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The Court also referred to the cases of Muhammad Nadeem Arif and others v. Inspector General of Police, Punjab, Lahore and others (2010 PLC (C.S) 924) and Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddi (PLD 1992 SC 207) wherein it was held that principle of locus poenitentiae would not be attracted in a case under which the benefit has been extended by a law which was violative of the provisions of the Constitution.

14. In the wake of above discussion, we do not find any infirmity or perversity in the findings recorded in the impugned order. The appeal is dismissed.

Chief Justice

Judge

Judge

Islamabad the
19th November, 2021
Khalid
Approved for reporting