SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Umar Ata Bandial
Mr. Justice Ijaz ul Ahsan
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Jamal Khan Mandokhail

CIVIL APPEALS NO.803 AND 804 OF 2016
[Against the order dated 21.12.2015, passed by the Islamabad High Court, Islamabad, in W.Ps. No.07 and 08 of 2010]

Muhammad Shabbir. *(in C.A No.803/2016)*
Muhammad Shahid. *(in C.A.No.804/2016)*
...Appellants

Versus

Quaid-e-Azam University through its Vice Chancellor, Islamabad and others. *(in both cases)*
...Respondents

For the Appellants (in both cases)	:	Qazi Shehryar Iqbal, ASC Syed Rifaqat Hussain Shah, AOR
For the Respondents (in both cases)	:	Mr. Muhammad Munir Paracha, ASC
For the Federation	:	Mr. Sajid Ilyas Bhatti, Additional Attorney General for Pakistan
Date of Hearing	:	18.01.2022

O R D E R

Gulzar Ahmed, CJ.- A 2-Member Bench of this Court has passed an order dated 30.04.2019, whereby it has formulated two questions of law, to be addressed and referred the matter to the then Hon'ble Chief Justice of Pakistan for constitution of a larger Bench for answering the same. Pursuant thereto, the matter has been taken up by this larger Bench. Following are the two questions: -

I. Whether the judgments in the Air League case (*supra*), State Bank of Pakistan case (*supra*) and Sui Southern Gas Co. Ltd. case (*supra*) can co-exist with reference to the scope and extent of the retrospective effect doctrine.

II. Whether all the decisions rendered by the Labour Court, during the interregnum period, are null and void in the eyes of law. If so, whether, and to what extent, such decisions can be extended protection by applying the de facto doctrine.

2. The facts of the matter are that the appellant in Civil Appeal No.803 of 2016, namely, Muhammad Shabbir was employed with Respondent No.1-Quaid-e-Azam University as Bearer, while the appellant in Civil Appeal No.804 of 2016, namely, Muhammad Shahid was employed with Respondent No.1-Quaid-e-University as Cook. They were issued charge-sheets and statement of allegations dated 05.03.2004. The enquiry committee was constituted to conduct regular enquiry. The appellants gave reply to the charge-sheets and statement of allegations. The enquiry committee concluded the enquiry and gave its report finding the appellants guilty of the charge. On receipt of the enquiry report, the respondents issued show cause notices, which were replied by the appellants. The competent authority through order dated 21.07.2004 imposed the major penalty of compulsory retirement from service on both the appellants. The appellants filed departmental appeals and then filed service appeals in the Federal Service Tribunal, Islamabad. On announcement of judgment of this Court in the case of *Muhammad Mubeen-Us-Salam and others* **vs.** *Federation of Pakistan through Secretary, Ministry of Defence and others* (PLD 2006 SC 602), whereby Section 2-A of the Service Tribunals' Act, 1973 was declared *ultra vires* the Constitution, the service appeals of the appellants were abated. The appellants then filed grievance petitions under Section 46 of the Industrial Relations Ordinance, 2002 **(the Ordinance of 2002)** in the Labour Court, Islamabad. The grievance petitions were contested by the respondents. The Labour Court through its judgments dated 24.11.2010 partly allowed the grievance petitions of the appellants by setting aside the penalty of compulsory retirement from service and converting it into withholding of two increments. The appellants were directed to be reinstated in service with back benefits. The respondents challenged the judgments of the Labour Court by filing of writ petitions in the Islamabad High Court, Islamabad. The High Court by the impugned order dated 21.12.2015, disposed of the petitions observing as follows:-

> "The next objection upon the impugned judgment is that same was issued during interregnum period after lapse of IRA, 2008 pursuant to sunset clause. This objection finds merit because impugned judgment was passed by learned Trial Court on 24.11.2010 while on that time there was no legislation in promulgation after lapse of IRA, 2008 on 30.04.2010, while during the period between 30.04.2010 to 18.07.2011 no labour law was in prevalence, therefore, learned Labour Court could not have assumed jurisdiction.
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> This point was decided by the Hon'ble Supreme Court in case titled as "Air League PIAC Employees through President vs. Federation of Pakistan etc." (2011 SCMR 1254) wherein it was held that "during the interregnum period w.e.f 30.04.2010, 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."
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> Similarly in case "State Bank vs. Presiding Officer Labour Court, Islamabad" (Civil Appeal No.1150/2012) the Hon'ble Apex Court held that "grievance petitions decided between the period 30.04.2010 to 08.07.2011 stand revived before the learned NIRC."
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> In the light of ratio set in by the Hon'ble Apex Court, the impugned judgment is declared to have been passed without lawful authority and jurisdiction. It is thus set aside with observation that respondent No.2 may file a grievance petition before learned NIRC under the IRA, 2012 in vogue."

Relying upon *Air League of PIAC Employees through President v. Federation of Pakistan M/O Labour and Manpower Division Islamabad and others* (2011 SCMR 1254) and *State Bank of Pakistan through its Governor/Director Human Resources & another v. Presiding Officer, Labour Court (District & Sessions Judge) Islamabad & others* (Civil Appeal No.1150/2012), the High Court found that the judgments announced by the Labour Court were without lawful authority and jurisdiction and thus, set aside the same with observation that the appellants may file the

grievance petitions before the NIRC under the Industrial Relations Act, 2012. The appellants filed civil petitions before this Court against the impugned orders of the High Court in which leave was granted vide order dated 31.03.2016, "to examine whether on account of successive legislation, the matter which had been competently initiated by the appellants (*their grievance petitions*) on 19.06.2006, under the valid law in force at that time was obliterated and not saved on account of IRA, 2008 and they were left remedy-less as the Labour Court according to the learned High Court stood abolished during this period, thus having no jurisdiction to decide the matter vide judgments dated 24.11.2010".

3. The appeals came up for hearing before a 2-Member Bench of this Court when the order dated 30.04.2019 was passed formulating the two aforementioned questions.

4. It is apparent from the record that the appellants have filed grievance petitions before the Labour Court under Section 46 of the Ordinance of 2002. During the pendency of the grievance petitions the Industrial Relations Act, 2008 **(the Act of 2008)** was promulgated and by Section 87 of this Act, the Ordinance of 2002 was repealed. Section 87(2)(b) of the Act of 2008 contained saving clause which, provided that the proceedings commenced under the repealed Ordinance were saved and were deemed to have been commenced under the corresponding provisions of the Act of 2008. The grievance petitions filed by the appellants continued before the Labour Court after promulgation of the Act of 2008 and without any objection from the side of the respondents. The Act of 2008 in its Section 87(3) provided as follows: -

> "87 .....
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> (3) This Act shall, unless repealed earlier, stand repealed on 30th April, 2010".

The apparent reading of the above quoted provision shows that the Act of 2008 was a temporary legislation and it provided the date on which it would stand repealed. The Act of 2008, thus, stood repealed by

its very own mandate on 30.04.2010. It seems that the grievance petitions which the appellants had filed, despite repeal of the Act of 2008, continued to remain pending before the Labour Court and the Labour Court also continued to function and hear the grievance petitions filed by the appellants although there was no labour legislation in the field after the repeal of the Act of 2008. Ultimately, the Labour Court vide its two separate judgments, both dated 24.11.2010, allowed both the grievance petitions in terms as noted above. The judgments of the Labour Court were challenged by the respondents in the writ petitions, which were decided by the Islamabad High Court, Islamabad **(the High Court)** vide impugned orders dated 21.12.2015 in terms as noted above. During the pendency of the writ petitions in the High Court, the Industrial Relations Act, 2012 **(the Act of 2012)** was promulgated on 14.03.2012. The Act of 2012 did not make provision for establishment of a Labour Court, rather by Section 53 thereof, the Federal Government was empowered to constitute a National Industrial Relations Commission **(NIRC)**. Section 33 of the Act of 2012, the individual grievance petitions (grievance petitions) were made to be filed and decided by the NIRC. Taking note of this change in law and also relying upon various other provisions of the Ordinance of 2002, the Act of 2008 and the Act of 2012, so also the law laid down by this Court in ***Air League's case*** (*supra*) and ***State Bank of Pakistan's case*** (*supra*), while setting aside the judgments of the Labour Court, the High Court observed that the appellants may file the grievance petitions before the NIRC under the Act of 2012.

5. Learned counsel for the appellants contended that on repeal of the Act of 2008 on 30.04.2010, the Act of 2012 was promulgated. Section 88 of the Act of 2012 has not only saved the grievance petitions filed by the appellants before the Labour Court but also the judgments of the Labour Court given on the grievance petitions. Learned counsel further contended that Clause (6) of Article 270AA of the Constitution,

1973 has given continuity to the Act of 2008 and it continued to remain in force and the Labour Court has competently, passed the judgments.

6. On the other hand, learned counsel for respondents No.1 & 2 **(the respondents)** while relying upon ***Air League's case*** (*supra*) contended that on the date when the judgments dated 24.11.2010 were passed by the Labour Court, there was no labour laws in the field as the Act of 2008 had repealed itself on 30.04.2010. The Act of 2012 was promulgated on 14.03.2012 and it specifically gave jurisdiction to the NIRC for determination of grievance petitions. He further contended that the Act of 2012 being a remedial and procedure legislation, it applied retrospectively from the date the Act of 2008 was repealed.

7. In ***Air League's case*** (*supra*) petition under Article 184(3) of the Constitution was directly filed before this Court with a prayer as follows: -

> "It is, therefore, respectfully prayed that this honourable Court may kindly be pleased to hold that IRA, 2008 stands protected up till 30th June, 2011 by virtue of Article 270-AA of 18th Amendment of Constitution of Islamic Republic of Pakistan and respondents Nos.3 and 4 be directed to continue with the proceedings for holding of secret ballot for the determination of CBA in accordance with law."

8. The facts of the case were that the petitioner-Air League of PIAC Employees was industry-wise Trade Union registered under the Industrial Relations Laws with NIRC. It has applied to NIRC for holding of a secret ballot for the determination of CBA. The NIRC was not proceeding with the matter for the reason that the Act of 2008 stood repealed. It was argued before the Court that Article 270AA of the Constitution has protected the Act of 2008 and the NIRC was competent to hold secret ballot for determination of CBA. The Court noted as a fact that the Provincial Assemblies of all the four Provinces have made their respective Industrial Relations Laws and also repealed the Act of 2008.

The Court also noted as a fact that after 30.04.2010, the Labour Courts, Labour Appellate Tribunals as well as NIRC stopped functioning for the reason that there was no legislation promulgated at Federal level. In paras 13-15 of the judgment this Court has observed as follows: -

> "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 Nos.26 and 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, stands 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 270-AA 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.
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> 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.*
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> *(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. Permanent, or Perpetual, and Temporary Acts.-- 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 270-AA 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."

On the question as to what is the effect of repeal of the Act of 2008, the Court in paras 17 and 18 observed as follows:-

"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 Article 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 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."

In paras 19-22 of the judgment, this Court dealt with the question as to which provision of law will take effect after the expiry of the Act of 2008 on 30.04.2010 and observed as follows: -

> "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 N.-W.F.P. v. Said Kamal Shah* (PLD 1986 SC 360) certain provisions of the N.-W.F.P., Pre-emption Act, 1950, along with 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 N.-W.F.P. Pre-emption Act,

1987 was promulgated on 28th April, 1987. In terms of its section 35 the N.-W.F.P. Pre-emption 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 N.-W.F.P. Pre-emption 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 N.-W.F.P. Pre-emption 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 pre-emption 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 pre-emption suits were applicable. It was further observed that undoubtedly a right of pre-emption 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 effect 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 and Shanghai Banking Corporation, Karachi (1994 SCMR 1007).

From the principle enunciated in these judgments it emerges that statute providing change of 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 30-4-2010 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 Pakhtunkhwa 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."

With regard to the question of remedy to the workers, workmen or Trade Union after repeal of the Act of 2008 on 30.04.2010, the Court observed as follows:-

"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 has 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 tribal 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."

9. In ***State Bank of Pakistan's case*** *(supra)* the matter in issue was that the respondents therein filed grievance petitions before the Labour Court, Islamabad. The Labour Court in the respective grievance petitions passed its judgments dated 11.01.2011, 26.06.2010 and 24.03.2011. The matter came up before this Court and it was argued that on very repeal of the Act of 2008 on 30.04.2010, the Labour Courts, which were constituted under the Act of 2008, have ceased to exist, in that, no law for adjudication of individual grievances of workers was in existence after 30.04.2010 and the Ordinance of 2011 having been promulgated by which the Federal Government was given power to constitute NIRC and by Section 33 of the Act of 2012 has given power to NIRC to determine individual grievances of workers, the Court held that the judgments of the Labour Court were *coram non judice* and set aside the same and remanded the grievance petitions to the NIRC for deciding them in accordance with law. The Court in this judgment relied upon ***Air League's case*** (*supra*).

10. In ***Sui Southern Gas Company's case*** *(supra)*, the question before this Court was whether the very Act of 2012 was *ultra vires* the Constitution on account of omission from the Constitution, the Concurrent Legislative List by the Eighteenth Constitutional Amendment, on the ground that the Parliament was not competent to legislate in the matters relating to Industrial Relations as the subject of Industrial Relations has devolved upon the Provincial Legislature. The Court after elaborate consideration came to the conclusion that the Act of 2012 was *intra vires* the Constitution and the Parliament was competent to promulgate the Act of 2012. The Court has dealt with the question about the fact of repeal of the Act of 2008 and promulgation of the Act of 2012 and with regard to the interregnum period has observed as follows: -

> "21. With regard to the question about the jurisdiction of the NIRC formed under Section 25 of the Industrial

Relations Act 2008 (which stood repealed w.e.f. 01.05.2010) in the interregnum till the promulgation of IRA 2012, suffice it to say that as held by this Court in Air League of PIAC Employees' case (supra) during the interregnum period w.e.f. 01.05.2010, 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. Further, the IRO 2012 does not destroy any existing right, rather by means of Section 33 thereof, all the existing rights stood preserved and protected, as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law. This Court has dealt with the issue of applicability of laws during the interregnum period when any law was repealed or declared ultra vires, and it has been repeatedly held that at the best the newly enacted law would be deemed to have retrospective effect by necessary implication because such change would only be deemed to be procedural [see: Government of N.W.F.P. v. Said Kamal Shah (PLD 1986 SC 360) and Sarfraz v. Muhammad Aslam Khan (2001 SCMR 1062)]. 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, the procedural law has retrospective effect unless contrary is provided expressly or impliedly [see: Air League of Piac Employees's case (supra)]. Thus, it is held that the IRA 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist.

In para-23, the Court ultimately held as follows: -

23. For the foregoing reasons, the appeals as also the petition are dismissed and it is held as under: -

(1) the Federal Legislature has extra-territorial authority but no such extra-territorial authority has been

conferred to the Provincial Legislature by the Constitution;.

(2) the Federal legislature does, but the Provincial Legislature does not, have legislative competence to legislate to regulate the trade unions functioning at trans-provincial level;

(3) the matters relating to trade unions and labour disputes, etc., having been dealt with and protected under the International Conventions, are covered under Entries Nos.3 and 32 of Part-I of the FLL. Thus, the Federal Legislature has legislative competence to legislate in this regard;

(4) under the command of Entry No.13 in Part-II of the FLL, the Federation has competence to enact laws relating to the inter-provincial matters, Entry No.18 thereof further enlarges the scope of the said Entry; therefore, the Federal Legislature has legislative competence to legislate in this regard too;

(5) the IRA 2012 neither defeats the object of the Eighteenth Amendment to the Constitution nor does it destroy or usurp the provincial autonomy;

(6) the IRA 2012 has been validly enacted by the Parliament and is intra vires the Constitution;

(7) the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one provinces shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations;

(8) as we have held that the IRA 2012 is valid piece of legislation, it is held that the National Industrial Relations Commission (NIRC) formed under Section 35 of the IRA 2012 has jurisdiction to decide the labour disputes, etc., relating to the employees/ workers of companies/corporations/institutions/ establishments functioning in more than one Province;

(9) the IRA 2012, being a procedural law, would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist; and

(10) M/s Shaheen Airport Services is not a charitable organization and IRA 2012 is applicable to it as it is operating in more than one Province."

11. It will be observed from the above three judgments of this Court that there is consensus of opinion that the Act of 2008 stood repealed on 30.04.2010 and from 01.05.2010 there was no law in the field of Industrial Relations either at the level of the Federation or in any of the Provinces. The Court in ***Air League's case*** *(supra)* as well as in ***Sui Southern Gas Company's case*** *(supra)* has opined that in the absence of law of Industrial Relations, which being a special law, the workers' remedy would lie under the ordinary laws prevailing at that time, which will come in and fill up the vacuum. Thus, from this opinion it is clear that the Court has specifically meant that on 30.04.2010, the Act of 2008 stood repealed, it being the special law operating in the field of Industrial Relations having ceased to exist, the remedy which the workers/Trade Unions would have immediately after repeal of the Act of 2008 before the forum provided under the ordinary civil laws, which means Civil Courts and such forum was provided for the interregnum period of two months i.e. uptill the promulgation by all the four provincial legislatures their respective law of Industrial Relations.

12. In ***Air League's case*** *(supra)*, this Court has also dealt with the question of abolition of forum provided in the Act of 2008 in matters relating to raising of grievance by workers and their Trade Unions and it was observed that NIRC, which existed under the Act of 2008 stood abolished on repeal of the Act of 2008 and new forum, which have been provided under the newly enacted provincial labour laws, will have jurisdiction to hear and decide the matters relating to the workers and their Trade Unions. In ***Air League's case*** *(supra)*, this Court has specifically held that law of Industrial Relations, which specifically provides for procedure and mechanism for the resolution of disputes of registration of Trade Unions and establishment of forum for redressal of

grievances of workers and employers, is merely a procedural law, and in the light of well settled principle of interpretation of statutes, the procedural law has retrospective effect until contrary is provided expressly or impliedly. It was also held that when the Act of 2008 stood repealed on 30.04.2010, the Industrial Relations laws made by the respective provincial governments will become applicable from 01.05.2010. The Act of 2012 was not promulgated when the judgments in ***Air League's case*** *(supra)* was announced. However, when the judgment in ***State Bank of Pakistan's case*** *(supra),* was given, the Federal Government had promulgated the Industrial Relations Ordinance, 2011, which was holding the field and by Section 33 of the said Ordinance, NIRC was constituted and was given jurisdiction to determine individual grievances of workers. The Court held that judgments given by the Labour Court, after repeal of the Act of 2008, were *coram non judice* and the grievance petitions were remanded to NIRC for deciding them in accordance with law. When ***Sui Southern Gas Company's case*** (*supra*) was decided by this Court, the Act of 2012 was in the field and in fact its very *vires* was under challenged before the Court. While holding the Act of 2012 to be *intra vires,* the Court further proceeded to deal with the Act of 2012 and found it to be procedural law and in the light of well settled principle of interpretation of statutes that the procedural law has retrospective effect unless contrary is provided expressly or impliedly, held that the Act of 2012 has retrospective application with effect from 01.05.2010. It was also observed by the Court that the Act of 2012 does not destroy any existing right, rather by means of Section 33 thereof, all existing rights stood preserved and protected and as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law. The Act of 2012 was specifically made applicable from 01.05.2010 and the rights, which the workers or Trade Unions had, were also found to be saved.

13. We note that law of Industrial Relations, which has been made from time to time, deals with the matters relating to adjudication of disputes of workers and employers and also provides for procedure of registration of Trade Unions and their Federations and also provides for forums for determination of their disputes. The laws of Industrial Relations promulgated by the Provincial Legislatures on repeal of the Act of 2008, were rightly held to be procedural laws in ***Air League's case*** *(supra)* and were rightly found to have retrospective application from 01.05.2010 and also in ***Sui Southern Gas Company's case*** *(supra)*, this Court has rightly held the Act of 2012 to be applicable from 01.05.2010. However, as noted in ***Air League's case*** (*supra*) that the forum provided under the Act of 2008, i.e., the NIRC having been abolished with the repeal of the Act of 2008 and new fora have been created under the Provincial Industrial Relations laws, such new fora shall have jurisdiction to decide disputes between the workers and employers and matters relating to their Trade Unions. The Labour Courts, constituted under the Act of 2008, on the same analogy, also stood abolished on the repeal of the Act of 2008 and the Act of 2012 having created new forum of NIRC for dealing with the grievances, disputes of workers and employers and matters relating to the Trade Unions and their Federations in the Islamabad Capital Territory and in trans-provincial establishments and Industry from 01.05.2010, could only exercise power and jurisdiction for determination of grievances of workers and not the Labour Courts, which ceased to exist on 30.04.2010. Thus, ***Air League's case*** *(supra)* so also ***State Bank of Pakistan's case*** *(supra)* and the ***Sui Southern Gas Company's case*** *(supra)* are in harmony, in so far as they propound the law about the application of the law of Industrial Relations with retrospectivity and also can co-exist, for that, in all the three cases, it was found that the forum provided under the Act of 2008 for adjudication of individual grievances of the workers ceased to exist on the repeal of the Act of 2008 and the respective forums provided under

the new Industrial Relations laws made by the Provincial Governments shall have the jurisdiction to determine the individual grievances of the workers while by the Act of 2012, specific forum of NIRC was created for determination of the individual grievances of the workers in Islamabad Capital Territory and for trans-provincial establishments and Industry and it would alone have jurisdiction to deal with the cases of individual grievances of workers. Another ground that supports the above conclusion is that the parties to the proceedings under the repealed Act of 2008, have no vested right to have their cases heard and decided by the forum created under the Act of 2008 i.e., the Labour Court rather on promulgation of the Act of 2012, where the forum of NIRC has been created and such having been given retrospective effect from 01.05.2010, the forum of NIRC can only hear and decide the grievance petitions.

14. Dealing with question No.II, about saving the judgments of the Labour Courts on application of *de facto* doctrine, we may note that the Labour Courts were created as a forum for *inter alia* redressal of individual grievances of the workers by the Act of 2008 and until the Act of 2008 remained in the field the Labour Courts were perfectly justified in hearing and deciding the grievance petitions filed by the workers. The Act of 2008 was repealed on 30.04.2010 and with it the forum of the Labour Court, provided under the said Act, also ceased to exist. As from 01.05.2010, the Industrial Relations laws made by the Provincial Governments came into application, while in matters of Industrial Relations relating to the Islamabad Capital Territory and trans-provincial Establishments and Industry, the Act of 2012 became applicable. The interregnum period has already been dealt with in ***Air League's case*** *(supra)* so also in ***Sui Southern Gas Company's case*** *(supra)*, that when the law of Industrial Relations was not operating in the field, the workers' remedy was found to be available under the ordinary laws, i.e., Civil Courts, on the principle that special law of Industrial Relations not being

in existence after 30.04.2010, the ordinary laws will occupy the field and fill up the vacuum. Thus, in both the cases, it was held that the Civil Courts will be the appropriate forum in case of workers' grievance. On the same principle, it can fairly be stated that from 30.04.2010 until the promulgation of the Act of 2012, which was published in the Gazette of Pakistan on 14.03.2012, there was a vacuum in the field of Industrial Relations in the Islamabad Capital Territory and in matters relating to trans-provincial establishments and Industry and the special law relating to Industrial Relations being not in the field, the ordinary civil laws will come into operation and fill in the vacuum providing for remedies to workers, employers and in matters relating to registration of Trade Unions and Federation of Trade Unions.

15. Section 88 of the Act of 2012 contained repeal and saving clause and while noting that the Act of 2008 has repealed itself it provided that without prejudice to the provision of Sections 6 and 24 of the General Clauses Act, 1897 every Trade Union of an establishment or Industry located in the Islamabad Capital Territory or in more than one province and existing immediately before the commencement of the Act of 2012, which was registered under the repealed Act, shall be deemed to be registered under the Act of 2012 and its constitution shall continue in force until altered or rescinded. Further anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given, proceedings commenced or other action taken under the repealed Act shall be deemed to have been done, made, issued, appointed, constituted, given, commenced or taken as the case may be under the corresponding provisions of the Act of 2012 and any document referring to the repealed Act relating to Industrial Relations shall be construed as referring to the corresponding provisions of the Act of 2012. Thus, every Trade Union registered in the Establishment or Industry located in the Islamabad Capital Territory or in more than one province, which was

existing prior to the commencement of the Act of 2012 and was registered under the repealed Act of 2008, were protected and saved with the deeming provision as having been registered under the Act of 2012 and its existence was allowed to continue in force until altered or rescinded. Similarly, rules made, notifications or orders issued, officer appointed, Court constituted, notice given, proceeding commenced, or other action taken under the repealed Act of 2008 were also saved and protected by the deeming provision making them to have been done, made, issued, appointed, constituted, given, commenced or taken under the corresponding provisions of the Act of 2012, also any document referring to the repealed Act of 2008, relating to Industrial Relations was also saved and protected to be construed as referring to the corresponding provisions of the Act of 2012.

16. The Act of 2008 stood repealed on 30.04.2010 and on the established principle of interpretation of Statutes it stood obliterated. However, the Act of 2012 did not obliterate the transactions already undertaken pursuant to the Act of 2008 but saved them as is specifically noted in Section 88 of the Act of 2012. Thus, all transactions made under the Act of 2008, as mentioned in Section 88 of the Act of 2012, are saved and given protection of the law so also the pending grievance petitions of the workers before the Labour Court. The transactions saved by Section 88 *ibid* are those, which have been completed under the Act of 2008 while the said Act remained in the field. No sooner the Act of 2008 stood repealed on 30.04.2010, no new or fresh transaction can be found to accrue under the Act of 2008 nor was it saved by Section 88 of the Act of 2012. The Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010, the Labour Court also ceased to exist from such date. The grievance petitions filed by the appellants were pending in the Labour Court on 30.04.2010 and their status remained

that of a pending proceeding. From 01.05.2010 NIRC was deemed to be constituted to hear grievance petitions and thus, the only forum provided in the law to hear and decide the grievance petitions from 01.05.2010 was NIRC.

17. The *de facto* principle has been considered by this Court in the case of ***Mehram Ali*** vs. ***Federation of Pakistan*** (PLD 1998 SC 1445), which is as follows: -

> 'Principle of *de facto* exercise of power by a holder of the public office is based on sound principles of public policy to maintain regularity in the conduct of public business to save the public from confusion and to protect private right which a person may acquire as a result of exercise of power by the *de facto* holder of the public."

The same view was reiterated in the case of *Malik Asad Ali and others* **vs.** *Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs, Islamabad and others* (PLD 1998 SC 161), the principle of *de facto* was considered and commented upon by this Court, which is as follows: -

> "Principle of *de facto* exercise of power by a holder of the public office is based on sound principles of public policy to maintain regularity in the conduct of public business to save the public from confusion and to protect private right which a person may acquire as a result of exercise of power by the *de facto* holder of the office."

In the case of *Pakistan Medical and Dental Council* **vs.** *Muhammad Fahad Malik* (2018 SCMR 1956), this Court has considered the principle of *de facto* and observed as follows: -

> "22. We held above that the Amendment Ordinances had lapsed/been repealed therefore the Council constituted thereunder had ceased to exist with effect from 25.04.2016. As a necessary corollary, the

Regulations of 2016 framed under section 33 of the Ordinance of 1962 by the Council constituted under section 3 thereof, both of which were substituted by the Ordinance of 2015, also ceased to exist having been illegally and invalidly framed. However, as regards the various actions/activities/orders/decisions taken in the ordinary day-to-day business of PMDC, we find that in the instant circumstances, they are protected under the *de facto* doctrine, until reviewed, revised, amended or modified by the new Council to be constituted after fresh elections are conducted."

In the case of *Rashid Ali Channa* vs. *Muhammad Junair Farooqui* (2017 SCMR 1519), this Court on principle of *de facto* has observed as follows: -

"4. .....

v) We are not persuaded by the argument of the learned counsel that the *de fecto* doctrine is attracted to the facts and circumstances of this case, which suggest that the very appointments of the Chairman and Members of the Commission suffered from serious defects and flaws. However, the matter did not end there. The process and procedure adopted by the then Chairman and Members for undertaking the exercise of selection was replete with illegalities, departure from recognized norms and deviation from the law, rules and procedure which we have found hard to overlook or sidestep. The impugned judgment has rightly refrained from recording any findings on the basis of the *de facto* doctrine or discussing the same having come to the conclusion that not only was the legality of appointments of the Chairman and Members of the Commission open to serious question but the mode, manner and procedure adopted by the Commission for selection of recommendees was also illegal, unjust, non-transparent and suspect."

18. In the Major Law Lexicon 4th Edition 2010, Volume 2 the *de facto* principle has been commented upon as follows: -

> "*De Facto* Doctrine. The *'de facto'* doctrine is now well established that the acts of the officers *'de facto'* performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts offices *de jure*. *Gokaraju Rangaraju* v. *State of A.P.*, AIR 1981 SC 1473; Also see *P.K. Padmanabhan Nambiar* v. *Secretary to Government, General Education (P.) Deptt.*, AIR 1998 Ker 59, 62, 63 paras 8 to 11."

19. The common and pre-dominant feature of *de facto* doctrine is in relation to exercise of power by holder of the public office, when it is found to be not legally entitled to exercise or performs such power of public office, on the sound principles of public policy and to maintain regularity in conduct of public business and to save the public from confusion and to protect the right which a person may have acquired as a result of exercise of power by holder of public office not entitled to perform or exercise such power, are saved on principle of *de facto* doctrine. Thus, where the very office, on which the power is exercised by the holder of public office, has ceased to exist, as in the present case the Labour Court being creature of the Act of 2008, on 30.04.2010 having repealed itself, there was no public office by the name of Labour Court on which *de facto* doctrine of holder of public office could be applied. As noted above, necessary ingredients for *de facto* exercise of power by the holder of public office is that the office should exist in the first place. If there is no public office in existence then there is no concept in law of holder of public office. The holder of public office will remain until public office remains. Where there is no public office in existence, there remains nothing on which *de facto* doctrine could be applied. The Presiding Officer of the Labour Court, when he pronounced the judgments dated 24.11.2010, in the grievance petitions filed by the appellants, did not exercise power as a *de facto* holder of a public office, for that, the very public office of Labour Court did not exist in law, there did not exist

holder of public office. Thus, when there was no Labour Court in the field on repeal of the Act of 2008 on 30.04.2010, there existed no Presiding Officer of the Labour Court as both stood abolished. From 01.05.2010, under the Act of 2012, NIRC was established and given power to address individual grievances of the workers. The NIRC only had jurisdiction to decide the grievance petitions filed by the appellants from 01.05.2010. The doctrine of *de facto* holder of public office not being applicable to the case in hand, the judgments dated 24.11.2010 given by the Labour Courts were patently without jurisdiction and *coram non judice* and could not be saved on any principle of law, including the *de facto* doctrine.

20. As we have come to the conclusion that the judgments of the Labour Courts were not protected either in reference to the scope of principle of retrospective application and also on *de facto* doctrine, thus, no illegality is found in the impugned order of the High Court. The same is maintained and the appeals are dismissed.

Larger Bench-I
Islamabad
20.01.2022
'APPROVED FOR REPORTING'
Rabbani/*

Announced in open Court on 20th January, 2022.