

# **IN THE SUPREME COURT OF PAKISTAN**

( Review/Original Jurisdiction )

## **PRESENT:**

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ  
MR. JUSTICE AMIR HANI MUSLIM  
MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE IJAZ-UL-AHSAN

### **C.R.P.49/2016, CRL.O.P.No.186, 193 OF 2016, CMAS.1681/2016, 7575/2016, 8132/2016, 8143/2016, 8144/2016, 8146/2016, 8147/2016, 8148/2016 IN CRP.49/2016 IN CA.184-L/2013 AND CMA. 8177/2016**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Shahid Pervaiz

**Vs.** Ejaz Ahmad and others

### **C.R.P.50/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Manzoor Ahmed and others

**Vs.** RPO Gujranwala and others

### **C.R.P.51/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Jamil Ahmed

**Vs.** RPO Gujranwala and others

### **C.R.P.52/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Malik M. Sarwar Awan etc

**Vs.** Govt. of Punjab and others

### **C.R.P.83/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Awais Malik and others

**Vs.** Ejaz Ahmad and others

### **C.R.P.84/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Mst. Rashida Bashir and another

**Vs.** Regional Police Officer,  
Gujranwala and another

**C.R.P.85/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Syed Jamat Ali Bokhari and others      **Vs.**    Ejaz Ahmed and others

**C.R.P.89/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Muhammad Nawaz and others      **Vs.**    Chief Secy. Govt. of Punjab  
and others

**C.R.P.91/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Ghulam Dastgir and others      **Vs.**    Ejaz Ahmad and others

**C.R.P.92/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Muhammad Azam      **Vs.**    Ejaz Ahmed and others

**CRL.R.P.52/2016 IN CrI.O.P.89/2011**

(On review from the judgment dated 12-06-2013  
passed by this Court in CrI.O.P.89/2013)

Awais Malik and others      **Vs.**    Chief Secy. Punjab and another

**CRL.O.P.123/2016 IN CP.1446-L/1997**

(Contempt proceedings arising out of order of this Court  
passed in Civil Petition No.1446-L/1997)

Akhtar Umer Hayat Lalayka      **Vs.**    Mushtaq Ahmed Sukhaira, IG  
Punjab, Lahore.

**CIVIL MSIC. APPLICATION NO.4435/2016**

(Application against out of turn promotions in the Province of Punjab)

**C.R.P.382/2016 IN CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Muhammad Ami Taimoor etc      **Vs.**    Province of Punjab and others

**C.R.P.383/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Mahmood-ul-Hassan Rana etc      **Vs.**    Province of Punjab and others

**C.R.P.454/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Abrar Ahmad Khalil and others                      Vs.    Govt. of Punjab and others

**CRL.R.P.174/2016 in Crl.O.P.89/2011**

(On review from the judgment dated 12-06-2013  
passed by this Court in Crl.O.P.89/2013)

Ghulam Dastgir and others                      Vs.    Chief Secretary, Govt. of  
Punjab and others

**CRL.O.P.186/2016 in CA.184-L/2013**

(Contempt proceedings arising out of judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Muhammad Azam                                      Vs.    Mushtaq Ahmad Sukhera etc

**Crl.O.P.193/2016 in Crl.O.P.86/2016 in C.P.1000-L/2005**

(Contempt proceedings arising out of the order dated 4.10.2016  
passed by this Court in Crl. O.P.86/2016 in C.P.1000-L/2005)

Shahid Pervaiz                                      Vs.    Mushtaq Ahmed Sukhera, IG  
Punjab. Lahore.

**Crl.O.P.195/2016 in CA.184-L/2013**

(Contempt proceedings arising out of the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Imtiaz Sarwar                                      Vs.    Zahid Saeed, Chief Secretary  
Punjab and others

**C.R.P.479/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Tahir Sikandar and others                      Vs.    The Inspector General of  
Police, Punjab and others

**C.R.P.480/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Muhammad Waseem Ijaz                      Vs.    IGP Punjab and others

**C.R.P.481/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Khalid Mehmood Afzal and others                      Vs.    IGP Punjab and others

**C.R.P.482/2016 in CA.184-L/2013**

(On review from the judgment dated 26-01-2016  
passed by this Court in CA. No.184-L/2013)

Malik Muhammad Sabir

**Vs.** IGP Punjab and others

**Crl.R.P.191/2016 in Crl.O.P.89/2011**

(On review from the judgment dated 12-06-2013  
passed by this Court in Crl.O.P.89/2013)

Shahid Pervaiz, SP

**Vs.** Chief Secretary, Govt. of  
Punjab etc.

**Attendance**

For Federal Govt:	:	Mr. Ashtar Ausaf, Attorney General for Pakistan
		Mr. M. Waqar Rana, Addl. Attorney General
For Govt. of Pb.	:	Barrister Khalid Waheed, Asstt. AG Pb.
For Govt. of Balochistan	:	Mr. Ayaz Swati, Addl.AG
For Govt. of Sindh	:	Mr. Shehyar Kazi, Addl. AG Sindh.
For Govt. of KPK	:	Mian Arshad Jan, Addl.AG
For ICT:	:	Mian Abdul Rauf, AG
CRP.49/2016, CRP 191/16 and CRP.85/16	:	Syed Ali Zafar, ASC Mr. Zahid Nawaz Cheema, ASC Mr. M. Akram Sheikh, Sr. ASC (for Respondent No.6 in CRP.85/16)
Crl.R.P.52/16 CRP.83/16	:	Kh. Haris Ahmed, Sr. ASC
CRP.89/16	:	Ms. Asma Jahangir, ASC
CRP.92/16, 382-383, 480/16, Crl.O.186/16	:	Mr. Hamid Khan, Sr. ASC Mr. M. S. Khattak, AOR
CRP.50&52/2016, 454/16, CMA.132/16.	:	Mr. Talat Farooq Sheikh, ASC Mr. Khalid-Ibn-i-Aziz, ASC
CRP.51/2016,	:	In person.
CRP.89/16, 91/16, Crl. RP.174/16, Crl.O.P. 195/16, CRP.479/16 & 84/16, CMA.4435/16	:	Nemo.
CRP.51/2016	:	Jamil Ahmed in person.
Crl.O.P.123/16	:	Malik M. Qayyum, Sr. ASC
Crl.O.P.193/16	:	Mr. Rashid A. Rizvi, Sr. ASC. Mr. Qausain Faisal, ASC Syed Rafaqat Hussain Shah, AOR

CRP.481/16 : Nemo.

CRP.482/16 : Mr. S. A. Mahmood Sadozai, ASC  
Ch. Akhtar Ali, AOR

CMA.7575/2016 : Nemo.  
in CP.49/16

CMA.8177/2016 in : Baleegh-uz-Zaman Jawad, ASC  
CRP.Nil/2016

CMA.8132, 8146, : Mian Qamar-uz-Zaman, ASC  
8147/16 Raja Abdul Ghafoor, AOR

CMA.8143- : Nemo.  
8144/2016

CMA.8148/16 in : Ch. Akhtar Ali, AOR/ASC  
CRP.49/16

For the Department : Mr. Kamran Adil, AAIG(Legal)  
Sajjad Hussain, SP  
Shaban Mehmood, DSP Legal  
M Jamshed. SC RPO Office DGK.  
Mushtaq Hussain, SSP.

Date of Hearing : 08-11-2016, 16-11-2016, 29-11-2016,  
01-12-2016, 08-12-2016 and 14-12-2016

## **JUDGMENT**

**AMIR HANI MUSLIM, J. -**

**C.R.P 49/2016 etc**

Shahid Pervaiz Vs. Ejaz Ahmad and others

The facts relevant for the present proceedings are that on 04.03.1984, the Petitioner was appointed as Assistant Sub-Inspector in the Punjab Police, promoted as Sub-Inspector on 05.07.1987 and then as Inspector on 05.03.1990. In the year 1996, while he was posted as S.H.O Hanjarwal, the Petitioner participated in an operation for the arrest of notorious outlaws Mujahid @ Musa and others, who were involved in the murder case of deceased Mureeb Abbas Yazdani. The accused were alleged

to have started indiscriminate firing at the time of *Fajar* Prayer in Masjid Alkhair at Multan which resulted in the murder of many people and injuries to others.

2. It is pleaded that as a corollary of this gallantry performance, the Police party which carried out the operation was recommended for accelerated promotion by the D.I.G, vide letter dated 30.11.1996, under Section 8-A of the Punjab Civil Servants Act, 1974. The Petitioner was recommended for promotion as DSP. It is claimed that the committee formed under Section 8-A read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, recommended out of turn promotion of all the members of the raiding team including the Petitioner. It is further claimed that all the members of the Police Party were promoted out of turn except the Petitioner. It has been further pleaded that the Petitioner approached the Lahore High Court, by filing Writ Petition No.28879 of 1997, with the prayer that he may also be given out of turn promotion like the other members of the raiding party.

3. The Writ Petition No.28879/1997 of the Petitioner was clubbed with an identical Writ Petition No.8147 of 1998, which were allowed and the learned High Court directed the Respondent-Department to grant one step out of turn promotion to the Petitioner. However, the Department did not accept the decision of the High Court and approached this Court through Civil Appeal No.259-L of 2000, which was dismissed on the ground of limitation. It is pleaded that on dismissal of Appeal of the Government on the ground of limitation, the relevant committee was formed under Section 8-A read with Rule 14-A, which also recommended out of turn promotion of the Petitioner

and he was granted one step out of turn promotion as DSP, vide Notification dated 24.05.2001, with a rider that the Petitioner would be allowed to wear the rank of Deputy Superintendent of Police subject to the condition that his substantive promotion would be allowed in the course after his seniors get promotion.

4. It is further pleaded that against the above condition, the Petitioner filed another Writ Petition before the Lahore High Court, which was allowed and it was directed that a civil servant is entitled to promotion from the date he performed his duties as recognized by Section 8-A, therefore, the condition incorporated in the Notification dated 24.05.2001 was violative of Section 8-A. The Department filed Civil Petition for Leave to Appeal before this Court, which was dismissed.

5. After dismissal of the Petition of the Department by this Court, the Petitioner made a representation to the Government and accordingly he was given out of turn promotion, vide Notification dated 16.08.2007, with effect from 24.10.1996.

6. It was in the year 2013, that this Court in its judgment reported as Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), declared the practice/concept of out of turn promotions as unconstitutional and against the fundamental rights of the individuals.

7. It is pertinent to mention here that after the above-judgment, the aggrieved persons filed Review Petitions directly which were also dismissed by this Court vide judgment reported as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456). It is also worthwhile to mention here that both

the aforesaid judgments were ordered to be sent to the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, with the direction to streamline the civil structure in conformity with the principles enunciated in the aforesaid judgments.

8. The present proceedings emanate from an order of this Court, which was passed on 26.01.2016 in Civil Appeal No.184-L of 2013, wherein this Court has ordered as under:-

*We expect that all out of turn promotions granted either to the police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments. Out of turn promotions ranging from constable to any gazette officers shall be streamlined in terms of the aforesaid two judgments. On completion of the exercise, the I.G Police Punjab, Home Secretary, Punjab and Chief Secretary, Punjab, shall submit compliance report with the Assistant Registrar of the Court for our perusal in chambers. This order shall be communicated to the I.G, Punjab, Home, Secretary, Punjab and Chief Secretary, Punjab, for their information and compliance and non-compliance of this judgment shall expose the concerned officials to contempt proceedings.*

9. After the passage of this Order, the Petitioner was relegated to the post of DSP, by applying the principles of the aforesaid judgments. It is against this order that the Petitioner alongwith others has directly approached this Court through Civil Miscellaneous Applications, which came up for hearing on 22.02.2016 and were ordered to be registered as a Review Petition.



**Civil Review Petition No.51 of 2016 in C.A.No.184-L/13.**

10. In this Review Petition, it has been pleaded that the Petitioner was appointed as Assistant Sub-Inspector in the year 1998, following which he had earned a reputation of being a dedicated and fearless Police Officer. Being instrumental in causing arrest of wanted terrorists, he was granted out of turn promotion in the year 1991 as Sub-Inspector and then out of turn promotion as Inspector in the year 1998, under Section 8-A of the Punjab Civil Servants Act, 1974. It has been further pleaded that even in the year 1999, the Petitioner was recommended for out of turn promotion as DSP, which recommendation was not considered, therefore, he filed numerous writ petitions and contempt applications before the Lahore High Court and eventually he was promoted as DSP on 20.09.2010.

11. It has been pleaded that after an observation made by this Court on 26.01.2016, in the case of Civil Appeal No.184-L of 2013, the Petitioner is relegated to the post of A.S.I.

**Civil Review Petition No.52 of 2016 in C.A.No.184-L/13.**

12. It has been pleaded that the Petitioner was appointed as Assistant Sub-Inspector in the year 1998 and was promoted as officiating Sub-Inspector in the year 1990. Later, he was granted one step out of turn promotion as Inspector under Section 8-A of the Punjab Civil Servants Act, 1974 read with Rule 14-A, which was not implemented, therefore, the Petitioner filed Writ Petition No.8147 of 1998, which was allowed, by judgment dated 22.06.1996. However, the Department challenged the judgment of the learned High Court before this Court through Civil Petition No.226-L of 2000, which was dismissed, vide judgment dated 26.04.2000. In the intervening period, the

Petitioner was promoted as DSP and S.P. More or less the case of the other Respondents is identical to that of the Petitioner.

**Civil Review Petition No.83 of 2016 in C.A.No.184-L/2013.**

13. It has been pleaded in this Petition that on 22.06.1982, the Petitioner joined the Police Department as Assistant Sub-Inspector and was promoted as Sub-Inspector on 29.06.1987. On 16.11.1995, he was further promoted to the rank of Inspector. On 18.01.1997, the Petitioner suffered injuries in a bomb blast which took place in the premises of the Sessions Court, in which the Chief of a banned outfit and fifteen officers lost their lives. It is pleaded that in view of his excellent performance, the Petitioner was recommended for out of turn promotion as DSP, by the Inspector General of Police, Punjab, under Section 8-A of the Punjab Civil Servants Act, 1974, read with Rule 14-A, which recommendation was not executed, therefore, the Petitioner filed Writ Petition before the Lahore High Court. The learned High Court disposed of the Writ Petition of the Petitioner with the direction to issue formal notification of promotion of the Petitioner as DSP. Thereafter, the Department filed two Civil Petitions No.443 and 584-L of 2001 before this Court, which was dismissed on the ground of limitation. After dismissal of the Petitions of the Department by this Court, the Petitioner made a representation to the Home Secretary, Punjab, and eventually he was given out of turn promotion as DSP, vide notification dated 27.06.2008, w.e.f. 18.01.1997 i.e the date of incident. The case of the other Petitioners is almost identical to that of the Petitioner.

**Crl. Original Petition No.123 of 2016 in C.P.No.1446-L/1997.**

14. The Petitioner joined the Punjab Police as Inspector in the year 1989. While posted as S.H.O Piplan, District Mianwali, he eliminated a proclaimed offender namely Ahmad Nawaz @ Barbari, a fugitive from law since 1979, who was wanted in more than twenty murder and *harabba* cases. The Petitioner was recommended for out of turn promotion under Section 8-A read with Rule 14-A, but this recommendation for his out of turn promotion was not implemented, therefore, he filed Constitution Petition No.2445 of 1995 before the Lahore High Court, with a prayer to grant him out of turn promotion as DSP, which was allowed. The Department filed Civil Petition for Leave to Appeal No.1446 of 1997 before this Court, which was dismissed, vide order dated 18.04.1998. It has been pleaded that the Government of Punjab in compliance with the judgment of the Lahore High Court, promoted the Petitioner as DSP vide Notification dated 17.10.1997, effective from 08.05.1993. In the interregnum, the Petitioner rose to the rank of Deputy Inspector General of Police. However, in view of the observations made, on 26.01.2016, by this Court in Civil Appeal No.184-L of 2013, the out of turn promotion granted to the Petitioner as DSP, vide Notification dated 17.10.1997, has been revoked.

15. More or less, the case of all the other Petitioners/Applicants is almost identical to that of the Petitioners whose cases have been given in detail above.

16. Syed Ali Zafar, learned ASC, Counsel for the Petitioner in Civil Review Petition No.49 & 85 of 2016, has contended that on 08.11.1987, Section 8-A was inserted in the Punjab Civil Servants Act, 1974, to grant out

of turn promotion to a civil servant who provenly exhibits exemplary intellectual, moral and financial integrity and high standard of honesty and gives extraordinary performance in the discharge of his duties, and was omitted on 17.10.2006. He submits that this Section was regulated by Rule 14-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974. He next contended that out of turn promotions under the said section were declared to have been made lawfully by this Court. In support of his contention to establish that this Court, in different cases, directed the competent authority to implement the orders passed under Section 8-A of the Act, he has relied on the cases of Capt. (Retd). Abdul Qayyum vs. Muhammad Iqbal (PLD 1992 SC 184), Government of Punjab vs. Shamsheer Ali Khan, Additional Commissioner Multan (1992 SCMR 1388), Chief Secretary, Government of Punjab vs. Mumtaz Ahmed (1996 SCMR 1945), Abdul Ghaffar vs. Deputy Inspector General (1997 PLC (CS) 1150), Government of Punjab vs. Muhammad Iqbal (1997 SCMR 1429), I.G Police Lahore vs. Qayyum Nawaz Khan (1999 SCMR 1594) Javed Hussain Shah vs. Government of the Punjab (2005 PLD (CS) 974) and Sardar Zafar Iqbal Dogar vs. Secretary of the Government of the Punjab, Home Department (2006 PLC (CS) 164).

17. He then referred to the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408), wherein this Court has observed that the concept of out of turn promotion is against the Constitution as well as the injunctions of Islam. He submits that the view taken by this Court in the case of Muhammad Nadeem Arif (*supra*) was an *obiter dicta*, as in this case, the vires of Section 8-A were not challenged and only the orders/instructions passed by

the I.G.P were set-aside. The view taken in this Judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516).

18. He has further contended that the language of Section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from Section 8-A of the Punjab Civil Servants Act. He contended that the Section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to regulate out of turn promotions under Section 9-A, which was inserted on 21.02.2002. He further submitted that for a short period of three months starting from 10.02.2005 to 11.05.2005, Rule 8-B was inserted in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, to regulate the provisions of Section 9-A. On 31.03.2009, the High Court of Sindh in C.P 1595/2005 had declared the out of turn promotions as unlawful and directed to re-examine them by a Committee. Consequently, Appeals arising out of said judgment came up for hearing before this Court and were dismissed as withdrawn. Thereafter six (06) validating laws were promulgated which had been examined on the touchstone of constitutional provisions by this Court and declared unconstitutional in the case of Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and then in review Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456).

19. He next contended that this Court did not strike down the whole Section 9-A in its entirety, but only declared the out of turn promotions to be unconstitutional, however, the award/reward conferred under this Section were kept intact.

20. The learned ASC has further submitted that this Court on 26.01.2016, while disposing of Civil Appeal No.184-L of 2013, has observed that the judgments of this Court referred to hereinabove were not being followed in letter and spirit in the other provinces. Therefore, he has now filed review against the said part of the order.

21. He next contended that Section 8-A of the Punjab Civil Servants Act, 1974, had not been set-aside by any of the judgments of this Court, although Section 9-A of the Sindh Civil Servants Act, 1973, which was *pari-materia*, had been declared unconstitutional. Moreover, in C.R.P 49/2016, the Petitioner Shahid Pervaiz, who joined service on 04.03.1984, was promoted on grounds of having judgments of this Court in his favour. He has contended that now the question would be whether the declaratory judgments of this Court would have any binding effect on the case of the Petitioner on basis of the principle of *res judicata*.

22. He further submitted that a statute could only be declared as *non-est*, if the legislature is not competent to legislate that law. He submitted that law becomes unenforceable so long as a conflict exists with a fundamental right and if the fundamental right is for some reasons or the other disappears, the law becomes operative again on the basis of doctrine of *eclipse*. In this regard, he referred to the cases of The Province of East Pakistan vs. MD. Mehdi Ali Khan (PLD 1959 SC 387) and Abul A' la Maudoodi vs. Government of West Pakistan (PLD 1964 SC 673) and State of Gujrat vs Shri Ambica Mills Ltd. (AIR 1974 SC 1300).

23. He has further contended that the effect of a judgment which declares a law to be unconstitutional will have to be examined on pending cases as well as on future cases. He has contended that even if a Court declares a law to be unconstitutional, it does not affect the past and closed transactions and the cases wherein vested rights have been created. In support of his contention, he has relied on the cases of Muhammad Yousaf vs. Chief Settlement and Rehabilitation Commissioner (PLD 1968 SC 101), Nabi Ahmed vs. Home Secretary, Government of West Pakistan, Lahore (PLD 1969 SC 599), Income-tax Officer, Central Circle II, Karachi vs. Cement Agencies Ltd (PLD 1969 SC 322), Miss Asma Jilani vs. Government of the Punjab (PLD 1972 SC 139), Al-Jehad Trust vs. Federation of Pakistan (PLD 1996 SC 324), Asad Ali vs. Federation of Pakistan, (PLD 1998 SC 161) Jamat -I - Islami Pakistan vs. Federation of Pakistan (PLD 2000 SC 111), Muhammad Mubeen-us-Salam and others vs. Federation of Pakistan through Secretary, Ministry of Defence (PLD 2006 SC 602), Begum Nusrat Ali Gonda v. Federation of Pakistan (PLD 2013 SC 829), Pakistan, through the Secretary, Ministry of Finance vs Muhammad Himayatullah Farukhi (PLD 1969 SC 407), Mehram Ali vs Federation of Pakistan (PLD 1998 SC 1445), Liaquat Hussain vs Federation of Pakistan (PLD 1999 SC 504), Zafar Ali Shah vs Pervez Musharraf Chief Executive of Pakistan (PLD 2000 SC 869), Attiyya Bibi Khan vs Federation of Pakistan (2001 SCMR 1161), Hussain Badshah vs Akhtar Zaman (2006 SCMR 1163), Muhammad Idrees vs Agricultural Development Bank of Pakistan (PLD 2007 SC 681), Imran vs Presiding Officer, Punjab Special Court (PLD 1996 Lahore 542), Chenab Cement Products vs Banking Tribunal (PLD 1996 Lahore 672),

Muhammad Aslam vs Muhammad Hayat (PLD 1998 SC 165), Coromandel Fertilizers Ltd. Vs. CTO (1992(1) ALT 327), Collector of Customs & Central Excise Vs. Oriental Timber Industries. (1985 SCR(3) 475), Union of India Vs. Godfrey Philips (1985 SCR Supl.(3) 123), West Bengal Hosiery Association vs. State of Bihar (1998 71 STC 298 (CS)), Video Electronics Pvt. Ltd vs. State of Rajasthan (1998 71 STC 304 (SC)), Hi-Beam Electronics Pvt. Ltd. Vs. State of Andhra Pradesh (1998 71 STC 305 (SC)), Besta Electronics Pvt Ltd. Vs. State of Madhya Pradesh (1998 71 STC 307 (SC)), Indian Cement Case (1998 69 STC 305 (SC)), Blue Star Limited vs. State of Andhra Pradesh (1990 78 STC 48), Brindavan Roller Floor Mills (ILR 1994 KAR 2196) and the cases of Govindaraju Chetty (1968 22 STC 46), Kil Kotagiri Tea Coffee (1988 174 ITR 579 (KER), Suresh Babu (res-judicata) (ILR 1998 KAR 3885), DP Sharma Case (ILR 1987 KAR 3255), Gokaraju Case (1995 Supp 1 SC 271), Avatar Sindh Case (AIR 1979 SC 1991), Upendra Nath vs. Lal (AIR 1945 PC 222), I.C. Golak Nath case (AIR 1967 1643), Coromandel Fertilizers Ltd Vs. Dy. Commissioner of Income-Tax (1992 (1) ALT 327), Brindavan Roller Flour Mills Pvt. Ltd. Vs. Joint Commissioner of Commercial Taxes (ILR 1994 KAR 2196), Managing Director, ECIL, Hyderabad Vs. B. Karunakar (AIR 1994 SC 1074), Superintendent & Legal Vs. Corporation of Calcutta (AIR 1967 SC 997), D. P. Sharma Vs. State Transport Authority. (ILR 1987 KAR 3255), Beddington Vs. British Transport Police (1998) 2 AC 143), Kleinwort Benson Ltd Vs. Lincoln City Council (1998) 3 WLR 1095), Hislop Vs. Canada (2007) 1 SCR 429), Murphy and Murphy vs. The Attorney General (1982) 1 I.R.).



24. He contends that where rights were created under or in pursuance of a judgment rendered which attained finality irrespective of the fact that the Courts have declared such law to be void in a later judgment, does not open the issue resolved in a past and closed transaction on the principle of *res-judicata*. In this behalf, he relied on the cases of Mir Afzal and others vs. Qalandar and others (PLD 1976 AJ&K 26), Ch. Rehmat Ali vs. Haji Jan Muhammad (1983 SCMR 1109), Atiq-ur-Rehman vs. Muhammad Ibrahim (1984 SCMR 1469, Noor Muhammad vs. Muhammad Iqbal Khan (1985 CLC 1280), Mst. Amina Bai vs. Karachi Municipal Corporation (1985 CLC 1979), Pir Baksh vs. The Chairman, Allotment Committee (PLD 1987 SC 145), Kohinoor Sugar Mills Lt vs. Pakistan (1989 SCMR 2044), Muhammad Anwar vs. M/s Associated Trading Co. Ltd. (1989 MLD 4750), Kharati and others vs. Muhammad Ibrahim (1989 CLC 894), Shahzad Hussain vs. Hajra Bibi (PLD 1990 Lahore 222), Nazam Din vs. Deputy Settlement Commissioner (1990 SCMR 239), Engineer-in-Chief Branch vs. Lalaluddin (PLD 1992 SC 207), Feroze Din vs. Administrator (1992 CLC 2430), Khadim Hussain vs. Govt. of Punjab (1993 SCMR 1869), Rahat Mehmood vs. Tariq Rasheed (PLD 1993 Kar. 648), Malik Gul Hassan and Co. vs. Federation of Pakistan (1995 CLC 1662), Muhammad Younis vs. Province of Punjab (1995 CLC 1834), Messrs Tank Steel and Re-Rolling Mills Pvt Ltd Dera Ismail Khan vs. The Federation of Pakistan (PLD 1996 SC 77), Muhammad Sohail vs. Govt. of NWFP (1996 SCMR 218), Muhammad Naqi vs. Mst. Rasheeda Begum (1997 MLD 900), Shah Zareen Khan vs. Sada Gul (1997 MLD 903), Nazir Ahmad Vs. Abdullah (1997 SCMR 2881), Amanul Mulk vs. Ghafoor-ur-Rehman (1997 SCMR 1796), Muhammad Ali Naqvi

vs. Sindh Employees Social Security (1999 PLC (CS) 893), Quetta Textile Mills Limited, Nadir House, Karachi. vs. Pakistan (2000 YLR 2683), Allah Dawaya vs. Additional District Judge (2002 SCMR 1183), Rukhsana Tabassum vs. Kazim Imam Jan (2003 CLC 189 Kar), Hameeda Shamim vs. Deputy Commissionr, Karachi (2003 CLC 53 Kar), Ch. Riaz Ahmad vs. Punjab Text Book Board, Lahore (2004 PLC (CS) 1243), Mustafa Kamal vs. Daud Khan (PLD 2004 SC 178), Mst. Bashiran Bibi vs. State Life Insurance Corporation of Pakistan (2004 CLC 1392), Ghulam Hassan vs. Munawar Hussain (2005 CLC 773), Muhammad Saleem vs. Additional District Judge, Gujranwala (PLD 2005 SC 511), Messrs Gadoon Textile Mills vs. Chairman, Area Electricity Board, WAPDA, Peshawar (PLD 2005 SC 430), Ch. Riaz Ahmad vs. Punjab Text Book Board (2006 SCMR 867), Nasir Khan vs. Province of Punjab (2006 YLR 87), District Coordination Officer Pakistan (2006 MLD 1), Ms. Mumtaz Maqsood vs. Secretary, Revenue Division and others (2010 YLR 1869), Aftab Ahmad vs. Muhammad Riaz (2010 MLD 240), Trustees of the Port of Karachi vs. Karachi International Container Terminal Ltd (2010 CLC 1666), Dr. Hassan Bux Rind vs. Province of Sindh (2010 PLC (CS) 228), Syed Ghazanffar Hussain vs. Nooruddin (2011 CLC 1303), Sanaullah vs. Mst. Naseem Begum (2012 MLD 1675), Punoo Khan vs. Mst. Iqbal Begum (2012 MLD 1678), Ghulam Akbar Lang vs. Dewan Ashiq Hussain Bukhari (2012 SCMR 366), Abdul Rauf Khan vs. Muhammad Hanif (2013 CLC 219), Arshad Ali vs. Muhammad Tufail (2013 CLC 632), Zakir Ullah vs. Muhammad Reham (2014 CLC 1026), Ch. Muhammad Siddique vs. Executive Engineer Electricity Department AJ &K Bhimber (2015 CLC 60), B.C. International (Pvt) Ltd vs. Tahfeen Qayyum (2015 MLD 1347), Jamia

Masjid Habiba vs. Dhoraji Cooperative Housing Society (PLD 2015 Sindh 39), Muhammad Nadeem Vs. Government of Balochistan (2015 PLC (CS) 1143), Upendra Nath vs. Lal (AIR 1940 PC 222), Satyadhyan Ghosal and others vs. Sm Deorajin Debi and another (AIR 1940 SC 941), Badri Narayan Singh vs. Kamdeo Prasad Singh (AIR 1962 SC 338), Amalgamated Goalfields Ltd and another Janapada Sbha Chhindwara and others (AIR 1964 SC 1013), Sheodan Sindh vs. Daryao Kunwar (AIR 1966 SC 1332), Virudhunagar Steel Rolling Mills Ltd vs. Government of Madras (AIR 1968 SC 1196), Ramagya Prasad Gupta vs. Murli Prasad (AIR 1974 SC 1320), State of Uttar Pradesh vs. Nawab Hussain (1977 SC 1680), Muhammad Mustafa vs. Mansoor and others (AIR 1977 Allahabad 239), Avtar Sindh and others vs. Jagjit Singh and another (AIR 1979 SC 1911), Rangarao vs. Kamalakant (1995 Supp (1) SCC 271), Suresh Babu vs. Smt. S. Susheela Thimmegowda (ILR 1998 KAR 3885), R. vs. Sarson [1996] 2 RCS, Canada (Attorney General) vs. Hislop [2007] 1 SCR 429, Harper vs. Virginia Department of Taxation (509 US 86 (1993)), Norton vs. Shelby County 118 US 425 (1886), R vs. Kirby (1957 95 CLR 529), Boddington vs. British Transport Police (1998 2 AC 143), Regina vs. Governor of Her Majesty's Prison Brockhill, (2000) 3 WLR 843, Murphy vs. Murphy (Attorney General) (1982 IR 241), Thomson vs. St. Catherine's College Cambridge, Henerson vs. Folkeston Waterworks Co., R vs. Unger (1997 2 NSWLR 990).

25. He further contended that people want certainty in their daily life issues, so that they can regulate their life, therefore, law should only be revisited in exceptional circumstances, and that although this Court has the power to do so, but such power must be exercised sparingly. He, in support of

his submission, has relied upon the case of Nabi Ahmed vs. Home Secretary, Government of West Pakistan, Lahore ( PLD 1969 SC 599) on the issue of retrospective effect of judgments.

26. He next contended that in a number of judgments, this Court has held that even if a law is declared unconstitutional, the benefits accrued thereunder would be protected on the basis of the principle of *res judicata*, therefore, rights created under or in pursuance of judgments rendered which have attained finality, would not open past and closed transactions. He submits that the binding decisions could not be re-opened and the past could not be erased by a judgment of the Court. Justice demands prospective overruling.

27. Mr Talat Farooq Shaikh, learned ASC, appeared in C.R.P 50 & 52/2016 and adopted the arguments of Syed Ali Zafar, ASC and submitted that except the Petitioner No. 6, Naveed, who was given anti-dated promotion, all other Petitioners were promoted out of turn.

28. Mr. Talat Farooq Shaikh, learned ASC for the Petitioners in C.R.P.No.454 of 2016, has filed written arguments contending that the promotions were granted to the Petitioners in pursuance of the Court orders; moreover, the seniority of the Petitioners has been disturbed without any legal justification, considering it out of turn promotion though they were never granted any out of turn promotion. He also contended that the Department has itself issued a list dated 17.06.2016, of the Superintendents of Police, who were granted out of turn promotion, but the names of the Petitioners do not figure therein. It was next submitted that the list of SPs, who were not

promoted out of turn was also issued and the names of the Petitioners appeared at Sl. No.20, 23 and 24 of the list, hence the order of withdrawal of promotion dated 26.9.2016, was without any lawful authority, because the Petitioners were regularly promoted by orders of the Courts in accordance with Punjab Civil Servants Act and the Rules. The learned Counsel has also adopted the arguments of Syed Ali Zafar, learned Sr. ASC in addition to his own submissions.

29. Khawaja Haris Ahmed, learned Sr.ASC, appeared in C.R.P 83/2016 and Crl.R.P 52/2016 and has contended that in both the judgments i.e Contempt proceedings (Supra) and Ali Azhar Khan Baloch (Supra), the Petitioners were not party. He submits that Section 8-A of the Punjab Civil Servants Act, 1974, came into existence in the year 1987 in the province of Punjab and its vires were neither challenged nor examined by this Court in any of the judgments. He submitted that he does not challenge the findings recorded in the judgment of *Contempt Proceedings (Supra)*. He next contended that Section 8-A of the Act was regulated by the Rule 14-A, whereas in Sindh, there was no rule to regulate Section 9-A that provided for out of turn promotion, therefore, the judgments given in peculiar facts and circumstances were not applicable to the other provinces. According to the learned Counsel, Section 9-A of the Sindh Civil Servants Act in Sindh stood alone but Section 8-A was to be regulated through the rules so they were not *pari materia*. Rule 14-A (*ibid*) had structured the discretion of the competent authority.

30. He then pointed out that even no notice was ever issued to the Advocates General of the other provinces in terms of Order XXVII-A of the

Code of Civil Procedure, 1908, and without notice, the application of the aforesaid judgments could not be extended to the other provinces.

31. On this objection of the learned Counsel, the Court has passed the following order:-

*M/s Syed Ali Zafar and Talat Farooq Sheikh, learned ASCs, have made their submissions on behalf of their respective review petitioners represented by them in C. R. Ps. No. 49, 50 & 52/2016.*

*2. During the submissions Kh. Haris Ahmed, learned Sr. ASC for the review petitioners in C. R. P. No. 83/2016 & Crl. R. P. No. 52/2016, has raised objection with reference to notice under Order XXVII-A CPC. We deem it appropriate that before proceeding further with these connected review petitions, let notice of these proceedings be issued to the learned Advocate Generals of all the four Provinces, learned Advocate General for Islamabad Capital Territory and also to learned Attorney General for Pakistan to render assistance on the constitutional points involved in these petitions. Re-list on 16.11.2016.*

*3. C. M. As. No. 4240, 6936 & 7261/2016 and Crl. M. A. No. 338/2016: All these applications for grant of permission to file review petitions and to argue the same are allowed subject to all just exceptions, therefore, all such review petitions be assigned proper numbers and be put up in Court on the next date of hearing.*

32. Khawaja Haris Ahmed, the learned Sr.ASC, has contended that the application of judgments of this Court reported as Contempt Proceedings Against Chief Secretary (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), could not be extended to the other Provinces, particularly the Province of Punjab. He submits that he has sought, *inter alia*, the review of paragraph 183 of the judgment reported as 2013 SCMR 1752, wherein a direction was given to all the Chief Secretaries of the

Provinces including the Secretary, Establishment Division, Government of Pakistan, to streamline the service structure of civil servants in line with the principles laid down in the said judgment whereby the term ‘out of turn promotion’ was declared against the spirit of the Constitution as well as the injunctions of Islam.

33. He next contended that the provisions of Section 8A of the Punjab Civil Servants Act, 1974, relating to the out of turn promotion were neither examined nor considered by this Court while concluding the aforesaid judgment to make the principles enunciated therein applicable to the other provinces and the Federal Government. He submitted that such a direction contained in paragraph 183 of the judgment is violative of Article 10A of the Constitution, which protects the civil rights and obligations of the citizens in granting them a fair trial and due process. The Civil Servants of the Punjab were not given the opportunity of hearing before reaching such a conclusion by this Court, therefore, the findings recorded on the issue of ‘out of turn promotion’ contained in the aforesaid judgment could not be made applicable to the Province of Punjab.

34. While formulating his arguments, he further submitted that the circumstances prevalent in the Province of Sindh were distinct, which perhaps has influenced the Court to reach such a conclusion whereas in Punjab the provisions of Section 8-A were regulated by Rule 14-A of the (Appointment and Conditions of Services) Rules, 1974, therefore, grant of out of turn promotion to the Petitioners, in any way, could be set at naught. He attempted to make a distinction between the provisions of out of turn promotion in Section 9-A of Sindh Civil Servants Act and Section 8-A of Punjab Civil

Servants Act. He stated that in Punjab statute, the discretion conferred under Section 8-A was structured and regulated by Rule 14-A, however, in the Sindh Civil Servants Act no Rule was enacted to regulate the provision of ‘out of turn promotion’, except for a limited period of three months. Therefore, the facts as well as the law of the province of Punjab were not *pari materia* with the province of Sindh which was declared un-constitutional.

35. He next contended that the aforesaid judgment did not take notice of some of the provisions of the Constitution, which have direct bearing on the findings recorded by this Court. In this connection, he has referred to Article 27(1) of the Constitution, which envisages that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the grounds of only of race, religion, caste, sex, residence or place of birth. He submitted that Article 27(1) is an exception to Article 25 of the Constitution. According to him, Article 27(1) has direct nexus to the discrimination in service and ought to have been considered while passing the judgment in review.

36. He further contended that Article 8(3)(a) of the Constitution, excludes the application of any law relating to the members of the Armed Forces or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them, was overlooked while recording findings on the issue of out of turn promotion. He submits that Section 8-A or Section 9-A of both the Provinces were police specific and are covered by the exclusion clause of Article 8(3)(a) of the Constitution.



37. He next referred to the provision of Section 6 of the General Clauses Act and submitted that Section 8-A of the Punjab Civil Servants Act was omitted and has the same effect as that of repeal of a statute. In support of his contention, he has relied upon the cases of Muhammad Tariq Badr vs. National Bank of Pakistan (2013 SCMR 314), Dr. Mukhtar Ahmed Shah vs. Government of Punjab (PLD 2002 SC 757). He concluded that the effect of repeal of a provision of law is very much clear, which means that a law ceases to have effect but, by no means, it can be said to have undone the prior acts effectuated by that provision of law.

38. On the point of cut of date, he contended that in the province of Punjab, it would be the date when Section 8-A of the Punjab Civil Servants Act was omitted which is 17.10.2006, and not the date when it was inserted in the Punjab Civil Servants Act.

39. Khawaja Haris Ahmad, Sr. ASC argued that the judgment of this Court in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) was rendered, keeping in view the peculiar facts as well as the law in the province of Sindh and the application of the same could not be extended to the other provinces, particularly the province of Punjab.

40. He next contended that the out of turn promotions under Section 8-A were never held to be unconstitutional during its life time and the out of turn promotions made under this Section were protected by this Court through various judgments. Moreover, the views of the Courts kept on changing by the afflux of time. Military Courts which were not considered Constitutional at one time have been validated by this Court established through amendment

in the Constitution. In support of his contentions, he has relied upon the judgments of this Court, which according to him, declared out of turn promotions as lawful Government of Punjab vs. Shamsheer Ali (1992 SCMR 1388), Abdul Qayyum vs. Muhammad Iqbal Khokhar (PLD 1992 SC 184), Government of Punjab vs. Raja Muhammad Iqbal (1993 SCMR 1814), Chief Secretary Government of Punjab vs. Raja Mumtaz Ahmed (1996 SCMR 1945), Government of Punjab vs. Muhammad Iqbal (1997 SCMR 1428), Inspector General of Police vs. Qayyum Nawaz Khan (1999 SCMR 1594), Muhammad Gulshan Khan vs. Secretary Establishment Division (PLD 2003 SC 102), Province of Punjab vs. Javed Hussain Shah, Inspector General of Police vs. Muhammad Iqbal (2007 SCMR 1864).

41. He further submitted that later on the trend changed and the out of turn promotions were questioned, however, the law was never struck down. He referred to the case of Farhat Abbas vs Inspector General (2009 SCMR 245), wherein it was observed that performance of duty with due diligence and efficiently deserves due appreciation but it cannot be over appreciated out of proportion so as to make out case a grievance to the other employees in service of the department. In the case of Muhammad Nadeem Arif vs. Inspector General of Police (2011 SCMR 408) this Court observed that rules should be framed to regulate the out of turn promotion to save the agony of the police officials/officers as well as to save the public exchequer from unnecessary litigation. He also referred to the cases of Government of Punjab vs. Sardar Zafar Iqbal Dogar (2011 SCMR 1239), Ghulam Shabbir vs. Muhammad Munir Abbasi (2011 PLC (CS) 763), Muhammad Fahim Soomro vs. Waqar Ahmed Qadri (2012 SCMR 680) to substantiate that the law on the

point was never struck down despite observing it unconstitutional and against the injunctions of Islam. This was only done so in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) on 12.06.2013.

42. Mr Mohammad Akram Sheikh, learned Sr.ASC, appeared for the Petitioner No.6 in C.R.P.No.85 of 2016 and contended that notice in terms of Order XXVII-A CPC was not issued to the Advocate General, Punjab and subsequent issuance of this notice would not cure this inherent defect. Therefore, the judgment under review was *per incurim*. In this behalf he relied on the case of Federation of Pakistan vs. Aftab Ahmed Khan Sherpao (PLD 1992 SC 723).

43. He next contended that though the principle of *stare decisis* does not apply to this Court, but the rights and benefits accrued to the individuals through earlier judgments would remain protected. He referred to the case of Pir Baksh vs. The Chairman Allotment Committee (PLD 1987 SC 145).

44. He further contended that the bar envisaged in Article 8(3) (a) would apply to the law relating to the police and such law is exempted from the scrutiny of this Court, as the police force has been dealt with differently as compared to the other civil servants. He referred to the cases of Inspector General of Police vs Mushtaq Ahmed Warriach (PLD 1985 SC 159) and Lt. Col. Anwar Aziz vs. Federation of Pakistan (PLD 2001 SC 549).

45. He next contended that the case of the Petitioner falls within the ambit of term “past and closed transaction” and rights accrued in favour of the Petitioner could not be taken away by change of law unless specifically

declared to be applied retrospectively. He referred to the case of Quetta Textile Mills reported in 2000 YLR 2683.

46. He submitted that in paragraph 183 of the judgment reported as (2013 SCMR 1752), the Chief Secretary of the Government of Sindh was directed to implement the judgment whereas the Chief Secretaries of the other provinces and the Secretary, Establishment Division, Government of Pakistan, were directed to streamline the service structure in line with the principles laid down in the said judgment. He submitted that there was no direction to the other provinces and the Federation to implement the said judgment retrospectively, therefore, the Punjab Government should not have implemented the judgment.

47. He then contended that the concept of out of turn promotion is not against the injunction of Islam and the Federal Shariat Court is expressly empowered by the Constitution in this behalf to consider the validity of the law on the touchstone of the injunctions of Islam. He in this behalf placed before this Court an extract from the book titled Seerat Encyclopedia, Volume 10 which reads as under: -

سُورَةُ اسامه کا پس منظر یہ تھا کہ رومی حکومت کو یہ گوارا نہ تھا کہ وہ اسلام اور اہل اسلام کے زندہ رہنے کا حق تسلیم کرے۔ اگر وہاں کوئی مسلمان ہو جاتا تو اس کی شامت آجاتی اور جان محفوظ نہ رہتی۔ اس حکومت کا غرور توڑنے کے لیے رسول اللہ ﷺ نے صفر 11 ہجری کے آخر میں ایک بڑے لشکر کی تیاری شروع فرمائی، سیدنا اسامہ رضی اللہ عنہ کو امیر لشکر مقرر کیا اور حکم دیا کہ بلقاء اور روم کا علاقہ روند آؤ۔ اس کارروائی کا مقصد یہ تھا کہ رومیوں کو خوف زدہ کر کے ان کی حدود پر موجود عرب قبائل کا اعتماد بحال کیا جائے اور کسی مغرور کھوپڑی میں یہ نشہ باقی نہ رہے کہ ہم رومی لوگ ناقابلِ تسخیر ہیں۔ ہم جو چاہیں کرتے پھریں، کوئی مائی کا لال ہم سے کسی طرح کا کوئی مواخذہ یا باز پرس کرنے والا نہیں۔

حافظ ابن حجر رحمہ اللہ کہتے ہیں: امام بخاری رحمہ اللہ نے اس عنوان کو رسول اللہ ﷺ کے مرض الموت اور آپ کی وفات کے حالات میں بیان کیا ہے کیونکہ رسول اللہ ﷺ نے وفات سے دو دن پہلے ہفتے کے روز لشکر اسامہ کو روانہ کیا تھا جبکہ اس کی تیاری کا آغاز آپ ﷺ کی بیماری سے پہلے ہی ہو چکا تھا۔<sup>1</sup> آپ کا سیدنا اسامہ رحمہ اللہ کو امیر لشکر بنانا اور شام کی طرف روانہ فرمانے کا فیصلہ بہت سی حکمتوں، عظمتوں اور برکتوں پر مبنی تھا۔ چونکہ سیدنا اسامہ رحمہ اللہ کے والد گرامی سیدنا زید رحمہ اللہ اس سرزمین میں شہید کر دیے گئے تھے، اس لیے آپ ﷺ نے اسامہ رحمہ اللہ کی دلجوئی فرمائی تاکہ وہ اپنے والد کے قاتلوں پر ٹوٹ پڑیں اور اللہ کے دشمنوں کو خاک و خون میں ملا کر اسلام کا پرچم بلند کر دیں۔ اس لشکر میں عام مہاجرین و انصار کے ساتھ ساتھ سیدنا ابوبکر اور سیدنا عمر رحمہما اللہ جیسے گرانمایہ اکابر بھی شامل تھے۔

سیدنا اسامہ رحمہ اللہ کی عمر اس وقت صرف اٹھارہ سال تھی۔ بعض لوگوں نے اعتراض کیا کہ اس لشکر میں بڑے بڑے انصار و مہاجرین موجود ہیں تو اس چھوٹی سی عمر والے اور آزاد کردہ غلام (کے بیٹے) کو امیر کیوں بنایا جا رہا ہے؟ مگر رسول اللہ ﷺ نے اسامہ رحمہ اللہ کی امارت پر اٹھائے گئے تمام اعتراضات بلا تامل مسترد کر دیے۔<sup>1</sup>

آپ ﷺ نے ارشاد فرمایا:

«إِنْ تَطَعُوا فِي إِمَارَتِهِ فَقَدْ كُنْتُمْ تَطْعَمُونَ فِي إِمَارَةِ أَبِيهِ مِنْ قَبْلُ، وَإِنَّمَا اللَّهُ! إِنْ كَانَ لَخَلِيقًا لِلْإِمَارَةِ، وَإِنْ كَانَ لَمِنْ أَحَبِّ النَّاسِ إِلَيَّ، وَإِنَّ هَذَا لَمِنْ أَحَبِّ النَّاسِ إِلَيَّ بَعْدَهُ»

”اگر تم اسامہ کی امارت پر اعتراض کرتے ہو تو تم نے اس سے پہلے اس کے باپ کی امارت پر بھی اعتراض کیا تھا۔ اللہ کی قسم! وہ امارت کے لائق تھا اور وہ سب لوگوں میں سے مجھے زیادہ پیارا تھا۔ اب اس کا یہ بیٹا (اسامہ) مجھے سب لوگوں میں سے زیادہ پیارا ہے۔“<sup>2</sup>

بہر حال صحابہ کرام رحمہم اللہ سیدنا اسامہ رحمہ اللہ کے گردا گرد جمع ہو کر ان کے لشکر میں شامل ہو گئے۔ لشکر روانہ ہو کر مدینہ طیبہ سے تین میل دور مقام جرف میں خیمہ زن ہو گیا لیکن رسول اللہ ﷺ کی بیماری کے متعلق تشویش ناک خبروں کی وجہ سے آگے نہ بڑھ سکا بلکہ اللہ کے فیصلے کے انتظار میں وہیں ٹھہرنے پر مجبور ہو گیا۔ اللہ کا فیصلہ یہ تھا کہ یہ لشکر سیدنا ابوبکر صدیق رحمہ اللہ کے دور خلافت کی پہلی مہم قرار پائے، چنانچہ رسول اللہ ﷺ کی وفات کے بعد جب ابوبکر صدیق رحمہ اللہ کی بیعت کی گئی تو انھوں نے سیدنا اسامہ رحمہ اللہ کو حکم دیا کہ وہ لشکر لے کر چلے جائیں، یوں ان کی قیادت میں لشکر روانہ ہوا۔ وہ بیس روز چلتے رہے آخر کار رومیوں پر حملہ کیا، جس نے بھی وہاں گردن اٹھائی، اسے قتل کر دیا گیا۔

48. He submitted that picking best of the best is prerogative of the Commander of a Force. Moreover, all the powers are scared trust whether it be executive, legislative or judicial, therefore, heavy duty lies on the shoulders of the Hon'ble Judges of this Court to discharge their duty. In the present case the out of the turn promotion of the Petitioner was declared to be lawful up to

this Court and now after so many years it would not be justified to apply the judgment of this Court retrospectively to undo such promotion. The concept that the judgment is not time bound has no sanctity in the eyes of law as vested rights have been accrued in favour of the Petitioner.

49. Mr. Muhammad Akram Sheikh, learned Senior ASC, has submitted written synopsis on behalf of the Petitioners in Civil Review Petition No.479 of 2016 in Civil Appeal No.184-L/2013, and contended that the direction contained in para No. 1 of C.A 184-L/2013 is not relevant to the case of the Petitioners, as interpreted by the Inspector General of Police, Punjab (IGPP), while issuing order dated 18.10.2016, whereby promotion of the Petitioners as DSP and in lower ranks was undone, holding that the same were made ante dating their seniority, which was held in C.A 184-L/2013, as violative of the law. He further contended that the order dated 26.01.2016 of this Court passed in C.A 184-L/2013, deals with cases of out of turn / accelerated promotion / back dated seniority to non-cadre officers in the regular cadres and the case of the Petitioners does not fall in any of these categories. He has also submitted that terms and conditions of service of the officers of Punjab Police upto the rank of Inspector (BS-16) are governed by the Punjab Police Rules, 1934. He referred to the Rule 12.8, 13.1 (3) and 13.18 and submitted that in the case of Gul Hasan Jatoi and others Vs. Faqir Mohammad Jatoi and other (2016 SCMR 1254) it has been held by this Court that “*those police personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued.*”

50. He next contended that every case is to be decided on its own peculiar facts and circumstances, therefore, while passing the order dated 26.01.2016 no opportunity was provided to the Police Officers who were likely to be adversely affected. He has relied on the case of Muhammad Nadeem Arif Vs. Inspector-General of Police, Punjab Lahore (2010 PLC (CS) 924). He next contended that the principle of locus poenitentiae will be applicable in the case in hand. He has adopted the arguments advanced by Mr. Abdul Rahim Bhatti, learned ASC in C.R.P 384/2016 (Muhammad Anwar Vs. IGP Punjab and others) and prayed that Respondent No. 1 (IGPP) should be directed to review his orders after hearing the Petitioners.

51. The Petitioner, Jamil Ahmed, in Civil Review Petition No.51 of 2016, has appeared in person and filed a written statement, stating therein that he adopts the arguments of Messrs Khawaja Haris Ahmed and M. Akram Shiekh, learned Sr.ASCs.

52. Ms. Asma Jahangir, ASC appearing in C.R.P 89/2016 in C.A 184-L/2013 on behalf of the Petitioners had adopted the arguments of Khawaja Haris Ahmad, ASC except his contentions on Article 27 of the Constitution of Pakistan. She contended that there were many errors floating on the surface of the impugned judgments, justifying the review. *Firstly*, the Petitioners were never heard before passing the judgments of this Court sought to be reviewed. *Secondly*, no notice in terms of Order XXVII-A of the Code of Civil Procedure, 1908 was given to the Advocate General, Punjab. *Thirdly*, there was distinction between Section 8-A of the Punjab Civil Servants Act, 1974 and Section 9-A of the Sindh Civil Servants Act, 1973 and by striking down the out of turn promotions in the province of Sindh, same

principle could not be applied to the Province of Punjab. She further submitted that in the province of Punjab there was a Committee formed under Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, therefore, unlike the practice in the Province of Sindh the discretion to grant out of turn promotion did not vest in a single person and such powers were not being exercised arbitrarily. *Fourthly*, Section 8-A of the Punjab Civil Servants Act, was omitted in the year 2006 and it had the same effect as that of repeal of a law and hence the vested rights created in favour of the Petitioners could not be taken away under the garb of the impugned judgments. She next contended that the question of out of turn promotion was one that stemmed out of a government policy, which could not be interfered with by the Court. In this regard she has relied upon the case of Dossani Travels Pvt Ltd Vs. Ms. Travels Shop Pvt. Ltd (PLD 2014 SC 1).

53. She next contended that all of the Petitioners were only given one time ‘out of turn promotion’ throughout their career and that too, validly under the law prevalent at that time and that too were awarded on good reasons as each one of them had acted in an exceptional manner during the discharge of their duties. She was of the view that such incentives are given to the officers/officials of the forces on the ground of “bravery” in many countries of the world, however, she did not point out any country where such benefit was being given. She further submitted that by the repeal of Section 8-A in Punjab in the year 2006, vested rights accrued in favour of the Petitioners, which could not be taken away on the basis of the principle of ‘past and closed transactions’.



54. She next contended that the judgment of this Court could not be given retrospective effect to undo the out of turn promotions validly given, under the law in force at the relevant time as the vested rights had accrued and the effect of repeal as per the Constitution and the law would be attracted. In support of her contention, she has relied upon the cases of Dr Mukhtar Hamid Shah vs. Government of Punjab (PLD 2002 SC 757), M.C.B Bank Ltd, Karachi Vs. Abdul Waheed Abro and others (2016 SCMR 108), Nazeer Ahmad and others vs. Ghulam Mehdi and others (1988 SCMR 824), Taza Khan and others Vs. Ahmad Khan and others (1992 SCMR 1371), Muhammad Tariq Badr vs. National Bank of Pakistan (2013 SCMR 314), Shahida Bibi and others Vs. Habib Bank Limited and others (2016 CLD 2025), Federation of Pakistan Vs. Dr. Mubashir Hassan and others (PLD 2012 SC 106), Jannat-ul-Haq and 2 others Vs. Abbas Khan and 8 others (2001 SCMR 1073), Hakim Ali Zardari Vs. The State (PLD 1998 SC 1), Al-Samrez Enterprises Vs. Federation of Pakistan (1986 SCMR 1917), Badshah Gul Wazir Vs. Government of Khyber Pakhtunkhwa (2015 SCMR 43).

55. Mr Hamid Khan, learned Senior ASC, while appearing for the Petitioner in C.R.P.No.92 of 2016 in Civil Appeal No.184-L of 2013, contends that the Petitioner is aggrieved by the order of the department, whereby under the garb of directions of this Court vide order dated 26.01.2016, regarding implementation of the judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), the Petitioner was reverted, *inter alia*, on the ground that he was promoted out of turn. The learned Counsel submits that the Petitioner was twice promoted out

of turn but the issue of his seniority was settled up to this Court by the judgment dated 12.12.2013. He contended that the aforesaid judgments of this Court were not applicable to the case of the Petitioner, as the matter was different and had also become part of the history on the basis of the doctrine of “past and closed transaction”, therefore, the matter could not be put to another round of litigation to settle what had already been settled by this Court and the benefit granted under the valid law could not be taken away.

56. Mr. Hamid Khan, learned Sr. ASC appeared for the Petitioners in Civil Review Petition 382/2016 and Civil Review Petition 383/2016. He contended that all the Petitioners in these Review Petitions were appointed and promoted in the Punjab Police on the basis of Sports Policy and the maximum promotion one could achieve through the Sports Policy was up to the rank of Inspector. He submitted that the Punjab Police issued a Sports Policy in the year 1982, which provided for an objective criteria on the basis of which incentives in the shape of cash reward or promotion could be granted to any police officer/ official and there were hardly 140 police officials/ officers, who were inducted and given accelerated promotion in the Punjab Police on the basis of this policy.

57. He next contended that the participation in sports from our country both at national and international levels was facing a continuous decline and the country has suffered a rapid downfall in the Sports performance, therefore, there was a pressing need to encourage sports activities in the country in accordance with Article 259 of the Constitution. He submits that although the sportsmen appointed and promoted under this policy were part of the Punjab Police, yet they should be categorized

separately from those who were promoted out of turn on the basis of an act of gallantry, based on the principle of intelligible differentia. In this regard he referred to the case of I. A Sherwani Vs. Government of Pakistan (1991 SCMR 1041).

58. He further contended that this category was never discussed in the judgments wherein the out of turn promotion was declared *ultra vires* the Constitution. He submitted that induction and accelerated promotion on the basis of sports policy has been a recognized method, which is based on the performance shown by an officer/official at national and international level. He added that since physical fitness and strength were of value to the duties entrusted to a Police Officer/Official, such inductions and promotions should be encouraged. Different departments like WAPDA, NBP, PIA, Air Force etc were also encouraging the sportsmen, representing the country at national and international level, by offering incentives in the shape of cash rewards as well as promotions. He contended that if the promotion of sportsmen in the Punjab Police is undone, then they will be discriminated against those who are getting the same benefit in other government departments.

59. He next contended that in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) the rationale on the basis of which out of turn promotions were held against the Constitution cannot be applied to the persons promoted on the basis of Sports, and it was not possible for the authority to wrongly exercise its powers under the garb of Sports Policy since it was based on an objective criteria of winning championships and or gold medals. He submits that the principle of legitimate expectancy was also attracted in their case.

60. He next contended that undoing of such promotions will be against the spirit of Article 10A of the Constitution which guaranteed “due process” and if the sportsmen, who have earned promotions on the basis of a valid sports policy are demoted, the principle of *locus poenitentiae* would be fully attracted, because the Sports Policy had become a mature practice in the Punjab Police since 1982 and has assumed the force of law which could not be deviated. In this regard he has relied on the case of Nazir Ahmad Vs. Pakistan (PLD 1970 SC 453).

61. Mr. Hamid Khan, learned Sr. ASC for the Petitioners has filed written arguments in C.R.P.No.480 of 2016 on behalf of 13 DSPs. He has submitted that in pursuance of order dated 12.12.2013 of this Court passed in Civil Appeal No.840/2012, seniority list of Inspectors dated 01.11.2012, was circulated and finalized. Another final seniority list of DSPs dated 01.07.2014, was circulated vide notification dated 01.07.2014, showing dates of promotion of all the Petitioners w.e.f. 12.02.2009 and 12.01.2010. He has further submitted that the seniority of the Petitioners as Inspector was adjusted w.e.f. 16.11.1995, alongwith colleagues of their own batch and this seniority list has assumed finality under the Orders of this Court.

62. He has next submitted that the seniority of the Petitioners through order dated 10.11.2016 of the Department has been disturbed and adjusted from 1999, which means that they have been promoted after 11 years, whereas their juniors have been promoted after 7 years and in some cases after 5 years. So the Petitioners have been rendered junior as Inspectors of Police on the pretext of implementation of the order of this Court dated 26.01.2016 passed in Civil Appeal No.184-L/2013. He has next submitted that the order dated

10.11.2016, passed by the IGP, Punjab is violative of the orders of this Court dated 08.03.2011, 12.07.2011 and 05.01.2012 passed in HRC No.1038/201. Furthermore, the said order of the Department is also violative of the judgement of this Court dated 12.12.2013 passed in Civil Appeal No.840/2012 and order dated 08.04.2014 passed in CRP No.2/2014.

63. He has also submitted that the case of the Petitioners has nothing to do with out of turn promotions and they have neither been promoted out of turn nor have benefited from ante-dated fixation of seniority, hence, order of this Court dated 26.01.2016, is not applicable to the present case. He has also referred to the case of Gul Hasan Jatoi and others Vs. Faqir Muhammad Jatoi (2016 SCMR 1254) and submitted that adjustment of seniority from the date of confirmation after completion of the period of probation would reflect the actual position of seniority of the Petitioners and such subsequent adjustment cannot be treated as out of turn promotion or ante-dated fixation of seniority.

64. He has also submitted that the seniority of the Petitioners as Inspectors in the year 2008 and DSPs in the seniority list of 2014 are past and closed transaction and cannot be re-opened at this stage. Moreover, the Petitioners were condemned un-heard violating the fundamental principle of *audi alteram partem* and Respondent No.1/IGP Punjab was bound to give opportunity of hearing to the Petitioners before withdrawing their promotions as DSPs after about 7 years without any justification. This is also violative of due process of law as enshrined in Article 10A of the Constitution. He next submitted that the withdrawal of promotion of the Petitioners is violative of the principle of *locus poenitentiae* and the right to continue as DSPs has been vested in the Petitioners. Furthermore, the impugned order of IGP, Punjab

suffers from bias and *mala-fide*. He has prayed that the seniority of the Petitioners as DSPs reflected in the final seniority list circulated on 01.07.2014, may be revived and restored.

65. Malik Muhammad Qayyum, Sr. ASC appeared on behalf of the Petitioner in CrI.O.P 123/2016 in C.P 1446-L/1997 and submitted that the Petitioner displayed gallantry beyond the call of his duty in an encounter, which took place on the night between 30<sup>th</sup> and 31<sup>st</sup> October, 1992 wherein Ahmad Nawaz *alias* Barbri, a notorious criminal and proclaimed offender was killed. Based on this act of gallantry, the Petitioner was recommended for accelerated promotion by the Deputy Inspector General of Police, Sargodha Range, Sargodha but this recommendation was turned down by the Inspector General of Police, Punjab. Thereafter, a Writ Petition was filed before the Lahore High Court which was accepted and the Lahore High Court directed for the grant of out of turn promotion on 03.12.1996. The Petition filed by the government before this Court (C.P 656-L/1997) was dismissed as being barred by time. However, the Petition (C.P 1446-L/1997) filed by Rana Shujat Ali Khan, compatriot Inspector of the Petitioner was dismissed by this Court and thereafter, on 17.10.1997, notification regarding promotion of the Petitioner was issued by the Government of Punjab pursuant to the Judgment of this Court in C.P 1446-L/2016, which was also affirmed on 18.04.1998, by dismissal of the Review Petition. He further submitted that now the said notification dated 17.10.1997, issued by the Governor of Punjab has illegally been withdrawn by the department on 17.02.2016 as the Inspector General of Police is not competent to withdraw the same of his own without any reference to or order of the Government.

66. He next contended that neither the Petitioner nor the Government of the Punjab were parties to the case out of which judgments in the case of Contempt proceedings against the Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) had been passed. He submitted that these judgments were not binding on the Petitioner.

67. He next contended that the order of out of turn promotion of the Petitioner was issued in terms of Section 8-A of the Punjab Civil Servants Act, 1974 and this provision was omitted from the statute in the year 2006 and the said provision was not the subject matter of the judgments of this Court i.e. 2013 SCMR 1752 and 2015 SCMR 456, therefore, the said judgments could not be applied to the case of the Petitioner.

68. He further contended that the law in Punjab was repealed long before the two judgments Contempt proceedings (Supra) and Ali Azhar Baloch (Supra) were delivered by this Court and there was no question of the same being brought to life again and then declaring it against the Constitution. Regarding the effect of omission of law, he referred to the cases of Dad Muhammad and another Vs. Additional District Judge Quetta and others (1996 SCMR 1868), Idrees Ahmad and another Vs. Hafiz Fida Ahmad Khan and 4 others (PLD 1985 SC 376), Muhammad Tariq Badar and another Vs. National Bank of Pakistan (2013 SCMR 314) and Raja Shaukat Mehmood Vs. Azad Jammu & Kashmir and another (2003 PLC (CS) 424).

69. He next contended that even if the judgments in the cases of Contempt proceedings (Supra) and Ali Azhar Baloch (Supra) are assumed to be applicable to the case of the Petitioner, yet those cases which have become

past and closed and have been concluded giving rise to vested rights cannot be reopened and interfered with on the basis of these judgments. In this regard he relied on the cases of Income Tax Officer (Circle-II), Karachi and another Vs. Cement Agencies Ltd and another (PLD 1969 SC 322), Pir Bakhsh and another Vs. Chairman Allotment Committee (PLD 1987 SC 145), Hussain Badshah and another Vs. Akhtar Zaman and others (2006 SCMR 1163), Mehram Ali Vs. Federation of Pakistan (PLD 1998 SC 1445), Dr. Subra Manian Swami Vs. State of Tamil Nadu and others (AIR 2015 SC 460), Akhtar Hussain Siddique Advocate Vs. The Province of Punjab (1999 CLC 951), Atia Bibi Vs. Federation of Pakistan (2001 SCMR 1161), Molasses Trading & Export Vs. Federation of Pakistan and another (1993 SCMR 1905), Province of East Pakistan Vs. Sharafat Ullah and others (PLD 1970 SC 514), Commissioner of Income Tax, Karachi Vs. Eastern Federal Union Company (PLD 1982 SC 247), Pakistan Steel Mills Corporation Vs. Muhammad Azam Katper and others (2002 SCMR 1023) and Ch. Textile Mills Vs. Income Tax Officer (PLD 1988 Lahore 440).

70. He next contended that the judgments of this Court generally apply prospectively and cannot destroy the rights which have already been accrued to a person. He relied on the cases of Pensionary benefits of Judges (PLD 2013 SC 829), Victor Linkletter Vs. Victor G. Walker Warden (381 U.S 618), Muhammad Yousaf Vs. Chief Settlement Commissioner (PLD 1968 SC 101), Muhammad Yousaf Vs. Essa Jan (2009 SCMR 1169), Mst. Atiya Bibi Vs. Federation of Pakistan (2001 SCMR 1161), Muhammad Farooq Vs. Muhammad Hussain (2013 SCMR 225), Mehram Ali Vs. the Federation (PLD 1998 SC 1145), Pir Bukhsh Vs. Chairman Allotment Committee (PLD 1987



SC 145), Asad Ali and others Vs. Federation of Pakistan and others (PLD 1998 SC 161).

71. He next contended that in any case the judgment delivered in favour of the Petitioner is protected by the doctrine of *res judicata*, *estoppel* and conclusiveness. The Petitioner, the I.G.P Punjab and the Government of Punjab are bound by the judgment of this Court passed in C.P 1446-L/1997 which had attained finality in the review petition on 18.07.1997 and these judgments, being conclusive and binding, operate as *res judicata*. In this regard he relied on the cases of Pir Bukhsh Vs. Chairman Allotment Committee (PLD 1987 SC 145), Dr. Subra Manian Swami Vs. State of Tamil Nadu and others (AIR 2015 SC 460).

72. The learned Counsel lastly contended that the judgment in the case of Dr. Mobashir Hassan and others Vs. Federation of Pakistan (PLD 2010 SC 265) i.e National Reconciliation Ordinance (NRO) case, was distinguishable on three grounds. Firstly, NRO was promulgated on 05.10.2007 and its vires were challenged within three days of its promulgation and within a week on first date of its hearing, this Court was pleased to pass an interim order, whereby any benefit under NRO was made subject to the outcome of the case. Secondly, in the NRO case it was observed that the President of Pakistan cannot issue an Ordinance of the nature which the Parliament is not empowered to enact. So there was an inherent defect in the promulgation of the NRO. Thirdly, no defense was put by Federation of Pakistan and no beneficiary has come forward to protect his benefits.

73. Mr. M. Bilal, learned Senior ASC, has filed written arguments in C.M.A.No.1681/2016 in C.R.P.No.49 of 2016, contending that the Petitioner joined Punjab Police as Assistant Sub-Inspector on 29.4.1985 on sports basis and thereafter was promoted to the rank of Sub-Inspector and was confirmed in that rank by the competent authority with effect from 27.09.1986. She was promoted to the rank of Inspector on 20-12-1991. Thereafter, in August 2005, on the recommendations of the Departmental Promotion Committee, she was appointed as DSP. In light of order dated 26-01-2016, passed by this Court in Civil Appeal No.184-L/2013, a large number of promotions of Police Officers were withdrawn by the IGP and Addl. IGP, Punjab, vide order dated 17-02-2016. As a result of order dated 17-02-2016, the date of promotion of the Applicant were revised, inter alia, on the ground that her batch mates in her range were promoted from the said dates. The CCPO Lahore vide order dated 03-03-2016, re-fixed her seniority against which the Applicant has already filed a departmental representation on 30-07-2016.

74. He next contended that the judgments reported as Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) and order dated 26-01-2016, of this Court in Civil Appeal No.184-L/2013, have no bearing on the case of the Applicant as no findings have been recorded by this Court regarding appointment on sports basis, which has become a regular practice and is prevailing even in other departments like Pakistan Customs, Pakistan Railways, HBL, NBP, PIA, WAPDA and Pakistan Air Force. He further submitted that even Article 259(2) of the Constitution also encourages

promotions on the basis of sports. Moreover, the “Sports Policy, 1982” has become a mature practice and the same cannot be undone.

75. He further contended that the principles of “past and closed transaction” and “locus poenitentiae” are fully attracted to the case of the Applicant. In this regard he has relied upon the case of Application by Abdul Rehman Farooq Pirzada vs. Begum Nusrat Ali Gonda Vs. Federation of Pakistan (PLD 2013 SC 829). He further contended that the Applicant has been condemned unheard as a result of which her fundamental rights guaranteed under Article 10-A and 25 of the Constitution have been affected. In this regard he has relied upon the cases of Contempt Proceedings against Syed Yousaf Raza Gillani, PM (PLD 2012 SC 553) and (Babar Hussain Shah vs. Mujeeb Ahmed Khan (2012 SCMR 1235). The learned Counsel has also adopted the arguments advanced by Mr. Hamid Khan, learned Sr. ASC in CRP No.382/2016 and 383/2016.

76. Mr. Muhammad Qamar-uz-Zaman, learned ASC appeared for the applicant / Petitioner in C.M.A.No.8132/2016 in C.R.P.No.49/2016, and has filed his written submission in which it is contended that case of the applicant lady is not of “out of turn promotion”. She was appointed as Sub-Inspector in Punjab Police on 27.11.1986. Thereafter, due to her outstanding performance shown in the arrest of a desperado, her admission to the List-F was anti-dated and she was promoted as Inspector w.e.f 21.01.1988 and when her juniors were promoted as DSP, having ignored the applicant, the Notification dated 02.11.1999 for her promotion as DSP was issued in light of the judgments of this Court dated 15.04.1999 and 20.10.1999. Thereafter, she was promoted as S.P w.e.f 05.10.2012.

77. It is next submitted that now the IGP in light of order dated 26.01.2016 of this Court, passed in C.A 184-L/2013, has withdrew her promotion as S.P and thereafter also withdrew her promotion as DSP and relegated her to the post of Inspector. While withdrawing her promotion, it has specifically been mentioned that the Notification dated 02.11.1999 (for her promotion as DSP) was issued under the judgment of this Court.

78. It is also contended that the IGP, Punjab is not competent to whittle down the effect of judgments dated 15.04.1999 and 20.10.1999, passed by this Court as the same had attained finality. Moreover, under Article 185 (2) (b) of the Police Order, 2002 all rights, privileges, obligations or liabilities acquired, accrued or incurred under the Police Act, 1861 have been saved and the saving clause of Police Order, 2002 do not confer any authority to the IGP, Punjab to undo the 'past and closed transactions'. Therefore, now after lapse of 18 years the IGP could not withdraw her promotion.

79. Mr. S. A. Mahmood Saddozai, learned ASC appearing for the Petitioner in C.R.P.No.482 of 2016 has submitted his written contentions that the Petitioner joined Police Department on 30.1.1980 as ASI and was placed in Balochistan Police. After 7 years he was promoted as officiating Sub-Inspector (S.I) w.e.f 15.01.1987, thereafter, he was confirmed as S.I w.e.f 22.05.1993. He was transferred to Rawalpindi Range, Punjab Police on 24.05.1993 and his name was placed at the bottom of the seniority of officiating Sub-Inspectors instead of placing in the list of confirmed Sub-Inspectors. He then filed departmental representation, which was not responded to. He approached the Punjab Service Tribunal where his Service Appeal was allowed on 27.03.2000, directing the Respondents to place his

name at the bottom of seniority list of confirmed Sub-Inspectors of Rawalpindi Range. In compliance with the said judgment his name was placed in list 'F' w.e.f 01.11.1995 and thereafter, he was promoted as officiating Inspector w.e.f 16.11.1995 and confirmed as Inspector w.e.f 16.11.1995 by order dated 29-08-2001. He was further promoted to the rank of DSP vide order dated 12.02.2009.

80. It was next contended that by wrongly applying the judgments of this Court in the cases of Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) and order dated 26-01-2016, of this Court in Civil Appeal No.184-L/2013, the Petitioner has been victimized and reverted back to as Inspector besides his seniority has been re-fixed after promotion to the rank of Inspector w.e.f 17.10.2001.

81. It was next contended that the above cited judgments of this Court have no nexus with the case of the Petitioner therefore, the order dated 10.11.2016, reverting him to the rank of Inspector may be set aside.

82. The Petitioner has submitted written arguments in CrI.O.P.No.195/2016 in C.A.No.184-L/2013, contending that the term 'out of turn promotion' as per its literal meaning means to get promotion while superseding someone who is senior to the promoted officer, whereas vide order of the Department dated 16.11.1991, the Petitioner was granted proforma promotion alongwith his batch mates as per his seniority and not a single person/officer, senior to him, was superseded, therefore, the promotion of the Petitioner cannot be termed as out of turn promotion. He has next

submitted that vide notifications dated 18.03.2016, 23.06.2016 and 28.03.2016, issued by the Respondent - Department, whereby his promotions to the post of Inspector, DSP and SP, respectively have been withdrawn, are violative of the judgments passed by this Court, as well as of the Punjab Service Tribunal, which speaks about the malicious and mala fide acts of the Respondents. He has next submitted that vide order dated 26.01.2016, passed in Civil Appeal No.184-L/2013, directions were issued regarding withdrawal of out of turn promotions, but the Respondents have deliberately victimized him without his fault and even without hearing. Therefore, he has prayed for initiation of contempt proceedings against the Respondents and to restore him to the post of Superintendent of Police.

83. Syed Mansoor Ali Bukhari, learned ASC has submitted written arguments in C.R.P.No.481/2016, and contended that while hearing HRC No.2103-G/2011, 1038/2010 and 6679-P/2011, on 12.7.2011, this Court has observed that all the representations pending must be decided within a period of one week and no promotion / demotion / change in seniority shall be made till final orders are passed. He further submitted that on 12.12.2013, while hearing Civil Appeal No.840/2012, this Court had directed the departmental authority to issue the final seniority list, after hearing the objections of the parties in terms of the judgments of this Court, within a period of one month.

84. He has next submitted that names of the Petitioners were appearing in the list, which was accordingly submitted in this Court in pursuance of the order dated 12.12.2013. However, at the time of notifying the same, names of the Petitioners were excluded. He has next submitted that the Petitioners filed representations against the notified seniority list of DSPs

dated 01-07-2014, but no response was given; thereafter, objections were submitted to the IGP, Punjab but the same proved abortive.

85. He has also submitted that the Respondents were bound to follow the directions of this Court vide order dated 08.03.2011, which, *inter alia*, stipulate as under : -

- i. Seniority list of the incumbent in all the cadres shall be updated for the purpose of the promotions against permanent existing vacancies,
- ii. All vacancies will be worked in respect of the present cadre to be filled in within due course of time,
- iii. Judgment delivered by the Apex Court, High Court, or Service Tribunal shall be implemented within the above stipulated period,
- iv. Final seniority list be prepared and promotions be made according to that list.
- v. Promotions shall be made in accordance with law and on merits in terms of seniority-cum-fitness basis.

86. He has next submitted that the order of this Court dated 26.01.2016, is quite within four corners of law and does not warrant any interference, therefore, the same should be maintained to foster the ends of justice.

87. In response to the notice issued to the learned Attorney General for Pakistan under Order XXVII A CPC, he has filed written arguments. He has contended therein that the judgments pronounced in relation to the Sindh Civil Servants Act, could not be extended to the Province of Punjab on the touchstone of Article 241 of the Constitution and that Section 8-A which

remained on the statute book was never challenged during its life time and the promotions given under this Section were protected upto this Court. He has submitted that the actions taken under the said provision are protected in the light of Section 6 of the West Pakistan General Clauses Act, 1956.

88. He has contended that the promotions made under the said Section are past and closed transaction. In support of his submission, he has relied on the cases of Income Tax Officer Karachi vs. Cement Agencies (PLD 1969 SC 322), Pir Baksh and another vs. Chairman Allotment Committee (PLD 1987 SC 145).

89. He has next submitted that the term ‘omission’ and ‘repeal’ has the same effect. He further submits that Section 8-A was never declared discriminatory as envisaged by Articles 8(1) and (2) of the Constitution, therefore, application of the principles propounded in the judgments under review with respect to the Province of Punjab would be prospective and that the rights accrued to the Petitioners through the judgments of this Court are protected under the principle of *res judicata*.

90. He has next submitted that if the application of the principles enunciated in the judgments under review is extended to the Province of Punjab and that too on the basis of an omitted provision, it would amount to violating the principle of legislative competence and independence as recognized by this Court in the case of Province of Sindh vs Mutihidda Qumi Movement (Civil Appeal No.760 to 765).

91. He has next submitted that in terms of Article 7 of the Constitution, the term ‘State’ includes a Provincial Assembly and in order to



make a declaration under Article 199(1)(a) of the Constitution, it would be necessary that the party should be before the Court and the Government of the Punjab was not a party at the time of hearing of the proceedings which culminated into judgments under review, and issuance of notice at this stage would not cure this defect.

92. He has further submitted that any adverse findings against the Petitioners would be against Article 10A of the Constitution and that the ratio of the judgments under review is against the spirit of the Constitution.

93. We have heard the learned Counsel for the Petitioners and have gone through the written synopsis submitted by them. The opportunity to file written synopsis was afforded to the learned Advocate General, Punjab, as well as the learned Attorney General for Pakistan, but the Advocate General, Punjab, did not file any written synopsis. We have perused the material on record with the able assistance of the learned Counsel and the learned Law Officer. Before examining the issues raised in these proceedings, we intend to reproduce certain material facts which formed the basis of the present proceedings. The first order in this regard passed by this Court on 26.01.2016 in Civil Appeal No.184-L of 2013, is reproduced hereunder: -

*“3. The learned Additional Advocate General, Punjab, states that the Punjab Government has started implementing judgment of this Court reported as Contempt Proceedings Against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and till date substantial portion of seniority of the Police personnel has been re-fixed. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on*

*merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under Section 9-A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.*

94. There is one more judgment of this Court in Civil Petition No.2058 to 2060 of 2014 decided on 05.12.2014 (Gul Muhammad and others vs. Government of KPK through its Chief Secretary and others) which has not been noticed by either party on the issue, wherein while maintaining the judgment of a learned Division Bench of the Peshawar High Court, this Court has refused the leave. The backdrop of the proceedings was that the Petitioners-Police Officers of KPK in the aforesaid petitions had approached the Peshawar High Court, challenging the withdrawal of their out of turn promotions through notifications issued by the competent authority in compliance with the judgments of this Court in 2013 SCMR 1752 and 2015

SCMR 456. The learned Peshawar High Court after discussing the issues had concluded that the principles enunciated on the issue of out of turn promotion in the aforesaid judgments would extend to all the provinces including the KPK and the competent authority was justified in withdrawing out of turn promotions.

95. The Punjab Government in terms of Article 189 of the Constitution had complied with the judgments of this Court reported in 2013 SCMR 1752 and 2015 SCMR 456, by issuing notifications whereby out of turn promotions granted to the police officers at times, pursuant to the provisions of Section 8-A of the Punjab Civil Servants Act, 1974, were withdrawn.

96. The Punjab Government did not seek review of the judgments referred to hereinabove besides the orders passed by this Court in Civil Appeal No.184-L of 2013, on the issue of out of turn promotions.

97. Before we address the submissions made by the learned ASCs, we may examine the context in which the present proceedings have arisen. The Petitioners are either the beneficiaries of the exercise of power under Section 8-A of the Act, 1974, who were granted out of turn promotions or are claimants to such out of turn promotions. It needs to be appreciated that in matters relating to service, there are certain rights or benefits which are granted or which accrue to the civil servants without affecting the rights or interests of other civil servants while other benefits accruing to civil servants necessarily affect the rights or interests of other civil servants. The former category includes financial benefits, training, transfer, posting etc. while the

latter category includes seniority, promotions, etc. where any arbitrary exercise of power by the authority may adversely affect rights of other civil servants in such matter. The out of turn promotions are inherently destructive of the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn promotions, are bypassed as a result of out of turn promotions. Thus each out of turn promotion must necessarily have a corresponding affected officer, who suffers due to this exercise despite being completely blameless. He suffers for no fault of his own when he is bypassed in favour of the beneficiary of such an exercise. Unless he voluntarily waives his rights, in which case the promotion could no longer be described as out of turn, the Courts ought not to ignore his rights in matters brought before it for adjudication, irrespective of his presence or absence before the Court in a particular case.

**The Section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to regulate out of turn promotions under Section 9-A, which was inserted on 21.02.2002.**

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic, and void *ab initio*. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

99. In another case, Suo Moto case No.16/2011, this Court again deprecated the practice of conferring out of turn promotions in the following terms:-

*“It is also a hard fact that the police has been politicized by out of turn promotions and inductions from other departments time and again, through lateral entries which has brought unrest amongst the deserving police officers waiting their promotions on merits. The posting and transfers of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within the Karachi on senior positions lack qualifications and competence both.....If this is the state of affairs, how can there be peace in Karachi. It seems instead of depoliticizing police force further damage has been caused by the government by introducing their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions.”*

100. Subsequently, this Court reiterated, *inter alia*, the principle of declaring the law of out of turn promotion unconstitutional and void *ab initio* in the Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752). The relevant para is reproduced as under:-

*“158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9-A would affect the performance of hundreds of thousands of the civil servants*

*serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9-A.”*

101. This Court also highlighted the pernicious effects of the conferment of out of turn promotions, at paras 161 and 162 (*ibid*):-

*“161.....The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All Pakistan Unified Group/PSP. The impugned legislation would distort interse seniority of the civil servants not only within the province but also the federal civil servants.*

*162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self-respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have*

*prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.”*

102. The Court then determined the unconstitutionality of the out of turn promotion and provided a direction for boosting the morale of police personnel at Paragraph 164 of the said judgment:-

*“164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sind Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9-A, the Sindh*

*Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word ‘Gallantry’ in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.”*

103. The Review Petitions were filed against the aforementioned judgment by the Sindh Government besides those who were aggrieved on their de-notification in terms of the directives contained therein. These Review Petitions were dismissed on 05.01.2015, by a three Member Bench of this Court, maintaining the findings recorded in the judgment reported in 2013 SCMR 1752. The judgment passed in Review Petitions is reported in 2015 SCMR 456. The learned Counsel for Petitioners raised a number of grounds challenging various findings of this Court, including the issue of out of turn promotion. Upholding the unconstitutionality and nullity of the legislative instrument pertaining to out of turn promotions, this Court recorded the following findings which are reproduced hereunder:-

### **OUT OF TURN PROMOTIONS.**

*122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Article 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry,*



*learned Advocate Supreme Court has contended that section 9-A of the Act has not been struck down by this Court, while declaring the out of turn promotions as un-constitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of 'out of turn promotion' being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review.*

*“126. The contention of the learned ASC that the judgment of the High Court of Sindh relating to the out of turn promotion is still in field, therefore, he prayed for formulation of a Committee to scrutinize the cases of the Police Officers, who were given out of turn promotion, is without substance. We have already declared “out of turn promotion” as unconstitutional, therefore, after recording such findings, the need of forming a Committee under Rule 8-B for scrutinizing the cases of Police Personnel is of no significance. However, they could be awarded or rewarded compensation for their exceptional acts of gallantry.”*

104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion.

### **Article 189 of Constitution**

105. Under Article 189, this Court is the court of last resort and laws declared or principles enunciated by it are binding on all the subordinate courts and authorities in Pakistan as reflected in Farhat Azeem vs. Waheed

Rasul (PLD 2000 SC 18). We have also held that the decisions of this Court laying down the proposition in law are laws binding on all, regardless whether they were party to the proceedings or not M/s Star Diamond Co vs. Union of India (PTCL 1988 FC 229). It has also been held by us that even a decision of Supreme Court for which no reasons are given would be binding upon the Courts in the Country Safdar Ali vs Conservator of Forests (1987 PLC (CS) 55). Likewise, where amendment in an Act was made prior to a decision of Supreme Court, declaration of law by Supreme Court would override the amendment in the Act and nullify its effect by virtue of Article 189 of the Constitution (PLD 1986 SC 14). Finally, the doctrine of *stare decisis* is not applicable to this Court. This Court in the case of Hitachi Limited vs. Rupali Polyester (1998 SCMR 1618), has concluded that the Supreme Court is not a slave of doctrine of *stare decisis* and can change or modify its view with the passage of time. All the courts and public institutions are bound to follow the principles laid down by this Court. No exception to this principle can be created under the garb of rule or procedural niceties.

#### **Difference between Section 8-A of PCSA and 9-A of SCSA:**

106. It has been contended that the language of Section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from Section 8-A of the Punjab Civil Servants Act. For ready reference both the provisions are reproduced in juxtaposition as under:-

#### **Section 8-A of Punjab Civil Servants Act, 1974**

Notwithstanding anything contained in this Act or any other law for the time being in force or in any contract, or

#### **Section 9-A of Sindh Civil Servants Act, 1973**

“Notwithstanding anything contained in this Act or any other law for the time being in force or any judgment, a civil

rights claimed or acquired under any judgment of any Court or Tribunal, a civil servant who provenly exhibits exemplary intellectual, moral and financial integrity and high standard of honesty and gives extraordinary performance in the discharge of his duties, may be granted out of turn promotion or award or reward in such manner as may be prescribed”

servant who provenly exhibits, the act of gallantry while performing his duties or very exceptional performance beyond the call of duty, may be granted out of turn promotion or award or reward in such manner as may be prescribed”

107. Even a perfunctory comparison of the two provisions would vouchsafe the following facts:

- i. Both provisions are substantively similar in nature and cater to the same purpose, i.e., out-of-turn promotion, which this Court has already declared unconstitutional and a nullity *ab initio*;
- ii. Both provisions create a new exception or category of promotion to the existing framework of service rules, in the name of out-of-turn promotion, whereas such promotion is alien to the concept and scheme of civil service rules, read with Articles 4, 9, 14, 18, 25 and 240, 242 of the Constitution;
- iii. Both provisions overtly militate against the settled law and principles of promotion based on merit, *inter se* seniority, annual performance reports and so on;
- iv. Both provisions are discriminatory and violative of the fundamental rights of other civil servants who have been affected by the out of turn promotions, despite the fact that they may stand a notch up in merit, *inter se* seniority and even competence from the beneficiary of such promotions;
- v. Measured on the touchstone of ‘pith and substance’, both the provisions seem to have been instrumentalized for the same purpose—out of turn promotion.

108. In view of the above similarities, the contention of the learned Counsel that the two provisions may be differentiated on the basis of the language used, holds no ground. Both provisions are similar in nature and

cater to the same purpose - out of turn promotion - which we have consistently held to be unconstitutional and void *ab initio*. Therefore, we are not persuaded by the argument that an exception may be created in the case of Section 8-A of PCSA.

109. It was also contended that Section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from Section 8-A of the Punjab Civil Servants Act, in that Section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to regulate out of turn promotions except for a short period of three months starting from 10.02.2005 to 11.05.2005, Rule 8-B was inserted in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, to regulate the provisions of Section 9-A.

110. We fail to appreciate the principle of law underlying this submission. It is settled law that the operation of a statute or any statutory provision is not dependent upon framing of the Rules. In some cases the absence of Rules may affect the enforceability or operability of the statute, as happened in the case of Section 9-A of the Sindh Civil Servants Act, where the Rules were to prescribe the procedure for claiming benefits under the provision and such could not be claimed unless the procedure prescribed in the statute was adopted. However, for considering the constitutionality or otherwise of a statute on the touchstone of the Constitution or Fundamental Rights, framing or non-framing of the Rules under that statute could hardly be relevant. The framing of Rules would be generally relevant for determining as to whether the power under the statute has been exercised properly or not,

but the existence of Rules could neither save nor destroy the constitutional validity of the Rules. Thus, the reasoning in the earlier judgments with respect to Section 9-A of the Sindh Civil Servants Act, is fully applicable to Section 8-A of the Punjab Civil Servants Act.

111. Yet another anomalous consequence of this argument is that while two identical provincial laws are enacted and acted upon and one province repeals the law while the other continues with its operations. Subsequently, the *vires* of the law that continues on the statute books is examined by the Court and its provisions have found to be inconsistent with the Constitution or Fundamental Rights with the result that the benefits conferred or availed thereunder, unless protected by the category of past and closed transaction, have to be reversed and its deleterious effects undone. This category, quite obviously, consists of the cases wherein ‘out of turn promotion’ was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed. Even otherwise, it does not appeal to logic that in such a situation, while those benefitting from a law which continued to be on the statute book and eventually found to be *ultra vires* the Constitution would stand deprived of such illegal benefits, those continuing to enjoy the same under the omitted/repealed law in other Province would stand protected. If an illegal benefit was accrued or conferred under a statute, whether repealed (omitted) or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act, and it is declared *ultra vires*, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not. Where such an

anomalous situation surfaces – i.e. where one province continues to countenance the benefits of an unconstitutional (though repealed/omitted) Act, while the other Provincial statute has been struck down on the same touchstone, and thereby determined whether those enjoying benefits pursuant to the repealed law are entitled to continue to do so, such reversal of benefits is imperative.

**A statute could only be declared as *non-est*, if the legislature is not competent to legislate that law:-**

112. Undoubtedly, the legislature enjoys much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution. It is the sole jurisdiction of this Court, under the law and the constitution to look into the fairness and constitutionality of an enactment and even declare it *non-est*, if it is found to be in conflict with the provisions of the Constitution. Thus, legislative competence is not enough to make a valid law; a law must also pass the test at the touchstone of constitutionality to be enforceable, failing which it becomes invalid and unenforceable.

113. Normally the courts make utmost efforts to save a piece of legislation from becoming invalid. But in certain cases, the courts also apply, *inter alia*, the doctrine of severance to remove a piece of legislation that distorts the scheme of a parent law, or deviates from the provisions of the Constitution. While dealing with the issue on the effect of law declared to be *non est*, a 14 Member Bench of this Court in the case of Dr Mobashir Hassan vs. Federation of Pakistan (PLD 2010 SC 265), has reached the following conclusion:-

*“169. It may be noted that the President has an authority under Article 89 of the Constitution to promulgate an Ordinance, but cannot issue temporary legislation, which the Parliament is not empowered to do. A thorough perusal of the Federal and the Concurrent Lists persuades us to hold that the President was not empowered to issue the NRO, 2007 as the subjects covered by its Section 2, 6, and 7 fall beyond the scope of these lists. As far as its manifestations is concerned, it has already been done by the Parliament before whom the NRO 2007 was placed, but the same was withdrawn subsequently under Rule 139 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, as impliedly the National Assembly refrained itself from making it as an Act of parliament. Inasmuch as, the actions taken from the date of its inception till the expiry of its constitutional life of 120 days under Article 89 of the Constitution from 5<sup>th</sup> October 2007 to 1st February, 2008, benefits derived by some of the persons have not been protected, and the Government (either Federal or provincial) has also not insisted to allow retention of the benefits derived out of it to the accused persons during the said period. More so, none of the beneficiaries, who have drawn benefit during the said stipulated period from 5<sup>th</sup> October 2007 to 31<sup>st</sup> July, 2009, when vide judgment dated 31<sup>st</sup> July 2009, all the Ordinances were declared to have been shorn of permanency, have not come forward to protect their benefits, although hearing of these petitions has been widely publicized in print and electronic media. Thus in view of theory of ultra vires, explained in Cooley’s Constitutional Limitations, reference of which has been made by Chief Justice Cornelius (as then he was) in Fazlul Quader Chowdhry vs. Muhammad Abdul Haque (PLD 1963 SC 486), wherein it has been observed that*

*“for the constitution of the State is higher in authority than any law, direction, or order made by anybody or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made; in any case of conflict the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity”, we are of the opinion that the NRO, 2007 is void ab initio, therefore, the parties who have derived benefit shall not be entitled for the same from 5<sup>th</sup> October, 2007 and all the cases withdrawn under Section 2, 6, & 7 of the NRO, 2007 shall stand revived immediately. The Courts seized with the matters shall proceed to decide the same, considering that the NRO 2007 was never promulgated.*

*171. We have examined the respective contentions of the learned counsel for the parties as well as the vires of the NRO, 2007 on the touchstone of various Articles of the Constitution, and have come to the conclusion that the NRO, 2007 as a whole, particularly its Sections 2, 6 and 7, is declared void ab initio being ultra vires and violative of Articles 4, 8, 12, 13, 25, 62(f), 63(1)(h), 63(1)(p), 89, 175, 227 of the Constitution, therefore, it shall be deemed non est from the day of its promulgation i.e. 5<sup>th</sup> October 2007 as a consequence whereof all steps taken, actions suffered, and all orders passed by whatever authority, any orders passed by the Courts of law including the orders of discharge and acquittals recorded in favour of accused persons, are also declared never to have existed in the eyes of law and resultantly of no legal effect.*

*172. Resultantly, all cases in which the accused persons were either discharged or acquitted under Section 2 of the NRO, 2007 or where proceedings pending against the*



*holders of public office had got terminated in view of Section 7 thereof, a list of which cases has been furnished to this Court and any other such cases/proceedings which may not have been brought to the notice of this Court, shall stand revived and relegated to the status of pre-5<sup>th</sup> of October, 2007 position.”*

114. The present matter falls in the latter category. Section 8-A, or similar instruments of law, clearly falls foul of the principles laid down in a series of cases by this Court. Therefore, legislative competence alone cannot be made a ground of saving the impugned provision, unless the relevant Constitutional provisions are amended, which is not the case in hand.

**Even if a Court declares a law to be unconstitutional, it does not affect the past and closed transactions and the cases wherein vested rights have been created.**

115. This question was also raised before this Court during the proceedings of the aforementioned Review petitions, where a number of contentions were made in this regard. It was contended that the Judgment under review should have been effective prospectively; that the benefits accrued to the Petitioners by the impugned legislative instruments, which were struck down by this Court, could not have been withdrawn as their rights were protected by the principles of *locus poenitentiae*; that the judgment under review was in *personam* and did not apply to others; and that judgments always applied prospectively and not retrospectively. In that regard, reliance was placed on the case Regarding Pensionary Benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as such’ (PLD 2013 SC 829). However, this Court did not agree with the contentions and observed that:-

*“129.....Now, it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability.”*

*“130. In the case in hand, the benefits extended to the Petitioners through the impugned legislation, were not only violative of law but were also declared ultra vires of the Constitution. In such like circumstances, the benefits, if any, accrued to the Petitioners by the said legislative instruments shall stand withdrawn as if they were never extended to them. The judgment relied upon by Syed Iftikhar Hussain Gillani is distinguishable on facts. Under the said judgment, this Court had re-visited the earlier judgment of this Court titled as Accountant General Sindh and others vs. Ahmed Ali U. Qureshi and others (PLD 2008 SC 522) by which the retired Judges were granted pensionary benefits. In the said case, it was held that the pensionary benefits granted to retired Judges were violative of the scheme and as such the judgment was declared as per incurium, declaring further that no pensionary benefits could be granted to any retired Judge, unless he serves for five years in office. In the present proceedings, this Court has struck down the legislative instruments by which benefits were extended to a class of persons, in complete disregard of the service structure mandated by the provisions of Articles 240 and 242*

*of the Constitution. Through the legislative instruments, which were struck down by this Court, undue favours were extended to a few individuals, for political considerations against the mandate of the Act and the recruitment Rules framed thereunder. Such instruments were held to be violative of Articles 4, 8, 9, 14 and 25 of the Constitution. Through these legislative instruments, many of the Petitioners were absorbed and/or given out of turn promotions or back-dated seniority, depriving other meritorious Civil Servants of their seniority and smooth progression in career. A substantial number of unfit and unmeritorious Officers were thus absorbed/ promoted out of turn/given back-dated seniority in important cadres, services and posts by extending undue favors by the Authorities, skipping the competitive process. Such absorptions etc, which were not permissible under the Civil Servants Act, had practically obliterated the Constitutional and legal differentiations that existed amongst various cadres, posts and services. We have already observed in our judgment that the legislative instruments, which were struck down by this Court, had engendered a culture of patronage, bringing more politicization, inefficiency and corruption in the Civil Service.”*

116. As to the claim that the out of turn promotions are covered by the doctrine of past and closed transaction, the infirmity of the argument is self-evident. Sometimes there are wrongs without individual victims while in other cases there are identified individual victims. The brunt of out of turn promotions is always borne by the individual officers who were bypassed due

to out of turn promotions. The damaging effect on the careers of deserving officers who suffered due to these out of turn promotions continue during service and even after retirement in terms of pensionary benefits. If the beneficiaries of this illegal exercise are reverted to the positions to which they would have been entitled to, on their respective merit and promotion, on their turn, this would immediately open up vistas of promotion for those deserving officers who were earlier bypassed due to out of turn promotions.

117. In the light of the rules and principles laid down by this Court, we with respect are not inclined to agree with the proposition that vested rights that were created under a law subsequently declared unconstitutional by this Court have attained finality under doctrine of past and closed transaction, and that they are immune from the application of the aforementioned judgments of this Court. We have maintained that vested rights are generated only under a valid and uncontested instrument of law. An instrument that was still born or treated by this Court as *non est* is barred from creating any vested rights, let alone being protected under the doctrine of past and closed transactions. we believe that it is our duty to protect the rights and interests created under a law and also to deny the enjoyment of rights created under an invalid law. In the instant case, the Petitioners are claiming the protection of rights that were created under a law that has failed to pass the test of constitutionality, as determined by this Court; hence, they cannot take the plea of past and closed transaction.

118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases

where law granting out of turn promotions was omitted, is without force. Insofar as the issue of examining the provisions of a repealed statute is concerned, such an exercise is carried out by Courts in routine in the context of Section 6 of the General Clauses Act, as well as Article 264 of the Constitution of Pakistan. Whenever any right, obligation, privilege or liability acquired, accrued or incurred under the repealed law is raised, the Courts are necessarily required to examine the provisions of the repealed statute. Thus, there is neither any reason in principle nor any precedent which bars the Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution. Any other conclusion would lead to the absurd consequences that while the statute remains on the statute book, the Courts can examine its vires but once it was repealed by a subsequent statute, its effect, even if *ex facie* inconsistent with the Constitution or Fundamental Rights goes beyond the realm of judicial review. If such were the effect of repeal, then all that would be required to create a protected class of legislation is promulgation of patently unconstitutional statutes creating rights in favour of certain interested persons which though completely destructive of the Fundamental Rights of others, stood protected behind an impenetrable wall by the mere repeal of the statute through such unconstitutional Act. Such would not only be a fraud upon the statute but would be completely destructive of the rule of law and constitutional governance. Thus, there is no reason which compels the Court to sustain such an absurd proposition. As and when a repealed statute is invoked or raised in support of any claim, right, office or act, before the Court,

the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights. We have not been able to discover any instance from our own history as well as that of other legal systems with entrenched judicial review on the touchstone of the Constitution, where the Courts have refrained from examining the vires of the statute on the mere ground that at the time of review such law stood repealed by a subsequent statute.

119. However, when a statute (whether existing or repealed) is found to be *ultra vires* the Constitution, the Court is empowered – indeed, mandated – to examine whether any person continues to enjoy the benefits of the *ultra vires* statute, or whether any state of affairs continues to exist as a result, and if it is found so, the Court is mandated to undo the same, provided that the benefit or state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be *ultra vires* the Fundamental Rights, who now stands retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employees who were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped. Reference in this behalf may be made to the case of Dr. Mobashir Hassan vs Federation of Pakistan (PLD 2010 SC 265). Even during hearing, we called upon the learned Counsel

for the Petitioners to satisfy us that the term ‘out of turn promotion’ used in Section 8-A is not violative of the provisions of Constitution guaranteeing fundamental rights to the civil servants. But none of them had addressed us on the issue.

120. In view of the above, we cannot accept the argument that while the beneficiaries of the repealed law could invoke its provisions to justify their out of turn promotions and yet raise an impenetrable bar, if the Court seeks to examine its consistency with the provisions of the Constitution and the Fundamental Rights. Indeed the case of the Petitioners claiming out of turn promotion under the repealed statute of Punjab is on a weaker wicket as compared to the officers whose out of turn promotions were sought to be given cover by a subsisting law. Yet when a subsisting statute was declared unconstitutional due to its violation of Fundamental Rights, a preferential treatment could hardly be sustained on the basis of a repealed statute.

121. This Court in the cases of Fazlul Quader Chowdhry vs. Muhammad Abdul Haque (PLD 1963 SC 486) and Muhammad Mubeen ul Salam vs. Federation of Pakistan (PLD 2006 SC 602), has held that “*in any event, on questions relating to the constitutionality of actions, the ground of laches cannot prevail, for there can be no estoppel against the Constitution and an Act which is unconstitutional cannot become constitutional by lapse of time, nor can it vest anyone with any kind of legal right to benefit from such an unconstitutional act.*” These judgments further concluded that “*this Court cannot be refrained from examining the constitutionality of a law because of lapse of time, therefore, notwithstanding any objection, if the constitutionality*

*of a law is under challenge, its vires can be examined despite the fact that it had remained on the statute book for a considerable time.”*

122. Indeed, raising such a question would lead to disastrous consequences; some of them are enumerated as under:-

- i. Citizens would lose their legitimate rights to usurpers merely by the lapse of time and under the garb of closed and past transactions;
- ii. In practical terms, declaring a law void and *non est* would make no difference as the undue benefits would continue to be enjoyed by the undeserving persons, under the garb of closed and past transactions, and at the cost of deserving persons.
- iii. The aims of justice would be defeated at the hands of a mechanical force of time; in other words, a mere operation of time would upstage the operation of law.
- iv. More alarmingly, this Court may come to lose its inherent jurisdiction to review a previous judgment, or any aspect of it, which may have remained hidden in the procedural or technical folds or escaped the testing at the altar of constitutional law.
- v. If allowed to be hampered by procedural niceties, this Court, or High Courts, may find it difficult to exercise their discretionary powers to render justice to the victims of an invalid law or of a law that has been declared void ab initio by this Court.
- vi. Annuling a law on constitutional grounds and yet protecting the rights created there-under would create an absurd situation, requiring the courts to enforce the provisions of substantive/constitutional



laws, without disturbing the principle of closed and past transactions.

- vii. The blind application of the principle of past and closed transactions may also lead to defeat the very intent of legislature, in addition to causing hardship cases.
- viii. Finally, upholding a *prima facie* unconstitutional provision merely on the grounds of past and closed transaction would subjugate the rules of judicious construction to a mindless adherence to temporal considerations, whereas the very concepts of retrospectivity and prospectivity of laws are rooted in the golden tenets of equity and fairness, not in the mechanical passage of time.

123. We are clear in our view that the issue of past and closed transaction (except what has been concluded in paragraph 111) does not arise in the instant case as we have already declared void *ab initio* the legislative instruments that provided for out of turn promotions. In other words, the provisions of section 8-A of PCSA created no vested rights in favor of the Petitioners because it was void from the moment of its inception. The principle of past and closed transaction would apply in the cases where rights are created under a valid law, even though such laws are allowed to lapse or removed from statutes. It is critical to differentiate between the rights created under a valid law and those claimed under a law that was void *ab initio*, regardless of the fact that this Court declared its invalidity or unconstitutionality after some times.

124. The Counsel have relied on certain judgments in support of their contentions. We have perused them and found that most of these were passed

before this Court examined the vires of the law providing for out of turn promotion in its constitutional jurisdiction in the case of Nadeem Arif. This judgment was followed later in a series of cases decided by this Court in constitutional jurisdiction. A fourteen Member Bench of this Court in the case of Justice Khurshid Anwar Bhinder vs. Federation of Pakistan (PLD 2010 SC 483), has concluded that “where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere *obiter dictum*. Even *obiter dictum* of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoy a highly respected position as if it contains a definite expression of the Court’s view on a legal principle, or the meaning of law. The principles enunciated by this Court in respect of the provisions of law pertaining to out of turn promotion hold the ground.

125. The contentions of the learned Counsel Khawaja Haris, Sr. ASC, pertaining to applicability of Article 27(1), are beyond appreciation. This Article protects the citizens from discrimination based on race, religion, caste, sex, residence and place of birth in matter of appointment to service of Pakistan. However, it does not open the doors of other forms of discrimination or nepotism under the garb of some rules that are patently unconstitutional and against the very scheme of the civil services. Were it so, a number of constitutional provisions such as Articles 4, 8, 9, 14, 18 and 25 would lose their significance and the entire edifice of social justice and equality before law would become vulnerable to various exceptions created under the

perverse interpretation of Article 27(1). Moreover, the ambit of Article 27 (1) is confined only to the initial appointments and not the appointments by way of promotion; therefore, to stretch it any further would contort or destroy the very spirit of this important constitutional provision. Article 27 (1) is complementary to Article 25 and should be read *in tandem*.

126. The learned Counsel Khawaja Haris attempted to argue that Section 8-A of P.C.S.A falls within the exclusionary clause of Article 8 (3) (a) of the Constitution as it is a police specific section. With respect, we find this argument flawed and misconceived, because the exclusion clause deals with the situation where the law enforcement agencies are required to maintain public order at the perils of some law which is otherwise protected under Article 8(3) (a). In other words, the exclusionary clause has nothing, whatsoever, to do with the Civil Servants Act which governs the terms and conditions of the civil servants including the police force.

127. The further contention of learned Counsel Khawaja Haris, Sr.ASC, on the point of applicability of the cutoff date of Section 8-A of the Punjab Civil Servants Act, which was omitted on 17.10.2006, is also without force. The contention to treat a certain law which otherwise was held as void *ab initio* from a particular date in itself, is self-contradictory. We have already held that a law which was declared by this Court as un-constitutional from the date of its inception cannot be treated as being so from a date when it was omitted or repealed.

128. We have already dealt with the contentions of Messrs Hamid Khan, Muhammad Akram Shiekh and Ms. Asma Jehangir, on the issue of past

and closed transaction in our foregoing paragraphs. Mr Muhammad Akram Sheikh, the learned Sr.ASC, has attempted to argue that the out of turn promotion is permissible in Islam and has relied upon an extract (reproduced above) from Seerat Encyclopedia, Volume 10. We do not find any substance in his contention nor has he advanced any argument except relying upon the above extract from the book, which has no nexus with the proposition he has advanced.

129. We have also perused the written synopsis of the learned Attorney General for Pakistan, received by us through mail. In substance he has only advanced his arguments that the judgments under review should apply prospectively. He has further contended that the principles enunciated in the judgments under review would not extend to the Province of Punjab. The grounds on which these arguments have been advanced are already dealt with by us in the foregoing paragraphs, therefore, we are of the considered view that the points raised, having already been answered in the judgments under review and this judgment, merit no consideration.

130. The learned Counsel for the Petitioners have attempted to draw a distinction in the judgments under review, *inter alia*, on the ground that no rules were framed to form a committee for scrutinizing the out of turn promotion to a Police Officer in the Province of Sindh, whereas in Punjab Rule 14-A was introduced to ensure transparency in grant of out of turn promotion. we have noticed from the available record that even this distinction is missing. The committee constituted under Rule 14-A had failed to draw a line between the job description of a Police Officer and the justification for grant of out of turn promotion. It is the duty of a Police Officer

to arrest an accused or recover drugs and if he performs well, the law provides that such officer should be decorated with awards and rewards, but grant of out of turn promotion, in no way, is permissible, in view of the reasoning recorded by this Court in the judgments under review. The Committee constituted under Rule 14-A, has completely lost sight of the duty of a Police Officer while awarding them out of turn promotion. We have noticed numerous instances, which clearly speak that they in discharge of their duties were bound to perform such acts and if they were found to have done something extraordinary, they could have been decorated with awards, rewards or compensated with any amount. Although there are a number of glaring instances of out-of-turn promotions granted by the committee which do not conform to the set principles, however, we find it inappropriate to delve into each instance in order to examine the merits of the said promotions. We have already laid down the principle that the very concept and practice of out-of-turn promotions are violative of the services rules and the provisions of the Constitutions, hence, the question of merit of these promotions do not matter our considerations.

### **SPORTS POLICY, 1982**

131. For ease of reference, the Sports Policy of 1982, is reproduced hereunder: -

Subject: **PROMOTION OF SPORTS IN THE POLICE FORCE**

#### **Memorandum**

It was observed at the D.Is.G's conference held on 2<sup>nd</sup> and 3<sup>rd</sup> of December, 1981 that not only the general standard of sports had been gradually going down but the interest in games had also been sagging for the past few years. Since physical fitness is one of the principal trait of a professionally sound police officer, it was felt that necessary incentives and stimuli be provided for promotion of sports and physical fitness in Police Force. In order to achieve the objective in view, rewards and promotions to outstanding

sportsmen have been considered imperative. Comprehensive standing instructions as outlined below are, therefore, being issued for strict compliance at all levels. D.Is.G. and SSP are particularly emphasized to kindly evince personal interest and ensure that the talent, wherever available, is given due recognition and good sportsmen are encouraged to give better performance: -

- i) All Heads of Police Offices will ensure that the following major games are played daily in unit lines, except for closed holidays. Not only necessary facilities be provided in this behalf but an endeavor should be made to raise District / Unit teams, where necessary talent is forthcoming: -
  - a) Athletics
  - b) Hockey
  - c) Football
  - d) Volleyball
  - e) Basketball
  - f) Kabaddi
  - g) Wrestling
  - h) Polo (for Lahore, Rawalpindi, DG Khan and PTC/Sihala only.
  
- ii) Inter District / Unit Tournaments.
  - a) Range D.Is.G will organize Inter-District Range Tournaments in the above games by 15<sup>th</sup> of November each year.
  - b) The individual sportsmen and members of teams winning Inter-District Range Tournaments shall be given commendations Certificates Class II which Rs.200/- as cash reward while the runner-up Commendation Certificate Class II with Rs.100/- as cash reward.
  - c) Constable exhibiting outstanding performance shall be considered for entry into list "A" "B-1" and "C" as the case may be, by the Range D.Is.G.
  
- iii) Inter Range Sports.
  - a) Inter Range Punjab Police Sports Tournaments shall be organized by the Director-General, Sports, Punjab Police by 15<sup>th</sup> December every year.
  - b) Policemen securing first position in any individual event in Athletics and members of the teams winning the Police Inter Range Championship shall be awarded C.C. Class 1 with Rs.1000/- as cash reward while the runners-up given C.C. Class II with Rs.500/- as cash reward.
  
- iv) Selection of Teams and Training
  - a) Punjab Police Teams shall be selected by the Director-General, Sports, Punjab Police by 15<sup>th</sup> December each year and he would organize training camps at stations considered suitable for improved hard training.
  - b) The Members of the Punjab Police teams when called for camp training by the Director-General

Chief Sports Officer, shall immediately be relieved by the Heads of Police Officers.

v) Posting of Sportsmen

Members of the Punjab Police Teams shall normally be posted close to the Provincial, Divisions or District HQrs, as the case may be.

vi) Promotions

a) Police Officers selected in the provincial teams for National Competition shall be awarded a C.C. Class 1 with Rs.5000/- as rewarded every time they are picked-up for such representation.

b) Members of the Police Teams or individual Police Officers who win the National Championship in any game or an individual event in Athletics

1. Shall be placed on List B-1, promoted as Offg; HCs and sent for the next immediate lower School Course, if they happen to be Constables.
2. Shall be confirmed, promoted as officiating A.S.Is and sent for the next immediate Intermediate School Course, if they happen to be officiating H.Cs.
3. Shall be confirmed and promoted to the next higher rank if they are officiating as ASI, SI or Inspector, in case of ASIs and S.Is, they shall be nominated for the next immediate Upper School Course as well.
4. They shall also be awarded C.C. Class 1 with a cash reward of Rs.7,500/-.
5. Police members of the National teams who win Gold Medal in Word/Asian Olympic Games or World Cup shall be given one step promotion, brought on next immediate promotion course and also awarded a cash reward of Rs.10,000/- with a letter of appreciation by the Inspector-General of Police, Punjab, which shall be placed on their Character Rolls.

vii) Promotion Indicated under Items (vi) (b) above, will, however, be admissible once in two years and an officer earning promotion on sports basis to the next rank should have served for at least two years since the date of his last promotion on similar basis.

viii) Meritorious performance by G.Os will also be duly recognized by offering them suitable souvenirs.

The above instructions should please be given vide circulation and brought to the notice of all ranks.

132. We have heard the learned Counsel for the Petitioners Messrs. Hamid Khan and others on the issue of out-of-turn promotions pursuant to the Sports Policy, and we have also perused the said Policy. With respect, we do not subscribe to the contentions of the learned Counsel. The Sports Policy broadly lays down two paths of accelerated promotions for the officials. One prescribes the courses and examinations, in addition to the performance in the sports competitions, in order to be qualified for out-of-turn promotions. However, the other path provides for the out-of-turn promotions to the members of National teams who win Gold Medal in World/Asian Olympic Games or World cup.

133. We believe that there is some justification for allowing out-of-turn promotions, and that too up to the level of ASIs only, due to the fact that certain qualifications/courses/examinations have been prescribed in the Policy in order to be qualified for such promotions. In other words, there is no element of an arbitrary or selective choice of candidates for the accelerated promotions and they have to meet the bare minimum requirements of the Police Rules.

134. As far as the accelerated promotions in terms of Sub-clause (5) of Clause VI of the Sports Policy are concerned, we are of the view that such promotions are in conflict with the provisions of Punjab Civil Servants Act, 1974, and the rules framed thereunder, and which Act itself is created pursuant to the provisions of Articles 240 and 242 of the Constitution.

135. Moreover, there seems no justification to allow the police officers to enjoy accelerated promotions on the basis of their performance in



sports activities, while this Court has declared out of turn promotion granted through statutory instrument to be *ultra vires* the provisions of the Constitution, on the ground of proven gallantry. In fact, promoting sports at the cost of professionalism within the police force will lead to ominous consequences. The efficient police officers will be demoralized if they are superseded by their junior colleagues, which in turn will also affect the overall performance of police in maintaining law and order.

136. This Court has already held in a series of judgments that acts of gallantry, no matter how commendable and appreciated by the society, do not justify out-of-turn promotions as they necessarily lead to impingement of the fundamental rights of fellow officers in terms of blocking their smooth progression of careers and impinging their respect and honor as protected under Articles 9 and 14 of the Constitution. Hence, this policy to the extent of accelerated promotions is not sustainable, being violative of the service laws and the provisions of the Constitution. This Court in a series of judgments has held that policy making is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the fundamental rights of individuals, the Courts are obliged to examine such policy in judicial review. We are fortified by the judgments of this Court reported as Ghulam Rasool Vs. Government of Pakistan through Secretary, Establishment Division Islamabad (PLD 2015 SC 6), Dossani Travels Pvt. Ltd Vs. Travels Shop (Pvt) Ltd. (PLD 2014 SC 1), Iqbal Zafar Jhagra and Senator Rukhsana Zuberi Vs. Federation of Pakistan (2014 PTD 243), OGRA through Secretary Vs. Midway II, CNG Station (2014 SCMR 220), Watan Party Vs. Federation of Pakistan (PLD 2013 SC 167), Alleged

Corruption in Rental Power Plants etc. (2012 SCMR 773), Dr. Akhtar Hassan Khan Vs. Federation of Pakistan (2012 SCMR 455), Executive District Officer (Revenue), District Khushab at Jauharabad Vs. Ijaz Hussain (2011 SCMR 1864), Al-Raham Travels and Tours (Pvt.) Ltd. Vs. Ministry of Religious Affairs, Hajj, Zakat and Ushr (2011 SCMR 1621), Punjab Public Service Commission Vs. Mst. Aisha Nawaz (2011 SCMR 1602), Suo Motu Case No.10 of 2007 (PLD 2008 SC 673) and Wattan Party through President Vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad (PLD 2006 SC 697).

137. The learned Counsel for the Petitioners, Mr. Hamid Khan, has contended that the accelerated promotions on the basis of Sports Policy are allowed to the officers who belong to a group that is separate from the main police group, and hence, distinction has to be drawn. Apparently, this contention does not seem convincing given the fact that we have perused the record and found that there exist no separate group of sports in the Punjab Police. In fact, serving police officers are participating in the sports competitions and they are the subjects of accelerated promotions on the basis of their performance. We have already held that seniority and promotions of the police officers are to be fixed/decided on the basis of the required standards provided in the service rules, hence accelerated promotions cannot be accorded on the basis of an officer's performance in a sports competition.

138. However, it would be open to the government to frame rules providing a Sports Group within police in order to encourage and incentivize sports, which will not form part of the regular police force. In other words, the

members of Sports Group shall not be assigned field posting, but will be restricted to their specialized Group.

139. The Learned Counsel Mr. Hamid Khan has referred to Article 259 of the Constitution to substantiate his point that the said Policy has been framed to promote sports in terms of the said Article. The perusal of Article 259, however, does not provide for any accelerated promotion and in fact confines the awards to the extent of decorations to be given by the President under the Federal Law. It may also be pointed out that the context of Article 259 is entirely different and it deals with the awards to be given to citizens by way recognizing their varied services and performances. It cannot be stretched beyond the given parameters to include accelerated promotions, by way of the said Policy; hence, the contentions of the learned Counsel are without substance.

140. We cannot lose sight of one important aspect of the case that the Punjab Government/Competent Authority has withdrawn all out of turn promotions earned by the police officials, in terms of Section 8-A of the Punjab Civil Servants Act, 1974. As a consequence, hundreds of thousands of police personnel have acquired their lawful right to promotion/seniority, which was denied to them owing to the invalid omitted law i.e. Section 8-A of the Act. In fact, a right has been created in favour of hundreds of thousands of Punjab Police personnel due to withdrawal of all out of turn promotions by the Punjab Government/Competent Authority. The police personnel in whose favour this right to gain lawful promotion/seniority has been created, were not impleaded as party to the present proceedings, therefore, these proceedings on this score alone merit dismissal.

141. During the hearing of these proceedings, one of the Petitioners' Counsel has prayed that the judgment of this Court in the case of Gul Hassan Jatoi vs. Faqir Muhammad Jatoi reported in (2016 SCMR 1254), may also be made applicable to Punjab Police, *inter alia*, on the ground that Police Rules are abused by the authorities with regards to termination of probation and not sending the police officials to different examinations/courses under Chapter XIII of the Police Rules on their turn. The Police Rules are applicable both to the Sindh Police and the Punjab Police. We are cognizant of the fact that delay in promotion of police officials affect their morale as they work hard in performing their duties. This Court in paragraphs 74 and 75 of the aforesaid judgment has given the following directions: -

*“74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of the competent authorities concerned. Hence, we are of the view that this practice must be brought to an effective end so that injustice may not be perpetrated against such officials. Therefore, in future those Police Personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued.*

*75. We have further observed that a cherry picking is made in the case of selection of Police personnel for police training or practical training despite the fact they have completed their required period to be eligible for such trainings, which amounts to denying them of timely promotion for the next scale; hence, we direct that in future, competent authority shall ensure that the Police personnel who have completed their required period to be eligible for trainings shall be forthwith sent for the training; and in case such police officials are bypassed for such trainings on account of default by the department, or to extend a favor to the junior, or*

*negligence by the authority concerned, their inter-se seniority and the accompanying financial entitlements shall not be effected on account of their late joining or completion of training.”*

These directives shall also be applicable to all the Police officials who are governed by Police Rules, 1934 and the competent authority shall ensure compliance to streamline the service structure of the police by redressing the heart burning and dismay of the police officials at the hands of high ups, who abuse their discretion in violation of the Police Rules.

142. Before parting with this judgment, we acknowledge the assistance of the Senior Counsel rendered by them on the issues at hand, which will have far reaching effect on the working of the police.

143. For the aforesaid reasons, all the listed Review Petitions and the Applications are dismissed. The I.G.P, Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers who were given out of turn promotion alongwith their batch-mates, as if they were never given out of turn promotion. However, the orders of withdrawal of out of turn promotion passed by the Department/Competent Authority shall be recalled against the Police Officers who had earned out of turn promotions, pursuant to the judgments of superior Courts/Service Tribunals, as discussed in paragraph 111 of this judgment. For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held without further loss of time and a compliance report be submitted to the Registrar of this Court for our perusal in Chambers. This exercise shall be completed within a period of one month. The Advocate General, Punjab, and the learned

Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities.

Chief Justice

Judge Judge

Judge Judge

Announced in open Court at Islamabad on \_\_\_\_\_2016.

Judge.

**Approved for reporting.**

**ORDER OF THE BENCH:**

With majority of four to one, (Anwar Zaheer Jamali, Chief Justice, dissenting), these review<sup>Petitions/</sup> applications alongwith all other miscellaneous applications are dismissed.

Chief Justice

Judge

Judge

Islamabad,  
Announced in open Court  
On 30<sup>th</sup> December, 2016.

Judge

Judge

Judge.

**Approved for reporting.**