IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

CPLA.Nos. 407-K & 499-K/2021
On appeal against the judgment dated 12.01.2021 passed by High Court of Sindh, Karachi in Constitutional Petitions No. D-2576 and D-3167 of 2020

Syed Saad Ali & another (In CPs.407-K/2021)
Javed Iqbal (In CPs.499-K/2021)
...Petitioners (s)

Versus

Federation of Pakistan through Secretary Ministry & others (In both cases)
...Respondent(s)

For the Appellants : Mr. M. M. Aqil Awan, Sr. ASC
Mr. Ghulam Rasool Mangi, AOR

For the Respondent(s) : Mr. Khalid Mahmood Siddiqui, ASC
Mr. Jamil Ahmad Virk, AOR

Date of Hearing : 12.06.2025

Judgment

Muhammad Ali Mazhar, J. The aforesaid Civil Petitions for leave to appeal are directed against the judgment dated 12.01.2021, passed by High Court of Sindh, Karachi, in Constitutional Petitions No. D-2576 and D-3167 of 2020.

2. The short-lived facts of the case are that the respondent No. 2 is a statutory body incorporated under the Pakistan Civil Aviation Authority Ordinance, 1982 ("**Ordinance**"). The CAA Service Regulations, 2000 ("**Regulations**") was framed pursuant to the provisions of the Ordinance. The Regulations were revised first in the year 2014 and then in the year 2019. The respondent No.2 advertised certain vacancies in newspapers and the petitioners applied against the vacant posts on merit, and after qualifying the written test and interview, they were appointed on contract basis for two years. The contract period was subsequently extended,

and after being granted an extension of their last contract, the Departmental Head recommended their case for further extension. However, *vide* letter dated 20.05.2020, the petitioners were informed that they will not be allowed a further extension. According to the revised Regulations in 2019, the maximum time limit for contract service was fixed as five years. The petitioners, in serious apprehension that their period of contract service will not be extended, filed the CP No. D-3167/2020 for the relief that their appointment may be declared a regular appointment and that Regulation 21(1) of the Regulations is *ultra vires* the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") and the fundamental rights guaranteed under it. The High Court clubbed the CP No. D-2576/2020 and CP No. D-3167/2020 together and dismissed both the petitions *vide* a consolidated judgment dated 12.01.2021 on the ground that the Civil Aviation Authority ("**CAA**") has no statutory rules. However, the High Court failed to consider that the *vires* of the Regulations were also under challenge, on which there was no discussion.

3. The learned counsel for the petitioners argued that under the rules and statutes of the CAA, there is no mention of a Contract or Project post, and no procedure laid down to fill such post. It was further contended that the contract appointments, without any backing of law, are not only unlawful but also amount to exploitation. He further argued that neither the plea of *vires* of regulations was considered nor any other crucial questions raised were taken into consideration, and though the case law was noted in the impugned judgment, but without appreciating the same, the High Court found it distinguishable. It was further averred that if a contract appointment is made against a permanent post involving duties/work of permanent nature through a transparent selection process, then it would be considered a regular appointment. According to the learned counsel, the revised Regulation 21(1) of the Regulations are *ultra vires* the fundamental rights guaranteed under the Constitution, but the High Court had dismissed the petitions without considering or giving any findings on whether the aforesaid Regulation is *ultra vires* or *intra vires*.

4. The learned counsel for the CAA argued that the petitions were not maintainable before the High Court and fully supported the impugned judgment. He further argued that this Court, in various dicta, already held that contract employees cannot invoke constitutional jurisdiction for their regularization or otherwise, and the proper remedy for a contract employee, if there is any breach of contract, is to file a civil suit. However, when we confronted the learned counsel on whether the question of *vires* raised by the petitioners was decided by the High Court, the learned counsel frankly conceded that no such issue was dealt with or decided in the impugned judgment.

5. Heard the arguments. According to the facts narrated in CPLA No.407-K of 2021 (CP.No.D-3167/2020 before the High Court), the petitioner No.1 (Syed Saad Ali) applied against one vacancy of Assistant Director (IT) (Data Base Administrator-EG-01), while the petitioner No.2 (Syed Zia-ul-Haq) applied against the vacancy of Assistant Director (IT) (Oracle Functional Consultant-EG-01). Both the petitioners, in their writ petition, sought the declaration that their appointment by way of direct recruitment in EG-01 is a regular appointment and they further challenged the *vires* of Regulation 21(1) of the Regulations, the same being *ultra vires* their fundamental rights, and prayed to the High Court to strike it down as unreasonable. Moreover, the Office Memorandum dated 20.05.2020, issued pursuant to Regulation 21(1) of the Regulations, was also challenged, with the prayer that since they were performing their duties against a permanent post for the last 5 years, hence directions be issued against the respondents to regularize their services. Whereas, in CP No.449-K of 2021 (CP No.D-2576 of 2020 before the High Court), the claim of the petitioner (Javed Iqbal) was that he was commissioned in the Pakistan Air Force in the year 1993 and having more than 17 years of service at his credit, he was sent on deputation to CAA on 29.08.2001 and was posted as ADC to Deputy DG (Ops. CAA). He remained on deputation till 16.12.2005 and also submitted an application, as per the Regulations, for his permanent absorption, which was processed and he was

consequently asked to seek retirement from his parent organization. It is further stated by the said petitioner that he was appointed as Airworthiness Safety Inspector, Ex-Cadre “B” (PG-10), on 25.01.2008 after fulfilling all codal formalities for regular appointment in the CAA, but he was appointed on contract basis. He had also prayed to the High Court for the declaration that he is a regular employee and is entitled to serve till the age of superannuation, and that the respondents may be directed to issue his notification as a regular employee.

6. The bone of contention before the High Court in CP No.D-3167/2020 was a challenge to the alleged *vires* of the revised Regulation 21(1) of the Regulations, whereby it was articulated that "subject to upper age limit criteria, the authority may fill a regular post or a temporary post, or a project post on contract basis for specified period, initially for two years to be renewed, upon satisfactory performance. Provided that a fresh yearly contract to be executed up to maximum of five years". The learned counsel for the petitioners collectively argued that the plea of *ultra vires* was not taken into consideration by the learned High Court and the impugned judgment, in this regard, is silent. It is translucent from the impugned judgment that while jotting down other relevant facts in CP No.D-3167/2020, the learned High Court also mentioned that the petitioner has prayed for the declaration to the effect that revised Regulation 21(1) of the Regulations is *ultra vires* the fundamental rights of the petitioners and the same be struck down being unreasonable. It is further reflected from the arguments of Mr. M. M. Aqil Awan, Sr. ASC (mentioned in the impugned judgment) that he strongly objected to the decision of the respondent (CAA) of introducing Regulation 21(1) of the revised Regulations. The learned Division Bench of the High Court acknowledged and noted that the petitioners also attacked the revised Regulation 21(1) of the Regulations, under which a time limit was provided for contractual appointment, but the learned High Court, in paragraph 10 of the impugned judgment, without adverting to the plea of *vires* raised by the petitioners and argued by their learned counsel, confined the judgment to the question

of regularization in service of CAA alone, and in the same scenario, held that contractual employees have no vested right to be regularized unless it has specifically been provided for under the terms and conditions of appointment and the law. Ultimately, the writ petitions were not found maintainable either on facts or in law.

7. The terms "*intra vires*" and "*ultra vires"* are both Latin phrases, and diametrical opposites. The expression *ultra vires* means "beyond the powers". If an act entails legal authority and it is done with such authority, it is symbolized as *intra vires*, that is, within the precincts of powers, but if it is carried out shorn of authority, it is *ultra vires*. It is well-settled that the constitutionality of any law, rules, or regulations, can be scrutinized and surveyed, and the law can be struck down if it is found to be offending the Constitution due to an absence of law-making and jurisdictive competence, or found in violation of the fundamental rights enshrined therein. At the same time, it is an established precept of the interpretation of laws, one backed by judicial sagacity and prudence in the form of numerous precedents of the superior courts, that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless it is *ex facie* violative of a constitutional provision. The function of the judiciary is not to legislate or question the wisdom of the legislature in making a particular law, nor can it refuse to enforce a law. The doctrine of severability permits the court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder. The words contained in statutes, rules, or regulations, are first to be understood in their natural, ordinary, or popular sense, and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute, to suggest the contrary. The *vires* of law, rules, or regulations can be challenged if its provisions are *ex facie* discriminatory, in which case actual proof of discriminatory treatment is not required to be shown, but there is also a presumption in

favour of the constitutionality of the enactments, unless it is *ex facie* violative of a constitutional provision. Reference can be made to the judgment of this Court rendered in the case of Lahore Development Authority v. Ms. Imrana Tiwana and others **(2015 SCMR 1739)**, wherein this Court summarized the applicable rules while determining the constitutionality of a statute and also referred to various other judicial precedents such as Province of East Pakistan v. Siraj ul Haq Patwari **(PLD 1966 SC 854)**; Mehreen Zaibun Nisa v. Land Commissioner **(PLD 1975 SC 397)**; Kaneez Fatima v. Wali Muhammad **(PLD 1993 SC 901)**; Multiline Associates v. Ardeshir Cowasjee **(1995 SCMR 362)**; Ellahi Cotton Mills Limited Vs. Federation of Pakistan **(PLD 1997 SC 582)**; Dr. Tariq Nawaz v. Government of Pakistan **(2000 SCMR 1956)**; Mian Asif Aslam v. Mian Muhammad Asif **(PLD 2001 SC 499)**; Pakistan Muslim League (Q) v. Chief Executive of Pakistan **(PLD 2002 SC 994)**; Pakistan Lawyers Forum v. Federation of Pakistan **(PLD 2005 SC 719)**; Messrs Master Foam (Pvt.) Ltd. v. Government of Pakistan **(2005 PTD 1537)**; Watan Party v. Federation of Pakistan **(PLD 2006 SC 697)**; Federation of Pakistan v. Haji Muhammad Sadiq **(PLD 2007 SC 133)**; and Iqbal Zafar Jhagra v. Federation of Pakistan **(2013 SCMR 1337)**]

8. It is a well settled exposition of law that each case has to be decided on its own facts. Every litigant deserves a fair chance of being heard and the decision of the court must be founded and structured on the facts of the case. It is an admitted position that the learned High Court neither considered the plea of *vires* of the Regulation under challenge nor discussed anything in this regard in the impugned judgment which completely ignored and overlooked the same. The doctrine of *"sub-silentio"* accentuates a legal principle where a judgment is rendered without specifically and precisely avowing or attending to the exact question of law raised for determination. In fact, *sub silentio*, a Latin term, literally translates to "under silence" or "in silence". In legal milieus, it points towards an incidence where the Court decides a *lis* without appreciating or deliberating the particular point of law raised before it, which disturbs the precedential value of the judgment. This

doctrine often denotes that if the court, in its judgment, overlooked or dispensed with a crucial point of law raised before it, then the precedential value of such decision is seriously disturbed. A decision is not binding if it was reached at without argument, without reference to the critical terms of the law, and without citation of authority. Such a decision, taken as *sub silentio*, lacks authoritative weight. In the case of Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., **(1941) 1 KB 675**, Sir Wilfrid Greene, M.R., said that he could not help thinking that the point raised had been deliberately passed *sub silentio* by counsel so that the point of substance may be decided. He went on to say that the point had to be decided by the earlier court before it could make the order, which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Thus, judgments passed *sub silentio* and without arguments are of no moment. This rule has ever since been followed. Courts have defined *sub silentio* when discussing the doctrine of precedent and the doctrine is also discussed in different lexica as under:

> **Black's Law Dictionary (6th ed., 1990):** Defines *sub silentio* as "under silence; without any notice being taken." It gives the example that "passing a thing sub silentio may be evidence of consent."
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> **Ballentine's Law Dictionary (3rd ed., rev. 1998):** Simply defines *sub silentio* as "silently." This reflects the Latin origin (meaning "under silence").
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> **Merriam-Webster's Dictionary of Law (1996):** Lists *sub silentio* as an adverb meaning "under or in silence: without notice being taken or without making a particular point of the matter in question."
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> **Webster's New World Law Dictionary (2000):** Notes that *sub silentio* (Latin for "under silence") means a matter decided without notice. It adds that "if a case is decided against precedent, the newer case is said to have over-ruled the previous decision sub silentio."
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> **West's Encyclopedia of American Law (2005):** Similarly defines *sub silentio* as "[Latin, Under silence; without any notice being taken]."
>
> **Oxford English Dictionary (oed.com):** Notes, *sub silentio* means "in silence; without express mention."

9. This Court, in the case of Uch Power (Pvt.) Ltd. v. Income Tax Appellate Tribunal **(2010 PTD 1809)**, explained that the

decisions *sub silentio* have no precedential value. Such decisions are defined as "those which are given on a point of law not perceived by the Court or present to its mind." Whereas, in the case of Municipal Corporation of Delhi v. Gurnam Kaur **((1989) 1 SCC 101)**, the Supreme Court of India, while quoting Salmond on Jurisprudence, explained that a decision passed *sub silentio* in the technical sense is when the particular point of law involved in the decision is not perceived by the court or present to its mind.

10. The aforesaid Civil Petitions were converted into an appeal and allowed *vide* our Short Order dated 12.06.2025. As a consequence thereof, the impugned consolidated judgment dated 12.01.2021, passed by the High Court of Sindh, Karachi, in Constitutional Petitions No.D-2576 and D-3167/2020, was set aside and the matter was remanded to the High Court for fresh adjudication, expeditiously, preferably within a period of three months, excluding the period of summer vacations. Above are the reasons assigned in support of our Short Order.

Judge

Judge

Judge

Karachi
12.06.2025
Khalid
Approved for reporting