

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

**MR. JUSTICE NASIR-UL-MULK, HCJ.
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IJAZ AHMED CHAUDHRY**

CIVIL REVIEW PETITION NO.193 OF 2013 ETC

C.R.P. No.193/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Ali Azhar Khan Baloch

vs. Province of Sindh etc

C.R.P. No.194/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

S. M. Kaleem Makki

vs. Dr. Nasimul Ghani Sahito

C.R.P. No.199/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Province of Sindh etc

vs. Farooq Azam Memon and others

C.R.P. No.203/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

S. M. Kaleem Makki

vs. Farooq Azam Memon

C.R.P. No.204/2013 IN S.M.R.P. NO.239/2013 IN CONST.P.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Syed Abid Ali Shah

vs. Farooq Azam Memon and others

C.M.A. No.6628/2013 IN S.M.R.P.239/2013 IN CA.12-K/2012

(On review against judgment 12.6.2013 passed by this Court in Appeal No.12-K/2012)

Shiraz Asghar Shaikh

vs. Dr. Nasimul Ghani Sahito and others

C.R.P. No.392/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Imdad Ali Solangi and others

vs. Province of Sindh and others

C.R.P. NO.388/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Ghulam Mustafa Zardari

vs. Province of Sindh and others

C.R.P. No.393/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Mujeeb-ur-Rehman Shaikh **Vs.** Province of Sindh and others

CMA. No.4568/2013 in CRP No.NIL/2013 in CA.98-K/2010

(On review against judgment 12.6.2013 passed by this Court in Crl. O.P.89/2011)

Rafique Ahmed Abbasi **Vs.** Chief Secretary, Govt. of Sindh and others

C.R.P. NO.387/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Imdad Memon and others **Vs.** Province of Sindh and others

C.R.P. No.410/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Jasoo Ram **Vs.** Nasimul Ghani Sahito and others

C.R.P. NO.391/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Nisar Ahmed Brohi **Vs.** Province of Sindh and others

C.R.P. No.389/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Hameedullah **Vs.** Province of Sindh and others

C.R.P. NO.394/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Muhammad Rafique Qureshi **Vs.** Province of Sindh and others

C.R.P. NO.409/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Mukhtiar Ali and others **Vs.** Province of Sindh and others

C.R.P. No.390/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Saifullah Phulphoto **Vs.** Province of Sindh and others

C.R.P. No.396/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Dost Ali Balouch **Vs.** Province of Sindh and others

C.R.P. No.397/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Manzoor Ahmed Sheikh and another **Vs.** Province of Sindh and others

C.R.P. No.407/2013 IN CIVIL APPEAL NO.12-K/2012

(On review against judgment 12.6.2013 passed by this Court in Civil Appeal No.12-K/2012)

Shahid Hussain Mahessar **Vs.** Province of Sindh thr. Chief Secy. and others

C.R.P. No.398/2013 IN CIVIL APPEAL NO.12-K/2012

(On review against judgment 12.6.2013 passed by this Court in Civil Appeal No.12-K/2012)

Muhammad Riaz and another **Vs.** Province of Sindh and others

C.R.P. No.408/2013 IN CIVIL APPEAL NO.12-K/2012

(On review against judgment 12.6.2013 passed by this Court in Civil Appeal No.12-K/2012)

Muhammad Rizwan Soomro **Vs.** Province of Sindh and others

C.R.P. No.411/2013 IN CIVIL APPEAL NO.12-K/2012

(On review against judgment 12.6.2013 passed by this Court in Civil Appeal No.12-K/2012)

Zameer Ahmed **Vs.** Province of Sindh and others

C.R.P. No.399/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Imran Hussain Jafri **Vs.** Farooq Azam Memon and others

C.R.P. No.400/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Syed Ahmed Sheikh & another **Vs.** Province of Sindh and others

C.R.P.NO.401/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Gul Hassan Zardari **Vs.** Province of Sindh and others

C.R.P. NO.402/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Shamsuddin Shaikh **Vs.** Province of Sindh and others

C.R.P. No.403/2013 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Nisamuddin Shaikh **Vs.** Province of Sindh and others

C.R.P. No.125/2014 IN CONST. PETITION NO.71/2011

(On review against judgment 12.6.2013 passed by this Court in Const. Petition No.71/2011)

Dr. Atta Muhammad Panhwar **Vs.** Province of Sindh and others

CRL.R.P. No.70/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Yar Muhammad Bozdar **Vs.** Province of Sindh and others

CRL.R.P. No.71/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Muhammad Jaffar Abbasi **Vs.** Province of Sindh and others

CRL.R.P. No.72/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Syed Altaf Ali and others **Vs.** Chief Secretary Sindh and others

CRL.R.P. No.73/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Nizamuddin and others **Vs.** Province of Sindh thr. Chief Secy. Sindh and others

CRL.R.P. No.74/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Ghulam Nabi Babar Jamali **Vs.** Chief Secretary Sindh, etc and another

CRL.R.P. No.75/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Ghulam Hussain Korai **Vs.** Province of Sindh etc

CRL.R.P. No.76/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Hafiz Safdar Shaikh **Vs.** Javed Ahmed and others

CRL.R.P.NO.77/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Talib Magsi **Vs.** Province of Sindh thr. Chief Secretary and others

CRL.R.P. No.78/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Dur Muhammad Panhawar **Vs.** Province of Sindh, etc

CRL.R.P. No.79/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Syed Shakir Hussain Shah

Vs. Province of Sindh thr. its Chief Secy. and others

CRL.R.P. No.80/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Mirza Shahbaz Mughal

Vs. Province of Sindh and others

CRL.R.P. No.81/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Tariq Mughal

Vs. Chief Secy. Govt. of Sindh

CRL.R.P. No.82/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

M. Hanif Solangi

Vs. Chief Secy. Govt. of Sindh

CRL.R.P. No.83/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Inayatullah Qureshi

Vs. Province of Sindh and others

CRL.R.P. No.84/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Khurram Waris

Vs. Chief Secretary Sindh

CRL.M.A. No.860/2013 IN CRL.R.P.NIL/2013 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Mir Hussain Ahmed Lehri

Vs. Javed Ahmed and others

CRL.R.P. No.39/2014 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Munir Ahmed Phulphoto

Vs. Province of Sindh

CRL.R.P. No.40/2014 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Atta Muhammad Memon

Vs. The Chief Secy. Govt. of Sindh

C.R.P. No.412/2013 IN CMA.310-K/2012 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Qamaruddin Shaikh

Vs. Secy. Local Govt. and others

CRL.R.P. No.38/2014 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Mrs.Aasma Shahid Siddiqui

Vs. Chief Secy. Province of Sindh

CRL.R.P. No.41/2014 IN CRL.O.P.89/2011

(On review against judgment 12.6.2013 passed by this Court in Crl.O.P.89/2011)

Ali Murad Abro

Vs. The Chief Secretary, Govt. of Sindh

CIVIL PETITION NO.968/2014

(On appeal against the judgment dated 13.5.2014 passed by the High Court of Sindh, Circuit Larkana in CP.D-538/2014)

Saleem Ullah

Vs. Province of Sindh, thr. Chief Secy. and others

ATTENDANCE

For the Petitioner(s)/Appellant(s)

- | | | |
|--|---|--|
| (CRP.199/2013) | : | Sarwar Khan Add. A.G Sindh
Abdul Fateh Malik A.G. Sindh
Rafique Mustafa Shaikh Add. Secretary Services(S&GAD)
Ghulam Ali Bharmani Dy. Secretary Services(S&GAD) |
| (CRP.203/2013) | : | Mr. Shabbir Ahmed Awan ASC |
| (CRP.392/2013) | : | Syed Iftikhar Hussain Gillani Sr. ASC |
| (Crl.RP.72/2013). | : | Syed Ali Zafar ASC |
| (CRP.388, 391, 389, 390, 397/2013, & Crl.RP 73/2013 | : | Raja Muhammad Ibrahim Satti Sr. ASC |
| Crl.RPs. 70 & 71/2013.
CP.968/2014 | : | Mr. Tariq Mehmood Sr. ASC |
| C.R.P. 194/2013. | : | Raja Muhammad Asghar Khan ASC |
| C.R.P. 204/2013. | : | Shabbir Ahmed Awan ASC appeared and submitted written arguments on behalf of Mr. Ibadul Hasanin ASC |
| C.R.P. 393/2013.
C.R.Ps.407 & 408/2013
CRP.400, 411/2013 | : | Mr. Abdul Rahim Bhatti ASC |
| C.M.A.4568/2013 in CRP Nil/13 in C.A. 98-K/2010.
Crl.R.P.38/2014
Crl.R.P.75/2013
CRP.401/2013
Crl.R.P.40 & 41/2014 | : | In Person |

C.R.P. 387/2013.	: Mr. Hamid Khan Sr.ASC
C.R.P. 193/2013. CRP.396/2013 CRP.125/2014	: Dr. Farough Naseem, ASC
C.R.P. 409/2013 For petitioner 1-3 Crl.O.P.121/2013 Crl.M.A.760/2013 in Crl.O.P.89/2011	: Mr. M.Aqil Awan, Sr. ASC
C.R.P.409/2013 For petitioner 4-8 CRP.394/2013	: Baz Muhammad Kakar, ASC
C.R.P.399/2013 Crl.R.P.76/2013 Crl.R.P.83/2013 Crl.M.A.860/2013 in Crl.R.P.Nil/2013 in Crlo.O.89/2011	: Mr. Shabbir Ahmed Awan, ASC
C.R.P.410/2013	: Mr. Abdur Rehman Siddiqui, ASC
CRP.398/2013 CRP.412/2013	: Mr. M. Shoaib Shaheen, ASC
CRPs.402, 403/2013	: Mr. Khurram Mumtaz Hashmi, ASC
Crl.R.P.74/2013,	: Mr. Adnan Iqbal Ch. ASC
Crl.R.P.77/2013	: Mr. Yawar Farooqui, ASC
Crl.R.P.79/2013	: Rana Azam-ul-Hassan, ASC
Crl.R.P.80/2013	: Mr. Abid S. Zuberi, ASC
Crl.R.P.78/2013 Crl.R.P.84/2013	: Mr. Irfan Qadir, ASC
Crl.R.Ps.81&82/2013	: Mr. M. Munir Paracha, ASC
CMA.6628/2013 in SMRP.239/2013	: Mr. Anwar Mansoor Khan, Sr. ASC
Crl.M.A.460/2013 in Crl.O.P.89/2011	: Nemo.
Crl.O.P.103/2013	: Mian Abdul Rauf, ASC
Crl.R.P.39/2014	: Mr. Z. K. Jatoi, ASC

For respondent(s)

- For Govt. of Sindh.
- : Sarwar Khan Add. A.G Sindh
Abdul Fateh Malik A.G. Sindh
Rafique Mustafa Shaikh,
Add. Secretary Services(S&GAD)
Ghulam Ali Bharmani,
Dy. Secretary Services(S&GAD)

Date of hearings : 5th, 6th, 10th June, 2014,
15th to 17th & 21st to 24th October, 2014.

JUDGMENT

AMIR HANI MUSLIM, J.-

CRP No. 199/2013

Province of Sindh etc vs. Farooq Azam Memon
by Mr. Sarwar Khan, Addl. AG Sindh

The Additional Advocate General Sindh has contended that Constitutional Petitions No.71/2011, 21, 23 and 24/2013, filed by the Petitioners under Article 184(3) of the Constitution, challenging the vires of the six impugned legislative instruments were not competent. According to him, the issues raised in these Petitions were not of public importance. He contended that individual grievances of 30 Civil Servants relatable to the terms and conditions of service fall outside the purview of Article 184(3) of the Constitution. He contended that in such cases this Court, time and again, has declined to entertain such Petitions. While relying upon the case of **Ishtiaq Ahmed Sheikh and others v. M/s UBL and others** (PLD 2006 SC 94), the learned Addl. Advocate General has contended that Article 184(3) has excluded adjudication of service matters. He next contended that the Petitioners could have approached the Sindh Service Tribunal for redressal of their grievances, which was equally competent to examine the vires of the legislative instruments.

2. He further contended that the Petitioners have failed to establish that their fundamental rights were violated by promulgation of the impugned legislative instruments, to give

cause to them to invoke jurisdiction of this Court under Article 184(3). In support of his contentions, he has relied upon the judgments in the cases of **All Pakistan Newspapers Society (APNS) etc v. Federation of Pakistan and others** (PLD 2004 SC 600) and **Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others** (2012 SCMR 455).

3. He next contended that the judgment under review has made Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 redundant, as the powers exercised by the competent authority under the said rule have been done away with. He contended that the principles enunciated by the impugned judgment were applied retrospectively. According to the learned Addl. Advocate General, if the law is declared ultra vires of the Constitution, the effect of such declaration would operate prospectively. In support of this contention, he has relied upon the cases of **Muhammad Younis and others v. Essa Jan and others** (2009 SCMR 1169) and **Mazhar Ali vs. Federation of Pakistan/President of Pakistan thr. the Secretary Establishment Division, and others** (1992 SCMR 435). He further contended that the Officers/employees serving in different departments of the Sindh Government for years together, were ordered to be repatriated to their Parent Departments, after the termination of their lien by lapse of time. The learned Addl. AG contended that the impugned judgment has attributed mala fides to the legislature, which finding is against the settled principles of law. He has relied upon the judgment in the case of **Fauji Foundation and another vs. Shamimur Rehman** (PLD 1983 SC 457) and prayed that the review be allowed on the aforesaid grounds.

CRP No. 388,389,390,391,397 of 2013 & Crl.R.P 73/2013

By Raja M. Ibrahim Satti, Sr. ASC

(CRP.388/2013)	Ghulam Mustafa Zardari v. Province of Sindh etc
(CRP.389/2013)	Hameedullah v. Province of Sindh and others
(CRP.390/2013)	Saifullah Phulpoto v. Province of Sindh etc
(CRP.391/2013)	Nisar Ahmed Brohi v. Province of Sindh and others
(CRP.397/2013)	Manzoor Ahmed Sheikh etc v. Province of Sindh and others
(Crl.R.P.73/2013)	Nizamuddin and others v. Province of Sindh thr. its Chief Secretary Sindh and others

4 Raja M. Ibrahim Satti, learned Counsel for Petitioner(s) has contended that this Court has examined the vires of legislative instruments while interpreting the Articles of the Constitution without issuing notices to the Attorney General for Pakistan in terms of Order XXVII-A Rule 1 CPC, therefore, the impugned judgment is not sustainable. In support of his contention he has relied upon the case of **Federation of Pakistan thr. Secy, M/o of Law etc v. Aftab Ahmed Khan Sherpao** (PLD 1992 SC 723). He next contended that the Petition was not maintainable under Article 184(3) of the Constitution as the Petitioners were seeking redressal of their individual grievances and were not seeking enforcement of their fundamental rights.

5. It was next contended by the learned Counsel that mala fides could not be attributed to the Provincial Legislature, which has passed the legislative instruments, in exercise of the powers guaranteed by the Constitution. According to the learned Counsel, the Provincial Legislature was competent to legislate law, which is their divine right, therefore, the legislative instruments were wrongly struck down. He in support of his contentions has relied upon the case of **Imran ullah v. the Crown** (PLD 1954 Federal Court 123).

6. He further contended that in compliance with the impugned judgment, the Sindh Chief Secretary has issued

notification repatriating the Petitioners to their parent Departments, without affording them the right of audience. The learned Counsel further argued that the issue of 'absorption' of the Petitioners was a past and closed transaction; and by the impugned judgment this Honorable Court has erroneously undone absorption of the Petitioners by ordering their repatriation retrospectively.

Crl.R.P. No. 72/2013

Syed Altaf Ali and others vs. Chief Secretary Sindh etc
by Syed Ali Zafar, ASC

7. Syed Ali Zafar, Counsel for the Petitioners, has contended that this Honorable Court has wrongly entertained the issue of appointment of the Petitioners by nomination in excess of the prescribed quota in exercise of its original jurisdiction under Article 184(3) of the Constitution. According to the learned Counsel such an issue could only be adjudicated upon by this Court under Article 212(3) of the Constitution, which Article deals with the service matters.

8. He next contended that the Court ought to have decided the issue on merits and not on the basis of the list provided by the Sindh Government. The Counsel referred to Rule 5(4)(b) of the West Pakistan (Executive Branch) Rules, 1964, which provides for promotion of various categories of Civil Servants by nomination. He submitted that if the appointments of the Petitioners by nomination are held to be illegal then all appointments made under Rule 5(4)(b) should be declared illegal and not just those nominated since 1994. He submitted that the aforesaid rule provides for preparation of lists B and C but no such

lists were maintained by the Sindh Government for the nomination of the Petitioners as a consequence whereof they did not have the opportunity to challenge it. He submitted that a cut-off date should have been determined by the Sindh Government for examining the appointments made in excess of the quota. Lastly, the learned Counsel contended that departmental construction of a statute, though not binding, can be taken into consideration, especially when it was followed by the department consistently. In support of his contention he has relied upon the case of Muhammad Nadeem Arif and another v. Inspector-General of Police, Punjab, Lahore and others (2011 SCMR 408).

Crl.RP No. 70/2013

Yar Muhammad Bozdar vs. Province of Sindh etc
by Mr. Tariq Mahmood, Sr. ASC

9. Mr. Tariq Mehmoor, learned Sr. ASC submitted that the Petitioner was a Superintendent in Board of Revenue, Government of Sindh. The recommendation for his appointment was made by the Member, Board of Revenue, Sindh in terms of Rule 5(4)(b) of the West Pakistan (Executive Branch) Rules, 1964. A list was prepared in 2005 and the Petitioner was recommended for nomination, therefore, his case falls within the prescribed limit of the quota. It was further submitted by the learned Counsel that the Petitioner passed many departmental examinations which were not taken note of by this Court while passing the impugned judgment against the Petitioner.

Crl. R.P. No. 71/2013

Muhammad Jaffar Abbasi v. Province of Sindh and others
by Mr. Tariq Mahmood, Sr. ASC

10. Mr. Tariq Mehmoor, the Counsel for Petitioner, submitted that the Petitioner was appointed as Deputy Secretary,

Sindh Public Service Commission through competitive process. On 30.03.1995, the post was upgraded to BS-18. On 01.09.1999, the Petitioner was transferred to S & GAD and absorbed in the Provincial Secretariat Service. The notification of his absorption was cancelled. The Petitioner challenged the cancellation of the notification before the Sindh Service Tribunal. The Tribunal accepted his Appeal against which Sindh Government filed CPLA before this Honorable Court. The CPLA, however, was dismissed for non-prosecution and the application for restoration of the CPLA was also dismissed. Resultantly, the order of the Tribunal attained finality. However, the absorption of the Petitioner has again been cancelled, pursuant to the impugned judgment without taking note of the aforesaid facts.

11. He next contended that before absorption, the Petitioner was a Civil Servant working in the Sindh Public Service Commission, which is an attached department of the S & GAD Department, and therefore, such absorption could not have been withdrawn in terms of the findings of the impugned judgment.

CRP No. 194/2013

S.M. Kaleem Makki vs. Dr. Nasimul Ghani Sahito
by Raja M. Asghar Khan, ASC

12. The learned Counsel, Raja M. Asghar Khan submitted that in the year 1993, the Petitioner was appointed as Project Director in BS-19 in the Sindh Small Industries Corporation through advertisement. Subsequently, by notification dated 22.06.2000, he was declared surplus. On 30.09.2005, he was absorbed in Provincial Secretariat Service (PSS) under Rule 9A of the Sindh Civil Servants (Appointment, Promotion and Transfer)

Rules, 1973. The learned Counsel contended that the absorption of the Petitioner in P.S.S. in the same scale was made after observing all the codal formalities; therefore, his appointment by absorption was valid.

CRP No. 204/2013

Syed Abid Ali Shah (Retired) vs. Farooq Azam Memon etc
by Mr. Abadul Hussnain, ASC

13. The learned Counsel submitted that in 1976 the Petitioner was appointed as Management Trainee in the Board of Management, Sindh for nationalized Ghee Industries. On 16.8.1997, he was appointed Managing Director at Maqbool Co. Ltd. when the Sindh Government requisitioned his services. On 24.10.1997, the Petitioner was sent on deputation for 3 years to the Ministry of Industries and Production. On 15.11.1997, he was appointed Cane Commissioner in BS-19. Then on 05.04.1998, he was transferred as DG, Bureau of Supply and Prices, Sindh. Subsequently, on 15.11.1998, he was repatriated to Ghee Corp. and on 14.01.1999, his services were placed at the disposal of Population Welfare Department (PWD). On 18.01.1999, he was appointed as Additional Secretary, PWD, and on 09.08.1999, he was absorbed in PWD in relaxation of rules. Then, on 30.09.1999, Ghee Corp. relieved him but on 18.12.1999, the Government issued a notification for repatriation of the Petitioner. However, on 21.12.1999, the Secretary of Sindh Government informed that the Petitioner has been absorbed, therefore, he cannot be repatriated. By notification, dated 18.1.2013, the Petitioner was absorbed in PSS.

14. The learned Counsel contended that, in pursuance of the impugned judgment, he was de-notified on 02.07.2013 and repatriated to Ghee Corporation though he had been merged in Sindh Government in PSS cadre and Ghee Corporation had become defunct. The Appellant retired on attaining the age of superannuation, on 01.06.2014, one year after de-notification.

CRP No. 393/2013

Mujeeb-ur-Rehman Shaikh vs. Province of Sindh
by Mr. Abdul Rahim Bhatti, ASC

15. Mr. Abdul Rahim Bhatti, the learned ASC, contended that the Petitioner was initially appointed as Assistant Director in Agriculture Department in BS-17 in 1989 through Sindh Public Service Commission. Later, his services were requisitioned by the Environment Department, Government of Sindh for a period of two years in the public interest. A summary was moved for his transfer and, consequently, he was appointed in the Environment Department. On 13.10.2005, he was promoted as Deputy Director in BS-18 through Provincial Selection Board and was granted seniority. The Petitioner was not a party to the proceedings either in the High Court of Sindh or before this Court. He was repatriated to his parent department without considering that the Petitioner fulfilled all pre-requisites of his appointment in the Environment Department, as provided under Rule 9(1) of the Rules of 1974. The learned Counsel submitted that Petitioner was validly appointed by transfer under Rule 9(1), and not under Rule 9-A.

16. He further contended that the word ‘person’ used in Rule 9(1), clearly manifests the intention of the legislature that there is no bar to the appointment of the Petitioner by transfer

under the A.P.T. Rules and in the other three Provinces and the Federation such transfers are ordered in routine. He next argued that the expression ‘person’ used in the Rule 9(1) does not mean Civil Servant only and includes a ‘Government Servant’, who may not be a Civil Servant.

CRP No. 387/2013 in Const.P.71/2011

Imdad Memon and others vs. Province of Sindh and others
by Mr. Hamid Khan, Sr. ASC

17. Mr. Hamid Khan, learned Counsel for the Petitioners, contended that none of the Petitioners was party to the proceedings; therefore, the Court could not have passed an order affecting their rights. He submitted that neither the High Court nor this Court (under Article 199 and Article 184(3) respectively) had the jurisdiction to examine the issue pertaining to the terms and conditions of service of a Civil Servant. The exercise of jurisdiction is barred under Article 212 of the Constitution. The issue of absorption is a matter relating to the terms and conditions of service, to be determined under the Civil Servants Act and the Rules framed thereunder. He submitted that a number of Petitions were filed by Civil Servants absorbed in the Secretariat Group in the High Court of Sindh, in ignorance of the fact that remedy was available to them before the Sindh Service Tribunal. Therefore, the Petitions were barred under Article 212 of the Constitution. The learned Counsel while relying upon the case reported in

Superintending Engineer Highways Circle Multan vs. Muhammad Khurshid (2003 SCMR 1241), submitted that the matter of jurisdiction has not been dealt with in depth. He contended that Rule 9(1) and 9-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provide two modes of

appointment by transfer and both these modes are recognized by law.

18. The learned Counsel submitted that Articles 240, 241 and 242 of the Constitution deal with the civil structure and Article 212 provides remedy to a Civil Servant. These Articles do not relate to fundamental rights. It has to be assessed in light of the aforementioned Articles whether the Supreme Court can adjudicate upon the issue relatable to the terms and conditions of service under Article 184(3). The learned Counsel contended that the Court has to draw a distinction between Article 184(3) and Article 212 while giving the findings. He contended that Article 240 empowers the Provincial Legislature to legislate laws relating to the terms and conditions of service of Civil Servants.

19. He next contended that in order to invoke the jurisdiction of this Court under Article 184(3), the expression 'subject to the Constitution' has to be given narrow meaning, as referred to in the Article 275. The learned Counsel submitted that Civil Servants do not have fundamental rights to invoke jurisdiction of this Court under Article 184(3) of the Constitution. According to the learned Counsel, benefit of Articles 9 and 25 of the Constitution cannot be extended to the Civil Servants.

CRP No. 193/2013

Ali Azhar Khan Baloch v. Province of Sindh etc
by Barrister Farough Naseem, ASC

20. The learned Counsel submitted that the Petitioner was employed as Deputy Manager at Pakistan Steel Mills (PSM), which works under the control of Ministry of Production. On 16.09.1992, upon the directive of the then Chief Minister, his services were

placed at the disposal of the Government of Sindh. For two years, he performed duties at various departments in the Government of Sindh, e.g. on 6.03.1993, he was posted as Project Director, Lines Area, Redevelopment Project KDA in BS-18. Finally, on 25.07.1994, permission was granted for his absorption by the Establishment Division into the Government of Sindh. On 28.05.1994, the Petitioner was finally absorbed as Deputy Secretary in the Sindh Secretariat (PSS) and was placed at the bottom of the seniority list. His lien with the PSM was terminated in 1994. He earned promotions from time to time and finally he was promoted as Secretary (BS-21) in the Sindh Government, by Notification dated 28.9.2012. By notification dated 25.4.2013, issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan, he was appointed by transfer as Senior Joint Secretary (BS-21) in Secretariat Group and his services were placed at the disposal of the Wafaqi Mohtasib for his further posting. He is now posted as Director General of the Wafaqi Muhtasib.

21. The learned Counsel for the Petitioner contended that the cut off date for the application of the impugned decision was held as 1994, therefore, his case was not covered by the impugned judgment. The learned Counsel submitted that the cut off date of 1994 is not backed by any standard. The date given in the litigation in 1996 (in which the Petitioner's case was decided) would be more suitable, which is 22.03.1995. The Counsel contended that the date of 1994 seems to be arbitrarily fixed. The learned Counsel cited the case *Province of Punjab thr. Secretary C&W Department and others vs. Ibrar Younas Butt* (2004 SCMR 67) in support of his submission.

22. The learned Counsel then referred to Rule 5 of Framework of Rules and Procedure applicable to Secretariat, which provides that the appointment of Additional Secretary in the Federal Secretariat can be made from public servants or officials from public or private enterprises. The learned Counsel submitted that if there is such an option available in the Federation, why it should not be made available at the Provincial level. The Petitioner was an employee of PSM, which is a public enterprise. He further submitted that appointments cannot only be made through CSS examinations, citing the Police Service as an example.

23. Alternatively, the Counsel argued that the Petitioner is qualified to be adjusted under Rule 5 and he should either be allowed to go to the High Court and this Honorable Court may observe that the impugned judgment will not come in his way or this Court may give necessary directions to the Department.

24. The Counsel next contended that in pursuance of Services of Pakistan (Redressal of Under-Representation) Ordinance, 2012, on 01.12.2012, the Petitioner was appointed by transfer as Senior Joint Secretary in Secretariat Group in Federal Government on probation under section 6 of the Sindh Civil Servants Act, 1973. On 25.4.2013, the Petitioner was absorbed by the Federal Government and appointed at Wafaqi Muhtasib Secretariat. He submitted that the Federal Government realized that some Provinces were underrepresented, including Sindh and Balochistan. The Ordinance provided that officers could be taken from Provincial Civil Service and inducted under the Ordinance. Counsel submitted that the Petitioner's appointment is valid as his

services were placed in the Federal Government under the aforesaid Ordinance.

25. He next contended that the notification for the Petitioner's absorption was issued prior to the impugned judgment i.e on 12.06.2013. He submitted that if the judgment has to be implemented retrospectively, the Petitioner should be repatriated in PSM and granted backdated seniority.

CMA No. 4663/2013 in CRP No. 409/2013

Mukhtar Ali etc v. Province of Sindh etc
by Mr. M. Aqil Awan, Sr.ASC

26. The learned Counsel, appearing for three Petitioners, Mukhtar Ali Pholijo, Muhammad Saleem Jokhio and Abdul Rashid, submitted that the persons against whom this judgment is being applied were not Civil Servants either before or after their absorption; they were just transferred from one cadre to another.

27. The Counsel submitted that Mukhtar Ali was appointed by Selection Board as a Medical Officer in BS-17 in Sindh Employee Social Security Institution (SESSI). By notification, dated 31.1.1996, he was absorbed in BS-17 in Sindh Council Service, Medical Branch. Before the impugned judgment was passed, the Petitioner was Administrator in District Municipal Corporation, Malir in Executive Cadre.

28. The second Petitioner, Muhammad Saleem, was an officer in City District Government Karachi in BS-18, Administrative cadre. The Counsel submitted that the Petitioner was employed in the same department but he was absorbed in another branch. The Counsel submitted that the services of the employees of KMC are regulated by the Sindh Local Government

Ordinance 1979, whereas the services of the employees of the Councils are governed by the Sindh Councils Unified Grades Service Rules 1982.

29. The third Petitioner Abdul Rashid was appointed as Assistant Director, KMC in BS 16 on 21.03.1996. On 12.4.2003, he was promoted to BS-17 and on 19.04.2007, he was subsequently promoted to BS-18. He was employed as an officer in City District Council; the nomenclature kept changing according to the prevalent laws but, basically, he was an employee of the Municipal Corporation. On 12.2.2013, the Petitioner was absorbed in Sindh Councils Service and promoted to BS-19 on 12.2.2013.

30. The Counsel referred to Rule 12(5) of the Sindh Councils Unified Grade Service Rules, 1982, which provides for appointment by transfer. The learned Counsel contended that Mukhtar Ali's appointment was not challenged but he had been repatriated to his parent office pursuant to the impugned judgment, which does not relate to non-Civil Servants per se. The impugned judgment was passed on 12.06.2013 and he was repatriated on 2.07.2013. The learned Counsel contended that since absorption has been declared illegal by the impugned judgment, the Petitioner, an officer of BS-19, has been repatriated to BS-17.

31. The learned Counsel submitted that the impugned judgment of this Court has curtailed a prevalent practice, which is permissible under the law. The learned Counsel contended that this Court needs to lay down the modalities of implementation and application of the impugned judgment. The modalities regarding deputation and absorption and the process of repatriation after

illegal absorption should also be laid down. He contended that if an officer has been wrongly absorbed, a show cause notice should be issued, the grounds of repatriation should be mentioned and speaking order should be passed, which is justiciable.

32. The learned Counsel submitted that the impugned judgment does not apply to non-Civil Servants as they were not party to the original proceedings and no Counsel appeared on their behalf. He cited the cases of ***Fazal Ahmed Samito vs Province of Sindh*** (2010 PLC (CS) 215) and ***Zulfiqar Ali Domki vs Province of Sindh*** (2012 PLC (CS) 1176) and argued that KMC/Council employees are not Civil Servants. He further submitted that Rule 12 (5) of the Rules permits appointment by transfer.

33. The learned Counsel submitted that, firstly, the judgment should be prospective, particularly, when punitive consequences flow from its application. Secondly, he contended, that the judgment is against the principles of natural justice; the Petitioners were not party to the proceedings and they were not heard. Thirdly, the impugned judgment nullified all absorptions since 1994 even though all the absorptions were not challenged. Furthermore, past and closed transactions under the impugned legislations cannot be held to be unlawful. Fourthly, he contended that the law of deputation says that transfer should be made to a post in the same grade. Similarly, repatriation should also be made in the same grade to the parent department. Lastly, he submitted that the High Court should adjudicate on the matter whether a case is covered by the impugned judgment or otherwise.

C.R.P. No. 407/2014

Shahid Hussain Mahesser vs. Province of Sindh etc
by Mr. Abdul Rahim Bhatti, ASC

34. Mr. Abdul Rahim Bhatti, ASC, argued that on 27.7.1998, the Petitioner was initially appointed as Assistant Director (BS-17) in the I.S.I by the Federal Public Service Commission (FPSC), through competitive process. Subsequently, the F.P.S.C advertised posts of Deputy Director (BS-18) in the Intelligence Bureau. The Petitioner secured first position in the test and on 15.10.2005, he was appointed as Deputy Director in the I.B. In both organizations i.e. the I.S.I and the I.B, the Petitioner had undergone specialized training courses, which includes surveillance, interrogation and investigation. On 25.07.2009, initially his services were placed at the disposal of Government of Sindh on deputation basis for his posting in BS-18, as he belongs to Sindh Rural. Later on, through notification, dated 29.6.2012, (placed at page 234 of P.B), he was appointed as Superintendent of Police (BS-18) by way of appointment by transfer and he severed all connections from the I.B.

35. The learned Counsel stated that the Petitioner was not a party to the proceedings in which the impugned judgment has been passed. He further contended that as far as his qualification, specialized courses and length of service are concerned, they are in conformity with the Rules. He was not lacking any requirement. He then referred to Rule 3(2) of the Sindh Civil Servants A.P.T Rules. He contended that there is no bar against appointment as S.P and the Petitioner met all the requirements provided in Rule 3 (2) of the Rules. He referred to Serial No.9 of the Schedule to the Rules where the post of S.P is mentioned.

36. The learned Counsel argued that the Petitioner joined the Special Branch of the Sindh Police and he fulfills all the conditions laid down for the Special Branch. He had undergone all the training courses in I.S.I and I.B.

37. He submitted that the provision of lateral entry is available in all the occupational groups and it is for the department to send him for training if the Petitioner lacks in some area.

38. He then referred to Rule 7(2) of the APT Rules and stated that the case of absorption of the Petitioner was duly examined by the appropriate Selection Board and was recommended by the two I.G.P's and the Intelligence Bureau. Then the matter was referred to the S&GAD where it was further examined and a formal summary was moved to the Chief Minister who approved it and then notification of absorption of the Petitioner was issued in conformity with the Rules.

39. He submitted that there are cases in which officers from F.I.A were inducted in the Police and the Courts held their induction to be lawful. He submitted that if it was not permissible then there was no need to mention the post of the S.P at S.No.9 of the Schedule to the Rules.

40. The learned Counsel contended that the Petitioner was governed by the Sindh Civil Servants Act, 1973 and he was originally a Civil Servant in the I.B and the I.S.I and his services were placed at the disposal of the Sindh Government.

41. In support of his submissions he referred to the cases of 2004 SCMR 164 and 1993 SCMR 982 to state that even

absorption of employees of autonomous bodies in the Government Department was held to be lawful. He then referred to the case of *2010 PLC (CS) 1415* and states that in this case the person who had not even received specialized police training, yet his appointment was held to be lawful. He then submitted that even if absorption or appointment by transfer is irregular, the department or the functionaries are held responsible and not the individuals. In support of his submissions he referred to the cases of *2013 SCMR 281*, *1996 SCMR 413*, *1996 SCMR 1350*, *2006 SCMR 678* and *2002 SCMR 1034*. He further contended that the impugned judgment would be prospective and not retrospective. In support of his contention he referred to the cases of *2009 SCMR 1169* and *2013 SCMR 34*. He further contended that after the judgment, the Petitioner was repatriated to the I.B, which refused to take his services back under the pretext that his lien was terminated when he was appointed/absorbed in the Sindh Police. He submitted that the case of the Petitioner is that of hardship as he is not even drawing his salary from anywhere.

C.R.P.No. 399 of 2013

Imran Hussain Jaffri v. Farooq Azam Memon and others
by Mr. Shabbir Ahmed Awan, ASC

42. The learned Counsel, Mr. Shabbir Ahmed Awan, argued that on 12.7.2010, the Petitioner was appointed as System Analyst (BS-18) in the Criminal Prosecution Branch through the Sindh Public Service Commission. On 10.9.2011, he was declared surplus and absorbed in the Provincial Secretariat Group.

43. The learned Counsel referred to Rule 9 of the A.P.T Rules and argued that any person from any department can be appointed in PSS, who possesses the matching qualifications. The

prescribed qualification for induction in PSS is merely graduation and the Petitioner has done M.Sc in I.T. He submitted that the Petitioner was validly absorbed in PSS under Rule 9 of the Rules. He contended that the Petitioner was not party to the main Petition in which the impugned judgment has been passed and the Petitioner has been condemned unheard.

CRP No.410 OF 2013

Jasoo Ram vs. Nasim ul Ghani Sahto etc
by Mr. Abdur Rehman Siddiqui, ASC

44. It is contended by Mr. Abdur Rehman Siddiqui, Counsel for the Petitioner that he will adopt the arguments of Mr. Abdul Rahim Bhatti, ASC on legal side. He contended that the Petitioner was posted as Deputy Director (BS-18) in Minority Affairs Department, Government of Sindh and was transferred and absorbed in BS-18 in ex-PCS cadre on 12.3.2013 and, subsequently, was posted as Deputy Secretary in Law Department on 3.4.2013. He contended that the Sindh Government in exercise of powers under Rule 9(1) of the APT Rules was competent to order absorption of the Petitioner. Pursuant to the judgment impugned in these proceedings, the Petitioner was de-notified and was ordered to be repatriated to his parent department.

CRP No. 396 of 2013

Dost Ali Baloch vs. Province of Sindh etc
by Dr. Farough Naseem, ASC

45. The learned Counsel, Barrister Farough Naseem submitted that the Petitioner was not party to the original proceedings. On 20.7.1986, he was inducted as Deputy Assistant Director in IB through the competitive examination in BS-17. On 27.12.1993, Special Branch of Sindh Police requisitioned the

services of the Petitioner on deputation basis for a period of three years. By notification, dated 7.5.1994, the I.B relieved him of his duties to join the Special Branch of the Sindh Police as DSP. At times, the Sindh Police refused to repatriate the Petitioner to the I.B due to law and order situation in the Province. In the meanwhile, the Petitioner was promoted on 2.2.1997 in BS-18. In the intervening period, in 1993, the Petitioner passed the CSS examination, and was recommended to be appointed in the Office Management Group (OMG). The Petitioner made an Application to the Sindh Police to relieve him so that he could join the Civil Services Academy, but the Sindh Police refused to relieve him. The Petitioner was required to report to the Civil Services Academy by 15.12.1994, but, due to refusal of the Sindh Government, he could not take up his appointment in the OMG. According to the learned Counsel, the Petitioner kept on insisting for repatriation since 1995 but the Sindh Government has declined. The Petitioner has performed exceptionally well and, apart from performing his duties, he was organizing technical upgradation, etc. and his retention was required to maintain the continuity and consistency of the department. On 14.10.1998, a notification was issued with the approval of the competent authority, permanently absorbing the Petitioner as SP Political Special Branch, Sindh Police in relaxation of rules.

46. The learned Counsel referred to Rule 4 and Rule 10 of Sindh Civil Servants (APT) Rules, 1974 and Rule 4(3) of Sindh Public Service Commission Functions Rules, 1990 and contended that an officer can be appointed without competitive examination by the order of the Chief Minister. The learned Counsel submitted that all public powers are to be exercised fairly, justly and

reasonably in furtherance of public interest. The Chief Minister cannot blindly do anything, but in exceptional cases like the present one, where the Government of Sindh was instrumental in preventing the Petitioner from joining the Civil Service the Petitioner who was highly qualified and was retained in Sindh Government to maintain law and order in Karachi, the competent authority was justified under Rule 4(3) to absorb the Petitioner in Sindh Government.

47. The learned Counsel stated that after rendering 20 years of service with the Sindh Police, the Sindh Government has repatriated the Petitioner when his lien had been terminated. He lost an opportunity to be part of the OMG due to non-relieving by the Sindh Government. He is an officer of BS-20, currently holding no post, and his lien in IB has also been terminated. Counsel then referred to the case of **Muhammad Malik v. Province of Sindh** (2011 PLC (CS) 1456) while submitting that the Petitioner cannot be compared to PSP because he is in a separate cadre, i.e. Sindh Police. The learned Counsel contended that the Petitioner is wrongly de-notified.

CRP No. 398 of 2013

Muhammad Riaz etc vs. Province of Sindh etc
by Mr. M. Shoaib Shaheen, ASC

48. Mr. M. Shoaib Shaheen, learned ASC submitted that the Petitioner was a regular employee of the Anti Narcotics Forces (ANF) since 1989 and was working as Assistant Director in BS-17 when on 13.5.2003, he was transferred and posted on deputation as DSP in the Sindh Police. The Petitioner was absorbed by notification, dated 26.02.2008, and promoted twice. There was a dispute regarding his seniority which was resolved by the Sindh

Service Tribunal and the High Court of Sindh, approving the Petitioner's backdated seniority and that matter attained finality. The learned Counsel in support of his contention has relied upon the case of ***Pir Bakhsh vs. The Chairman, Allotment Committee and others*** (PLD 1987 SC 145). The learned Counsel submitted that the Petitioner's transfer from ANF to Police under Rules 3(2) and 9(1) of APT Rules, 1974, was justifiable.

49. The learned Counsel contended that the impugned judgment declares that absorption can only be made under Rule 9-A, however, absorption can also be made under Rule 9(1). The Counsel further stated that the Petitioner's transfer has not been validated under the legislative instruments that have been struck down. He submitted that the impugned judgment does not clarify exactly which absorptions are illegal and that even legal appointees have been affected by the impugned judgment, and this Honorable Court must review this judgment.

CRP No.387 of 2013

Imdad Memon and 2 others v. Province of Sindh etc
by Mr. Hamid Khan, Sr. ASC

50. Mr. Hamid Khan, learned Sr.ASC, submitted that the Petitioners were validly appointed by transfer and absorbed. He submitted that Rules 9(1) provides for appointment by transfer, and by promotion. By the impugned judgment it has been held that an employee can only be absorbed under Rule 9-A but not under Rule 9(1). He submitted that Rule 9(1), has to be read with Rule 7(2) and (3) of the Rules. According to the learned Counsel the word 'Person' used in Rule 9(1) would include any person, and competent authority is conferred powers to appoint him by transfer which includes absorption in that post. The learned Counsel

further submitted that lateral movement between the departments is permissible by the Rules of 1974.

Crl.R.P.No.38 of 2014

Asma Shahid Siddiqui vs. Chief Secy. Govt. of Sindh
In person

51. The Petitioner, appearing in person, argued that in the year 1996, she was appointed as Forest Ranger (BS-16) in the Forest Department on the recommendations of the Punjab Public Service Commission. She was married in 1996 and her husband was also a Forest Ranger in the Sindh Forest Department, therefore, she applied for inter-provincial transfer to the Forest Department, Government of Sindh, on the basis of Wedlock Policy. On 11.2.1997, she was absorbed in the Sindh Forest Department as Forest Officer (BS-16). She submitted that during the interregnum, she also qualified the Sindh Public Service Commission examination for appointment to the post of Assistant Registrar (BS-17) in the Co-operative Department, Government of Sindh, and she worked as such for some time, but due to future prospects she came back to the Forest Department. She contended that at the time of passing of the impugned judgment, she was working as Divisional Forest Officer, Hyderabad, when she was ordered to be repatriated to the Forest Department, Government of Punjab. She contended that her lien in the Government of the Punjab had been terminated, therefore, the Government of Punjab had refused to take her services back. She, therefore, requested that her notification of repatriation may be ordered to be withdrawn.

C.R.P.No. 408 of 2013 in CA 12-K of 2012

Muhammad Rizwan Soomro vs. Province of Sindh etc
by Mr. Abdul Rahim Bhatti, ASC

52. The learned Counsel argued that, on 11.7.2006, the Petitioner was appointed as Assistant Director (Investigation) in the NAB. On 2.4.2008, his services were requisitioned by the S&GAD, Sindh, for posting in Government of Sindh, on deputation basis; whereafter, on 10.5.2008, he was absorbed/inducted in the Sindh Police as DSP (BS-17). The learned Counsel submitted that Rule 9(1) of the Sindh Civil Servants (Appointment, Transfer and Promotion) Rules, 1974 confers ample powers upon the competent authority to appoint a person by way of transfer and the procedure provided for appointment in these Rules was duly followed while making appointment of the Petitioner. He further contended that National Accountability Bureau is a subordinate office of the Ministry of Law and the Petitioner was a Civil Servant.

C.R.P. No. 402 of 2013 (Shamsuddin Sheikh vs. Province of Sindh etc)
C.R.P No. 403 of 2013 (Nizamuddin Sheikh vs. Province of Sindh etc)

by Mr. Khurram Mumtaz Hashmi, ASC

53. Mr. Khurram Mumtaz Hashmi, learned ASC, for the Petitioners has contended that Petitioner in C.R.P.No.402 of 2013, the Petitioner was appointed as Sub-Engineer (BS-11) in Public Health Engineering Department, Government of Sindh, on 9.8.1984. On 29.9.1987, he was appointed as Assistant Engineer in Public Health Department and was again promoted as Executive Engineer (BS-18) on 6.10.1999. On 14.05.2005, the Government of Sindh S&GAD Department requisitioned the services of the Petitioner on deputation basis for an initial period of 2 years, for his posting in Works and Services Department. On 26.5.2007, the period of deputation was extended for another 2 years by the

S&GAD Department, Government of Sindh. Consequently, on 8.10.2007, he was absorbed as executive Engineer (BS-18) in the Works and Service Department, Government of Sindh and his name was placed at the bottom of seniority list of Executive Engineers of the Department. The learned Counsel submitted that the Petitioner was transferred from one non-cadre to the other non-cadre post, therefore, his case is not covered by the judgment.

54. The learned Counsel submitted that the position of the Petitioner in C.R.P No.403 of 2013 was similar, as on 12.9.1994, he was appointed as Executive Engineer (BS-17) in Water and Sewerage Board, Karachi (KWSB). On 25.10.1994, the appointment of the Petitioner was regularized and on 27.10.2008, he was promoted as Executive Engineer (BS-18) in the KWSB. Consequently, on 18.8.2008 he was absorbed as Executive Engineer (BS-18) in the Works and Services Department, Government of Sindh. Lastly, he submitted that the impugned judgment is not a judgment in rem but is a judgment in personam.

C.R.P No. 400 of 2013 in CP No. 71 of 2011

Saeed Ahmed Sheikh etc vs. Province of Sindh etc
by Mr. Muhammad Ibrahim Bhatti, ASC

55. The learned Counsel contended that Petitioner No.1 was initially appointed as Section Officer in Provincial Secretariat Service (BS-17) on the recommendation of the Sindh Public Service Commission. On 26.11.2010, he was promoted as Deputy Secretary and on 14.3.2013, the notification of absorption of the Petitioner in ex-PCS in BS-18 in exercise of powers of section 24 of the Sindh Civil Servants Act, 1973 was issued.

56. Petitioner No. 2 Gulshan Ahmad Sheikh was appointed vide notification, dated 29.10.1991 as Additional Private Secretary in Chief Minister Secretariat. In the intervening period, he was appointed as Protocol Officer and on 26.3.2008, the post was upgraded from BS-17 to BS-18. On 14.3.2013, he was absorbed in ex-PCS by CM, Sindh in exercise of power under section 24.

57. The learned Counsel contended that section 24 confers ample powers upon the competent Authority to absorb/induct an officer from one cadre to another cadre. Therefore, absorption of the Petitioner in ex-PCS was validly made.

CRP. No. 411 of 2013 in CA.12-K of 2012

Zameer Ahmad Abbasi v. Province of Sindh etc
by Mr. Abdul Rahim Bhatti, ASC

58. The learned Counsel contended that the Petitioner was initially appointed as Assistant Director (BS-17) in the National Accountability Bureau on the recommendations of the Federal Public Service Commission. He received specialized training from the National Police Academy Islamabad. The S&GAD Department Government of Sindh requisitioned the services of the Petitioner on deputation. Finally, on 29.2.2012, he was absorbed as DSP (BS-17) in Sindh Police by the S&GAD Department. The learned Counsel contended that the appointment of the Petitioner was made by transfer as per Rule 6(1) of the APT Rules. Therefore, his absorption in the Sindh Police was valid. He further contended that as per Recruitment Rules for the post of DSP, the post of DSP is a non-cadre post and the Petitioner was absorbed against the same.

Crl.RP No.74 of 2013

Ghulam Nabi Babar Jamali etc v. Chief Secretary, Sindh
by Mr. Adnan Iqbal Ch. ASC

59. Mr. Adnan Iqbal Ch, learned Counsel for the Petitioners submitted that the Petitioners were not party to the original proceedings. Petitioner No.1 is a Civil Diploma holder appointed initially on 01.06.1984 as Sub Engineer in BS-11 in the Irrigation Department. On 3.12.2003, he was promoted to BS-16 after a delay of 8 years; he had passed his examinations and was entitled to promotion in 1996. On 26.1.2004, he was promoted out of turn for 'gallantry' in performance of his duties to BS-17 as Assistant Engineer.

60. The learned Counsel submitted that on 22.8.1988, Petitioner No.2 was appointed as Sub Engineer in BS-11 in the Irrigation Department. On 22.8.1994, he was promoted from BS-11 to 16 and on 06.10.2003, he received out of turn promotion to BS-17.

61. The learned Counsel submitted that Section 9-A of the Sindh Civil Servants Act, 1973 and Rule 8B of the Sindh Civil Servants (APT) Rules, 1974 allow out of turn promotion and have not been struck down by the impugned judgment. Therefore, the portion of the impugned judgment that nullifies out of turn promotions needs to be revisited because the Rule that allows out of turn promotion is still on the statute book.

62. The learned Counsel submitted that Section 9-A is applicable to all and is not confined to the Police Personnel, so 'promotion for gallantry act' can be given to all Civil Servants. He submitted that the word gallantry has been used and defined in

the Decorations Act, 1975. It states gallantry is a trait that could be exhibited by any Civil Servant regardless of opportunity presented to him in the field. If the opportunity of exhibiting gallantry only arises in the Police Department, it does not mean that other Civil Servants cannot display gallantry. He then referred to the use of the word gallantry in Article 259 of the Constitution. The learned Counsel submitted that the portion of the impugned judgment that confines Section 9A and Rule 8B to the Police Force should be removed.

63. He next contended that the phrase 'beyond the call of duty' used in section 9-A should be interpreted in a broader sense, so as to extend its benefit to all Civil Servants. He submitted that a Civil Servant can be granted out of turn promotion by applying this principle and the case of the Petitioner falls within Rule 8B.

64. He further submitted that Section 9-A was inserted in 2002, which prescribed mode for granting out of turn reward and award by Rules framed in 2005. Rule 8B was introduced in 2005, which provides for constitution of a committee to examine all out of turn promotions. Since the impugned legislations have been declared illegal by the judgment under review, the learned Counsel submitted that the decision of the High Court of Sindh is still in the field. The learned Counsel further contended that out of turn promotion was declared unlawful in *Nadeem Arif v. IG Police, Punjab, Lahore* (2010 PLC (CS) 924). However, before this judgment in 2010, out of turn promotions had been endorsed and approved in numerous judgments including *Capt. (Retd.) Abdul Qayyum v. Muhammad Iqbal Khokhar* (PLD 1992 SC 184), *Punjab Seed Corporation v. Punjab Labor Appellate Tribunal* (1996 SCMR

1946), **Government of Punjab v. Raja Muhammad Iqbal** (1997 SCMR 1428), **IG Police Lahore v. Qayyum Nawz Khan** (1999 PLC (CS) 1381), **Raja Shoukat Mehmood v. Azad Jammu and Kashmir Government** (2003 PLC (CS) 424) and **IG Police, Lahore v. Muhammad Iqbal** (2007 SCMR 1864). The Petitioners were promoted out of turn in 2004; therefore **Nadeem Arif's case (supra)** does not apply to them since change in enunciation of law is prospective and, therefore, their cases should be assessed under Rule 8B.

Crl.RP No.75 of 2013

Ghulam Hussain Korai v. Province of Sindh
In person

65. The Petitioner appeared in person and stated that he is aggrieved by the notification, dated 02.07.2013. He submitted that on 02.07.1995, he was appointed as Assistant Sub Inspector in Central District Karachi under '*shaheed quota*', as a result of the martyrdom of his brother, Mohammad Bux Korai. On 07.12.2001, he was promoted as Sub Inspector by the competent authority. A Committee was constituted which recognized the Petitioner's participation in numerous encounters and his injury in an encounter in 2004. As a result, on 03.04.2008, he was promoted as Police Inspector in recognition of recovery of a container worth Rs.10 crore. He was working as Inspector in (BS-16) in Sindh Police when on 19.11.2009, he was sent on deputation for 2 years as DSP (BS-16) District Prison Malir, which period was extended for another 2 years. On 15.3.2013, he was absorbed as DSP in BS-16 with effect from 19.11.2009. He was next appointed as Officiating Superintendent for 22 months at Sanghar Jail in BS-17 in OPS. His parent department called him back but I.G. Prisons

refused to repatriate him. He was repatriated to his parent department when the impugned judgment was implemented. The Petitioner submits that he has been reverted to his substantive post of Inspector. He contended that he was appointed by transfer in Prison Department under Rule 9(1), which was a valid appointment.

CRP No.76 of 2013

Hafiz Safdar Shekhi v. Javed Ahmed etc
by Mr. Shabbir Ahmed Awan, ASC

66. The learned Counsel, Mr. Shabbir Ahmed Awan, submitted that the Petitioner was not a party to the original proceedings. He is a Civil Engineer appointed as Assistant Engineer at Works and Services Department, Government of Sindh in March, 1993. On 16.03.1995, he qualified through Public Service Commission to be appointed as Assistant Executive Engineer (AEE) in BS-17. In January 2006, his services were requisitioned by the Anti-Corruption Establishment (ACE) as Technical Officer under the rules on deputation, and, on 10.03.2008, he was absorbed as AEE. He was promoted to BS-18 in the Anti-Corruption Department. The contention of the learned Counsel is that once the Petitioner was appointed by transfer in Anti-Corruption Establishment under Rule 9(1) he could not have been called back to his parent department.

Crl.RP No. 77 of 2013

Talib Muksi v. Province of Sindh etc
by Mr. Yawar Farooqui, ASC

67. The learned Counsel Mr. Yawar Farooqui submitted that in 1993, the Petitioner was appointed in BS-17 in Local Govt. Department, Balochistan as Assistant Director. He was promoted

to BS-18. He contended that the Petitioner's son was attacked and he spent two months with his son at Agha Khan Hospital Karachi, where he underwent treatment. The Petitioner applied to the CM, Sindh for transfer on humanitarian grounds, and his transfer was made under section 10 of Balochistan Civil Servants Act. On 03.09.2010, he was posted as Director Food, Sindh by the CM in exercise of his powers under section 24 of the Sindh Civil Servants Act, 1972. He was then appointed as EDO Finance, Sindh and on 14.03.2013, was absorbed in ex-PCS without going through any competitive process. The Petitioner was repatriated to the Balochistan Government in the wake of the impugned judgment; however, he has severed all connections with the Balochistan Government, therefore, he could not be repatriated.

Crl.RP No. 79 of 2013

Syed Shakir Hussain v. Province of Sindh etc
by Mr. Rana Azam-ul-Hassan, ASC

68. The learned Counsel Mr. Rana Azam ul Hassan submitted that Petitioner was not party to the proceedings. On 02.07.1995, he joined Jail Department as Assistant Superintendent Jail in BS-14 and on 15.11.2004, he was promoted to BS-16 as Deputy Superintendent with the approval of the relevant authority under section 9-A. The learned Counsel submitted that the Petitioner was promoted to BS-17 out of turn which promotion was reversed. The grievance of the Petitioner is that appointees of his batch, who were junior to him, have been promoted to BS-17 on regular basis and he has been relegated to BS-16 in the wake of the impugned judgment. He submitted that the Petitioner should also be considered for promotion to BS-17

and his seniority be fixed along with his other colleagues, who were appointed with him in the year 1995 in BS-14.

Crl.RP No. 78 of 2013

Dur Muhammad Panhwar v. Province of Sindh
by Mr. Irfan Qadir, ASC

69. The learned Counsel Mr. Irfan Qadir submitted that the Petitioner, who is qualified as MA-LLB, was appointed as Senior Auditor in Pakistan Military Accounts, Ministry of Defence, Government of Pakistan in BS-11 on regular basis as a Civil Servant. He was then posted in the office of the Controller Naval Accounts Karachi and the post was subsequently upgraded to BS-14. On 07.11.2007, his services were requisitioned and placed at the disposal of Sindh Government, and he was sent on deputation for 5 years. In 2010, his post was again upgraded to BS-16. He was posted in Solicitors Department and was discharging similar duties as of his parent department. He was allowed to work as Superintendent in Solicitors Department in BS-16 till 06.11.2010. By order, dated 14.04.2012, the Petitioner was permanently absorbed. However, in pursuance of the impugned judgment, the Petitioner's absorption was withdrawn and he was repatriated to his parent department.

70. The learned Counsel argued that there are specific Rules framed for this post in pursuance of Rule 3(2) of the APT Rules which state that 30% of posts shall be for appointments by transfer. Furthermore, the Petitioner was transferred under Rule 9(1), which is still intact. Therefore, his appointment was valid and lawful. The Petitioner's appointment was not in violation of the rules or the judgment but his repatriation from the Sindh Government was without notice. The Petitioner was placed at the

bottom of the seniority list, did not receive any benefit under the struck down provisions and he had not earned any out of turn promotion.

71. The learned Counsel further submitted that the Court should not dwell on academic issues. He next contended that this is not a public interest litigation and principles of justice have been violated in the judgment under review as thousands of officers have been condemned unheard. Therefore, the principle of *audi alteram partem* has been violated and the officers were denied their fundamental rights of hearing, fair trial under Article 10A of the Constitution. The Counsel argued that the judgment is discriminatory and violates Article 25, as some officers were heard while others who were not party were not heard.

72. The fact that all these Petitions have been jumbled together is an error apparent on the face of the record. The mess created by excessive use of *suo motu* powers should now be cleared and these decisions should be reviewed. The Counsel contended that the judgment is vague, unclear and contains gross errors pertaining to the Constitution and laws, as under Article 184 (3) of the Constitution, this Court cannot examine the questions relating to terms and conditions of service. The proceedings are void ab initio because the judges of the Honorable Court were under a wrong impression of the law that the Judgment of the High Court of Sindh was to apply in rem and not in personam. The Counsel referred to Articles 189 and 190 of the Constitution and submitted that the judgment was to apply in personam and it must apply prospectively, not retrospectively. When a principle of law is laid down, it applies prospectively. The Counsel referred to *Pir Buksh's*

case PLD 1987 SC 145, in which writ petitions were decided by the High Court against which the Government filed Appeals but in one case no Appeal was filed. Therefore, it was decided that since his case was not before the Court, no adverse order could be passed against him. Hence, his rights were taken away because he was not heard. Therefore, the judgment under review will apply purely in personam and not in rem. The Counsel further submitted that the Supreme Court in fact implemented the judgment of the High Court and this Court is not the forum for this.

73. The learned Counsel contended that there are major inconsistencies within the judgment. He submitted that in para. 116 of the judgment, it has been held that absorption is legal if an officer is transferred to a post that requires matching qualifications, expertise and experience. But para. 175 declares all absorptions illegal. Furthermore, the judgment prohibits transfer of Civil Servants to non-cadre posts, however, there is no law that prohibits transfer of a person against a post held by a Civil Servant especially when the qualifications match. No embargo has been placed on the legislature by the Constitution to include anybody within the ambit of Civil Servant; Article 240 of the Constitution provides to the contrary. The Counsel submitted that Rule 9(1) uses the term ‘person’, therefore it is not confined to any Civil Servant, government servant or public servant only.

74. The learned Counsel further submitted that the concept of absorption and lateral entry is not alien to the country’s jurisprudence. This is evident from Rule 8(1) of Civil Service of Pakistan (Composition and Cadre) Rules 1954, Rule 8 of Trade and Commerce where people can be appointed directly, Rule 7 of

Customs, Rule 9 of Foreign Affairs, Rule 7 of Income tax, Rule 8 of Information, Rule 9(c) of OMG and Rule 7 of Police Group. Thousands of appointments will have to be repatriated in the Federal Government and Punjab Government if absorptions are declared illegal because law has to be applied equally. In para. 128, the impugned judgment held that a deputationist should be a Government Servant, and there is no emphasis that it should be Civil Servant specific. And, there is no law with such a requirement either. But it has been held to the contrary in para. 129 and the judgment in ***Lal Khan's case*** (supra) being relied upon is non-existent.

Crl.RP No. 81 of 2013 (Tariq Mughal v. Chief Secretary, Sindh)
Crl.RP No. 82/2013 (M. Hanif Solangi v. Chief Secretary, Sindh)
 by Mr. Muhammad Munir Paracha, ASC

75. The learned Counsel Mr. Muhammad Munir Paracha, ASC submitted that on 23.09.1998, Petitioner no. 1, Tariq Mughal was appointed as Assistant Executive Engineer (BS-17) on ad hoc basis for 6 months in Port Bin Qasim Authority. His post was regularized on 10.04.1991 w.e.f 06.08.1990. On 16.05.1993, he was sent on deputation for 3 years as Assistant Executive Engineer, ZMC East and on 21.02.1994, he was absorbed in Sindh Council Unified Grade Service in BS-17. On 02.07.2013, he was reverted in implementation of the impugned judgment. The Counsel contended that the judgment is violative of the Order XXVII-A Rule 1 of CPC because no notice was issued to the Advocate General/Attorney General. This was essential as the Court was examining the vires of legislation. The Counsel relied upon the case of ***Federation of Pakistan v. Aftab Ahmad Sherpao*** (PLD 1992 SC 723) in support of his contention. He submitted that

proceedings taken under Article 184 (3) are barred under Article 212 of the Constitution as the proceedings were relatable to the terms and conditions of the Civil Servants and Article 184 (3) is controlled by the Article 212 of the Constitution.

76. The Counsel submitted that legislative instruments can be held ultra vires only on the following 5 grounds; competence of the legislature to legislate such laws, inconsistency with fundamental rights, violation of any provision of the Constitution, inconsistency with injunctions of Quran and Sunnah (declared by the Federal Shariat Court and Shariat Appellate Bench of this Court) and Federal Money Bill. None of the aforesaid grounds existed to reach such a conclusion.

77. The learned Counsel submitted that appointment can be made through promotion or by direct transfer. He next contended that the definition of Civil Servant has been wrongly interpreted. Everyone working in the affairs of the Province is a Civil Servant, not just those who pass competitive examinations. The Court has the power to determine legislative intent, but it cannot declare a law as bad law unless it is invalid. If the Court interprets law in a way that it is against the intent of the legislature, the legislature can revalidate the law so that its true intent is followed. The Counsel submitted that if a judgment interprets law or a law is struck down due to incompetency of Legislature, it can have retrospective effect. However, if a law is invalid because it is inconsistent with fundamental rights, as is the case in the judgment under review, the judgment must be prospective.

78. On 01.03.1990, Petitioner no. 2 Muhammad Hanif Solangi was appointed as Assistant Security Officer (BS-12). In 1994, the post was upgraded to BS-14. On 19.06.2004, he was promoted as Security Officer in BS-16 and on 25.10.2008, he was appointed as Deputy Director Coordination. This post was also upgraded on 19.05.2009. On 15.08.2012, he was assigned charge of Secretary, SITE. Subsequently, he was appointed Deputy Director Admin and Land Management in SITE Ltd Karachi by promotion. He was appointed by transfer and on 22.10.2012, he was absorbed as Deputy Secretary, in the PSS by transfer.

CMA No.583 of 2013 in Crl.RP No. 83 of 2011

Inayatullah Qureshi v. Province of Sindh ETC
by Mr. Shabbir Ahmed Awan, ASC

79. Mr. Shabbir Ahmed Awan, learned ASC contended that the judgment is not applicable to the Petitioner. On 10.05.1987, he was appointed as Research Officer (BS-17) in Government of Pakistan in Planning and Development Division. On 30.11.1989, his services were requisitioned by Government of Sindh, P&D Division as Planning Officer in Project Appraisal Section, P&D Division w.e.f 14.11.1989 on the recommendations of Sindh Public Service Commission by notification, dated 21.10.1992. The post was advertised and on the recommendations of Federal Public Service Commission, the Petitioner was appointed as Assistant Chief (BS-18) on 21.07.1997. He was then promoted and appointed as Deputy Chief in BS-19 w.e.f 15.12.2003 and on 18.08.2004, he was sent on deputation. On 12.4.2008, he was absorbed as Director, Planning and Development Department in Government of Sindh in BS-19, in accordance with section 10A(2) of Sindh Civil Servants Act, 1973. The learned Counsel contended

that he was not a beneficiary of any of the Acts/Ordinances which had been declared ultra vires. Therefore, the judgment does not apply to the Petitioner. Furthermore, nobody had the experience or qualification to be appointed to this post so the Petitioner has not taken up any other Officer's place. The Rules of Business of Sindh and the Federation are exactly the same. Therefore, the Petitioner was protected by the principle of locus poenitentiae. The Counsel submitted that his lien has now been terminated and he is not posted anywhere.

CMA No.860 of 2013

Mir Hussain Ahmad Lehri v. Sindh
by Mr. Shabbir Ahmed Awan, ASC

80. The learned Counsel, Mr. Shabbir Ahmed Awan, contended that on 28.03.1991, the Petitioner was appointed DSP through the Balochistan Public Service Commission in BS-17. His services were requisitioned by the Sindh Government on deputation and subsequently, on 27.10.2003, he was permanently absorbed in Sindh Police as DSP. On 14.01.2005, he was promoted on the recommendations of the Selection Board as Superintendent of Police (BS-18). In accordance with the Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, he was encadered as Superintendent of Police in Police Service of Pakistan. As a result of the judgment under review, the Petitioner has been repatriated to Balochistan Police as DSP.

CRP No. 401 of 2013

Gul Hassan Zardari v. Province of Sindh etc
In person

81. The Petitioner appeared in person and submitted that in 1990, he was appointed as Sub Inspector in the Intelligence

Bureau. He was appointed as Sub Inspector in Sindh Police in 1994 through proper procedure with NOC. Subsequently, he was promoted as Inspector in the Sindh Police and posted at Nawabshah, Police Lines. In pursuance of the impugned judgment, he has been repatriated to the IB, which department has refused to take him back after 26 years as his lien was terminated and now he is nowhere.

CMA No.6628 of 2013 in SMRP No.239 of 2013

Shiraz Asghar Sheikh v. Dr. Nasimul Ghani Sahto etc
by Mr. Abdul Rahim Bhatti, ASC

82. The learned Counsel, Mr. Abdul Rahim Bhatti, contended that on 21.4.2007, the Petitioner was appointed to PEMRA on regular basis as Assistant General Manager (BS-17). He was working as Field Enforcement Officer at Sukkur. On 19.5.2008, his services were requisitioned and on 15.8.2008, NOC was issued by PEMRA to join Sindh Government. On 20.8.2008, Services and General Administration Department (S&GAD) placed his services at the disposal of Provincial Police Services. On 17.01.2009, he was sent for training to National Police Academy, Islamabad. The Counsel contended that the Petitioner was not given backdated seniority. He completed his training from Police Academy and was relieved on 15.7.2010. He was appointed as DSP (BS-17) in the Sindh Police. The learned Counsel submitted that the Petitioner was not party to the proceedings; he was condemned unheard and the principle of *audi alteram partem* was violated.

83. The learned Counsel contended that Rule 9(1) of the APT Rules is for regular appointees. The Petitioner's appointment was made under Rule 3(2) and all requirements of the rules were

satisfied. He submitted that the requirement of passing the exam of the Public Service Commission is for initial appointment and not for appointment by transfer. Furthermore, the Petitioner was required to conclude and complete the training before his appointment as DSP and he has completed the training. The Counsel further contended that the Petitioner's lien with PEMRA has been terminated.

Crl.RP No. 84 of 2013

Khurram Warris v. Chief Secretary Sindh
by Mr. Irfan Qadir, ASC

84. The learned Counsel, Mr. Irfan Qadir, submitted that the Petitioner was granted out of turn promotion for gallantry beyond the call of duty by risking his life. He displayed extraordinary bravery. However, because of the impugned judgment, these promotions have also been declared illegal. The Counsel contended that there are inconsistencies between para. 146 and para. 148 of the impugned judgment. These matters of out of turn promotions were supposed to be scrutinized by a committee according to HC judgment but such committee was never constituted.

Crl.O.P No.121 of 2013 (a/w CRP 193/2013)

Muhammad Shamil Hingorjo vs. Muhammad Ejaz Chaudhry, Chief Secretary Sindh and others
by Mr. M.M. Aqil Awan, ASC

85. The learned Counsel Mr. M.M. Aqil Awan submitted that five officers have filed this contempt application. Petitioners 1, 2 and 3 were never absorbed but they are still here in Appeal as a result of the department exercising its influence and relieving them of their duties. Services and General Administration Department

has issued orders to repatriate the Petitioners but they are not being implemented.

CMA No.353 of 2014 in CrI.R.P No. 39/2014

Munir Ahmed Phulpoto v. Province of Sindh
by Mr. Z.K. Jatoi, ASC

86. The Counsel submitted that the Petitioner was not a party to these proceedings and he has only been granted one out of turn promotion for gallantry under section 9-A. On 13.03.1990, he was appointed ASI. In 1998, he was promoted as Inspector with his batchmates. His gallantry acts were recognized in a meeting on 20.01.2009, referred to on pg. 150 of the paper book, as a result of which he was promoted as DSP.

C.R.P. No.125 of 2014 in Const. Petition No.71 of 2011

Dr. Atta Muhammad Panhwar v. Province of Sindh etc
by Dr. Farough Naseem, ASC

87. The learned Counsel, Mr. Farough Naseem, filed documents on behalf of the Petitioner. The Petitioner had passed the CSS examination in 1990 and was allocated Information Group. While in service, a post was advertised on 14.09.2008 in Public Sector Organization in Alternative Energy Development Board (AEDB), Federal Government. The Petitioner made an application and he was offered an appointment, by notification, dated 17.12.2008, which he accepted. It was a fresh appointment and he was appointed as Secretary to the Board in BS-20. He had made no application but the Federal Government placed him his services at the disposal of the Sindh Government by order, dated 10.07.2010. His services were requisitioned because they required officers having technical knowledge in information sector. On 09.08.2010, he was appointed as Special Secretary at CM

Secretariat. He was given a charge to be posted as DG, Malir Development Authority on 16.07.2011. Then, by notification, dated 19.08.2011, he was appointed DG, MDA in the Local Government under section 6 of Malir Development Authority Act, 1994. He was not absorbed but appointed afresh. Counsel submitted that the post was not advertised; the procedure of appointment is silent. (MDA is a statutory body that falls under the Local Government).

88. The Petitioner was absorbed in PCS cadre but now that appointment has been reversed as a result of the judgment under review. After the judgment was pronounced on 12.06.2013, in order, dated 02.07.2013, Dr. Atta's parent department was listed as MDA/Federal Environmental Board so confusion was created. However, the last post to which he was appointed was DG MDA. Federal Environmental Board has terminated his lien. He should be appointed in MDA in non-cadre post and be allowed to remain in Local Government.

89. The learned Counsel submitted that an order was passed in the judgment under review that those on deputation should be reverted but those absorbed were reverted as well. The Counsel submitted that the Petitioner is not asking to be appointed as DG, but he should be appointed in MDA, because his lien with the Information Group has been terminated.

90. The Counsel submitted that the judgment under review held that absorption can only be made under Rule 9-A. Secondly, he submitted that the effect of the judgment is such that the power available to the CM, which must be exercised justly, equitably and reasonably, under Section 24 of the Act of 1973, has been taken away. The Counsel argued that the Honorable Court

may lay down parameters of exercise of such powers. Appointments made under this section may then be subjected to judicial review, but this power cannot be taken away in its entirety. The power should be exercised in terms of the judgment given in ***Ehsanullah's case*** (1993 PLC (CS) 937). The Counsel submitted that pronouncement on the power under section 24 should be revisited and the Court should also revisit the finding that absorption can only be made under Rule 9-A, keeping in mind Rule 4(3) of the Sindh Public Service Commission Function Rules.

CRL.R.P.40 of 2014

Ata Muhammad Memon v. Chief Secretary, Sindh
(In person)

91. The Petitioner appeared in person and submitted that on 04.08.1987, he was appointed in KDA as Assistant Engineer on temporary basis. He passed the exam and received training. On 27.04.1989, the Petitioner was sent on mutual transfer to Public Health Engineering and he was posted in Hyderabad. He submitted that he has been working for 25 years but he has not been promoted. He has been reverted as a result of the judgment. He joined KMC, as KDA has been dissolved but they reverted him as well.

CRP No. 412 of 2013

Qamaruddin Sheikh v. Secretary Local Govt. Sindh etc
by Mr. M. Shoaib Shaheen, ASC

92. The learned Counsel, Mr. Shoaib Shaheen, contended that on 13.09.1989, the Petitioner was initially appointed as Land Officer in BS-16 in Taluqa Municipal Corporation, Hyderabad. Subsequently, on 01.12.1991 he was promoted as Deputy Management Land Officer to BS-17. On 24.08.2002, he was

promoted as Taluqa Officer Regulation (BS-18). Under Sindh Local Government Ordinance 2001, Hyderabad MC was abolished. Local Government Board was constituted under the Ordinance and the Petitioner was posted as TMO, Orangi Town on 08.12.2003 by the Board. He was absorbed in BS-18 in Sindh Council Unified Grade Service with the approval of the CM, Sindh under Rule 9(1). The Counsel contended that the Petitioner was not a Civil Servant either before absorption or afterwards, therefore the judgment does not apply to him. Employees of the Councils are not Civil Servants. The Acts and the Ordinances that have been struck down by the judgment under review were relatable to Civil Servants and cadre posts. The matter involving non-Civil Servants and non-cadre posts was not before the Honorable Court and the findings in the judgment will not apply to them.

Crl.M.A No.374 of 2014 in Crl.RP No.72 of 2013

on behalf of Petitioner No. 6 Abu Bakr
by Mr. M. Shoaib Shaheen, ASC (**to Check**)

93. The learned Counsel submitted that the Petitioner was held to be nominated in excess of the quota. The judgment under review provided that only officers up to Serial No.12 of the list were validly nominated. The Petitioner was at No. 13 on the list. He submitted that meanwhile, two officers placed above him on the list have been promoted. The learned Counsel submitted that the process of nomination has not been declared invalid and only the nominations in excess of the quota have been so declared, therefore, the Petitioner should have been nominated now when two persons above him have been nominated and promoted.

Crl.R.P. No.41 of 2014

Ali Murad Abro vs. Chief Secretary, Sindh
(In person)

94. On 28.07.1987, the Petitioner was appointed in KDA as Assistant Engineer (BS-17) on permanent basis. On 26.02.1995, He was transferred to C&W Department under mutual transfer with Muhammad Amir (Assistant Engineer at C&W) in BS-17. He is still serving in BS-17. The Petitioner was repatriated to the Local Government Department on 02.07.2013 and was placed at the bottom of seniority list. However, Muhammad Amir, who was mutually transferred with him, has not been repatriated.

C.P. No.968 of 2014

Saleem Ullah v. Province of Sindh thr. Secy. Services,
General Administration etc
by Mr. Tariq Mehmood, Sr.ASC

95. The learned Counsel Tariq Mehmood contended that the Petitioner Saleem Ullah first went to the High Court in respect of his grievance. On 25.10.1994, he was appointed as Assistant Executive Engineer (AEE) in BS-17 in Karachi Water and Sewage Board (KWSB) as a result of due process. In the same year, Muhammad Harris was appointed in C&W Department and was posted at Larkana as AEE. Harris moved an application to be adjusted in Karachi, as he was not comfortable in Larkana. Therefore, on 10.01.1995, there was a mutual transfer of Harris and Saleem Ullah. They were both appointed in the same grade and the same post and they had the same qualification. Chief Secretary approved the transfer in relaxation of rules on 11.07.1995 as both Harris and Saleem Ullah were absorbed. The Petitioner passed the promotion exams but he is still serving in BS-17. Muhammad Harris was subsequently promoted to BS-18 in

KWSB and now he is appointed somewhere else. The Counsel submitted that the Petitioner did not initiate the matter of transfer. He further submitted that he was not a Civil Servant but became one when he was absorbed.

CRP No.760 of 2013 in CrI.O.P.89 of 2011

M. Zareen Khan v. Arshad Saleem Hotiana, Chief Secretary Sindh etc
by Mr. M. Aqil Awan, Sr. ASC

96. The learned Counsel Mr. M.M. Aqil Awan contended that the Petitioner was absorbed from Education Department to Revenue Department. He wants to be sent back to Education Department. Petitioner is not asking for relief, he is just submitting that this is wrong.

C.R.P No.394 of 2013 in C.P.71 of 2013

Muhammad Rafique Qureshi v. Province of Sindh
by Mr. Baz Muhammad Kakar, ASC

97. The learned Counsel Mr. Baz Muhammad Kakar contended that the Petitioner was appointed as Revenue Officer. He was then appointed Deputy Commissioner and was granted out of turn promotion for eliminating encroachment in Port Qasim. His out of turn promotion was withdrawn as a result of the impugned judgment.

NOTICE UNDER ORDER XXVII-A (1) OF CPC

98. Before advertizing to the other issues raised by the learned Additional Advocate General Sindh and the Petitioners' Counsel, we intend to first take up the contentions of M/s Syed Iftikhar Hussain Gillani, Muhammad Munir Piracha and Raja Muhammad Ibrahim Satti, Sr. ASCs that the Constitution Petitions No.21/2011, 21/2013, 23/2013 and 24/2013 filed by Dr. Nasim-ul-Ghani and others ought to have been dismissed for want of

notices under Order XXVIIA (1) of the CPC to the Advocate General Sindh. We have noticed that the Constitution Petition No.71/2011 was fixed in Court on 4.11.2011 when this Court ordered notices, as required under Order XXVIIA (1), not only to the Advocate General Sindh, but also to the learned Attorney General for Pakistan. Even in the Constitution Petitions No.21, 23 and 24 of 2013, filed subsequently, notices were waived on behalf of the Advocate General Sindh. In response to the referred notices, the Advocate General Sindh did appear and assisted this Court throughout the proceedings. For the aforesaid reasons, the contention of the learned Counsel on the non-issuance of the notices to the Advocate General Sindh on the subject Constitution Petitions is without substance.

MAINTAINABILITY OF THE CONSTITUTION PETITIONS BY WHICH THE IMPUGNED LEGISLATIVE INSTRUMENTS WERE CHALLENGED.

99. The learned Additional Advocate General Sindh as well as the other learned Counsel for the Petitioners have objected to the maintainability of the Constitution Petitions under Article 184(3) of the Constitution, inter alia, on the ground that in the aforesaid Petitions, the Petitioners have raised individual grievances in regard to their seniority and promotions, which under the service laws are not construed as 'vested right' of a Civil Servant. Their next argument was that, if at all, any right of the Petitioners is impaired, they could have approached the Sindh Service Tribunal for redressal of their grievances. Similar arguments were advanced by the learned Additional Advocate General and some of the other Counsels opposing the Constitution Petitions at the time of hearing which were attended to and in para

114 of the impugned judgment, it was concluded that the Petitions under Article 184(3) of the Constitution were maintainable.

100. The Constitution gives protection to Civil Servants under Articles 240 and 242, which relate to formation of service structure. Pursuant to Article 240(b), the Sindh Provincial Assembly has enacted the Sindh Civil Servants Act 1973. This Court, in exercise of its Constitutional jurisdiction under Article 184(3) of the Constitution, can examine the vires of an enactment either on its own or on an application or petition filed by a party. The requirement of Article 184(3) of the Constitution is that if this Court considers that a question of a public importance with reference to the enforcement of any of the fundamental rights conferred by Chapter I of Part II is involved, it has the jurisdiction to pass appropriate orders notwithstanding that there might be an alternate remedy. The word 'consider' used in the Sub-Article (3) of Article 184, relates to subjective assessment of this Court. The Supreme Court is the final authority upon the matters affecting judicial determination on the scope of Constitutional provisions. Once the Supreme Court arrives at the conclusion that a question of public importance having nexus with the fundamental rights guaranteed by the Constitution has been raised, the exercise of its jurisdiction under Article 184(3) cannot be objected to either by the Government or by any other party.

101. The perception that a Civil Servant can only seek redressal of his grievance from the Tribunal or from any other forum provided by the Civil Servants Act, is not correct. A Civil Servant, being a citizen of this country, equally enjoys the fundamental rights conferred by Chapter 1 of Part II of the

Constitution. We, while examining the contentions made during the hearing of the Constitution Petitions, have dealt in detail with the issue as to whether any rights of the Civil Servants were offended by the impugned legislative instruments in the Constitution Petitions. We, after hearing the parties, concluded that the impugned legislative instruments were violative of Articles 240(b), 242(1B), 4, 8, 9 and 25 of the Constitution. We have also observed in the judgment under review that the issues raised in the Constitution Petitions were of public importance and had far reaching effects on service structure of the Province, therefore, the Petitions under Article 184(3) of the Constitution, were maintainable before this Court and hence the same were entertained.

102. The Petitioners in the Constitution Petitions had challenged the vires of the legislative instruments, raising the question of public importance relating to the rights of the Civil Servants in Sindh. Such issues did cover the parameters, which attract the jurisdiction of this Court under Article 184(3) of the Constitution and, therefore, following the dictum in the cases of ***Watan Party and others v. Federation of Pakistan*** (PLD 2012 SC 292) and ***Tariq Aziz-ud-Din and others*** (2010 SCMR 1301) it was held that the Petitions were maintainable. The issue of maintainability of the Petitions cannot be raised either by the Additional Advocate General or by the Petitioners' Counsel once this Court, while passing the judgment under review, has held that the Petitions were maintainable. We for the aforesaid reasons, hold that the contentions of the learned Additional Advocate General and other Counsel on the issue of maintainability of the Petitions are without force.

RULE 9(1) OF APT RULES.

103. In order to appreciate the contentions of the learned Additional Advocate General and the Petitioners' Counsel as to whether the Chief Minister/Competent Authority is empowered under Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 to absorb the beneficiaries from different organizations to Provincial Service or Cadre or post, we need to examine the entire scheme of the Sindh Civil Servants Act, 1973 [hereinafter referred to as "the Act"]. The Sindh Civil Servant Act 1973 has been enacted pursuant to the provisions of Article 240 of the Constitution.

104. Section 2 (1)(b) defines the term 'Civil Servant' and excludes under sub-section (i) a person who is on deputation to the Province from the Federation or any other Province or Authority. Section 2(1)(d) defines the term 'Initial Appointment'. The initial appointment as per the definition given under the Act means 'Appointment made otherwise than by Promotion or Transfer'. According to Section 2(1)(g), the term 'prescribed' means 'prescribed by rules'. Section 2(1)(i) defines 'Selection Authority', which includes the Sindh Public Service Commission, a Departmental Selection Board, a 'Departmental Selection Committee' or other 'Authority or Body' on the recommendations of, or in consultation with which, any appointment or promotion, as may be prescribed, is made.

105. Section 5 of the Act provides the mode of appointments to a Civil Service of the Province or a Civil Post in connection with the affairs of the Province to be made in the prescribed manner by the Government or by a person authorized

by it on its behalf. Section 6(1) of the Act provides probation period for a Civil Servant, who is initially appointed to a service or post referred to in Section 5. Section 6(2) is an extension of initial appointment. Section 6(3) prescribes examinations, tests or courses for a Civil Servant, which he requires to qualify before the expiry of his probationary period. In case he fails to complete his required qualification during probation satisfactorily, he would be discharged in terms of Section (6)(3)(a) or under (b) of the Act, and, if he is appointed to such service or post by promotion or transfer, he would be reverted to the service or post from which he was promoted or transferred.

106. Section 7(1) of the Act speaks of confirmation of the Civil Servant on his satisfactory completion of the probation period. Section 7(2) of the Act relates to a Civil Servant promoted to a post on a regular basis. The Civil Servant falling under this category would also be eligible for confirmation on his rendering satisfactory service for the prescribed period.

107. Section 8 of the Act provides that for proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared. Section 9 of the Act provides that a Civil Servant possessing such minimum qualification as may be prescribed, shall be eligible for higher post for the time being reserved under the Rules for Departmental Promotion. Section 10 speaks of posting and transfer of the Civil Servants within or outside the Province with the limitations contained therein. Section 24 of the Act authorizes the Government to deal with the case of a Civil Servant as it appears

just and equitable, whereas Section 26 empowers the Government to frame Rules for regulating the service of a Civil Servant.

108. In exercise of powers conferred under Section 26 of the Act, the Sindh Government, besides other Rules, has also framed Rules called "***The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974***" [hereinafter referred to as "***the Rules***"]. Rule 3(1) of the Rules provides for appointment to a Civil Service or a post by three modes (i) by initial Appointment, (ii) Appointment by promotion and (iii) Appointment by transfer.

109. Rule 3(2) provides the method of appointment, the qualifications and other conditions applicable to a post, laid down by the department concerned in consultation with Services and General Administration Department (S&GAD). Rule 4(1) provides the description of the Authority competent to make appointments to various posts. Rule 5(1) empowers the department or the Government to constitute Departmental Promotion Committees and or Departmental Selection Committees in consultation with S&GAD. Part-II of the Rules deals with the appointments by promotion and transfer whereas, Part III of the Rules deals with the initial appointments.

110. Rule 6(1) authorizes the Government to constitute a Provincial Selection Board, which would recommend appointments by promotion or transfer of the Civil Servants in BS-18 and above carrying special pay. Whereas, Rules 7(1),(2) & (3) deal with appointments by promotion and/or transfer of the Civil Servants without special pay on merits, on the recommendations of the appropriate Departmental Promotion Committee or the appropriate Selection Board constituted by the Government as the case may

be. Rule 8 mandates that Departmental Promotion Committee or the Provincial Selection Board shall consider the qualifications, tenural limitations and requisite conditions laid down for promotion or transfer of a Civil Servant. Rule 9(1) of the Rules authorizes the government/competent Authority to make appointments by transfer of the Civil Servants on regular basis mentioned in the table given in the Rule, which comprises of 3 columns. Column 2 of the table deals with the officers who could be transferred, column 3 of the table mentions the Authority competent to order transfer and column 4 of the table mentions the Department notifying such transfer.

111. Keeping in mind the aforesaid scheme provided by the Act, we would like to examine the scope of Rule 9(1) of the Rules. In the first place, the definition given by Section 2(1)(d) of the Act clearly manifests that initial appointment is an appointment made otherwise than by promotion or transfer. This definition has to be read with Part-II of Rule 6(A) of the Rules, which relates to appointments by promotion or transfer. Section 5 of the Act, which deals with the initial appointment to a Service or a Civil Post, has to be read with Section 8(1) where it is provided that for proper administration of service or cadre, the appointing authority is required to prepare a seniority list with the categories given in the Section based on the recruitment Rules, which are framed in consultation with S & GAD under Section 26 of the Act. The relevant Rule in this respect is Rule 3. In other words, Section 8 of the Act compartmentalizes the different classes of Civil Servants by dividing them in three categories i.e. service, cadre or post as prescribed by recruitment Rules of their departments. This distinction of class has been specifically introduced by the

legislature with the sole object that if a person is initially appointed in one service or cadre or post, his progression would remain in the same cadre, service or post. His vertical growth or progression shall remain within his class by compartmentalizing the Act which regulates his terms of service. What is more interesting is that Section 5 of the Act does not vest any discretion in the Government to relax the Rules for change of cadre. The language of Section 5 is very clear and mandates that the appointments to the Civil Service or post shall be made in the prescribed manner.

112. Appointment by promotion as used in Rule 6(A) is the consequence of initial appointment. Likewise, appointment by transfer is also the consequence of initial appointment. The appointment by promotion is made within the cadre or service or post and, therefore, it does not require any interpretation. The appointment by transfer can only be ordered if the Civil Servant is eligible and qualifies for his transfer under Rule 3(2) of the Rules of the department to which he is to be transferred, read with Rules 4, 7 and 8 of the Rules, which prescribe conditions laid down for such appointments by transfer to such posts. A Civil Servant who is to be appointed by transfer has to appear before the Departmental Promotion Committee or the Provincial Selection Board which will consider his eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his transfer is to be ordered.

113. It is contended by some of the learned Counsel that the term 'person' used in Rule 9(1) of the Act would mean that the Government or the competent authority can order appointment by

transfer of any person from anywhere within or outside the Act by appointing him to any post of equivalent basic scale. We are not persuaded by this argument of the learned Counsel for more than one reason. The word ‘person’ has not been defined either in the Act or in the Rules. It has to be interpreted with the other rules relatable to the appointment by promotion or by transfer. Rule 9(1) speaks of appointment by transfer to be made from amongst the persons holding appointments on regular basis mentioned in column 2 of the table given under the Rule. Therefore, the word ‘person’ as used in Rule 9(1) would relate to the officers, who are Civil Servants and mentioned in column 2 of the table given under Rule 9(1). The word ‘person’ could not be given an ordinary meaning beyond the scheme of the Act and Rules of 1974.

114. We, after looking at the scheme of the Act and the Rules framed thereunder, are clear in our minds that Rule 9(1) does not empower the Government or Selection Authority defined under the Act to appoint a Civil Servant or any other person by transfer to any other cadre, service or post without his eligibility, qualifications and the conditions laid down under Rules 3(2), 4, 6, and 8 of the Rules. Section 8 of the Act makes class of Civil Servants for proper administration and such class is not interchangeable at the whims of the Selection Authorities and/or the Government to extend favours to their blue eyed. There is no discretion given under Section 5 of the Act to appoint any person in Civil Service against a Civil Post in the manner other than prescribed by the Rules. Rule 9(1) does not confer permanent status on Civil Servant on his appointment by transfer nor it contemplates his absorption in the transferee Department as a consequence of his appointment. There is neither procedure nor

mechanism provided under the Act or the Rules to treat appointment by transfer as absorption in the transferee department. Rule 9(1) cannot be used as a tool to allow horizontal movement of a civil servant from his original cadre to another cadre against scheme of the Act and the Rules of 1974. The term ‘transfer’ has to be interpreted in its common parlance and is subject to the limitations contained in Rules 3, 4, 6, 7 and 8 of the Rules 1974. Any appointment by transfer under Rule 9(1) has to be for a fixed term, and, on completion of such term, the Civil Servant has to join back his parent department. The word ‘appointment’ used in the Rule 6(A) cannot be equated with the word ‘initial appointment’ used in the Act which excludes appointment by transfer and promotion. Therefore, restricted meaning has to be given to the expression ‘appointment by transfer’. For the aforesaid reasons, we are clear in our minds that the concept of absorption of a Civil Servant and/or Government servant is foreign to the Act as well as Rule 9(1) of the Rules. Rule 9(1) does not permit transfer of non-Civil Servant to a non-cadre post or to a cadre post. We, in para 126 of the judgment under review, have not discussed the scope of Rule 9(1) as neither the Government nor any of the parties appearing before us had taken the plea that they were appointed by transfer and absorbed under Rule 9(1) of the Rules. However, we had recorded the following finding on Rule 9(1) which is reproduced : -

“No Civil Servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A Civil Servant can be transferred out of cadre to any other department of the Government subject to the restrictions contained under Rule 9(1) of the Rules of 1974.”

115. Now, after we have scanned the entire scheme of the Act and the Rules framed thereunder, we are clear in our minds that the aforesaid finding was in accord with the Act which has been promulgated pursuant to Articles 240 and 242 of the Constitution. We further clarify that even a Civil Servant cannot be transferred to any other cadre, department, post or service unless he is eligible for such post, in terms of the Rules 3(2) and qualifies the test of Rules 4, 6, 7 and 8 of the 1974 Rules as discussed hereinabove.

116. The term ‘transfer’ used in Rule 9(1) has not been defined either in the Act or the Rules of 1974, therefore, we have to attach an ordinary dictionary meaning to it. The ordinary dictionary meaning of the term ‘transfer’ means ‘to move from one position to another.’ If this meaning is attached to the term ‘transfer’ used in Rule 9(1), it would lead to mean an ordinary posting of a Civil Servant from one position to another. Such transfer, however, cannot be construed to qualify the term ‘absorption’ as has been contended by the learned Counsel, which term is alien to the Act and the Rules. Therefore, the appointment by transfer under Rule 9(1), as has been interpreted by us, would be confined to the parameters laid down by the scheme of the Act and the Rules of 1974.

SCOPE OF RULE 9-A OF THE APT RULES

117. We have heard the learned Counsel representing beneficiaries on the scope of Rule 9-A of the Rules. Under Rule 9-A, a person who has been rendered surplus on account of abolition of his post, in any Office or Department of the

Government or autonomous body and/or on account of permanently taking over of the administration of such autonomous body wholly or partially by the Government, can be appointed by transfer to any post in a Department or Office in the Government subject to his eligibility and qualifications as laid down under Rule 3(2) for appointment to such Office. It is further provided under Rule 9-A of the Rules that such person shall be appointed to a post of equivalent or comparable basic scale and, in case such post is not available, then to a post of lower Basic Scale. Rule 9-A of the Rules provides further restriction to the seniority of such person to the post by reckoning his seniority at the bottom of the seniority list from the date of such appointment, with a further rider that his previous service, if not pensionable, shall not be counted towards pension and gratuity. We have dealt with the aforesaid issue in para 116 of the judgment under review and have set parameters of Rule 9-A of the Rules in para 126 of the judgment under review.

118. After hearing the arguments of the learned Counsel for the petitioners, we need to further clarify the scope of Rule 9-A of the Rules. Rule 9-A of the Rules has been introduced with the object to accommodate the persons who are rendered surplus by abolition of their posts or the organization in which they were working has been taken over by the Sindh Government. This Rule, as has been noticed, cannot be used as a tool to accommodate a person by abolishing his post with an object to appoint him by transfer to a cadre or service or post in deviation of Rule 3(2), which is a condition precedent for appointment to such post. In order to exercise powers under Rule 9-A of the Rules, there has to be some justification for abolition of the post against which such person was working. This justification should come from the

Department and or organization which shall be in consultation with the S&GAD and approved by the Competent Authority. Rule 9-A of the Rules does not permit appointment by transfer of a non-Civil Servant to any other Department and/or organization controlled by the Government to a post which restricts the transfer under Rule 3(2) of the Rules. A person can only be appointed by transfer under Rule 9-A, if he has the eligibility, matching qualifications, expertise coupled with the conditions laid down under Rule 3(2) for appointment to such post. The Competent Authority under Rule 9-A of the Rules while ordering appointment by transfer cannot lose sight of the conditions prescribed under Rule 4, 6(A) and 7. Therefore, any appointment by transfer under Rule 9-A of the Rules in violation of the aforesaid conditions is a nullity, and the conclusion reached by us in para 126 of the judgment under review has to be read in addition to the findings recorded herein above.

ABSORPTION

119. The learned Additional Advocate General, as well as the Counsel representing the Petitioners had argued that the Competent Authority had the powers under Rule 9(1) of the Rules to absorb any person from within and/or outside the Province through appointment by transfer. We have already dealt with the scope of Rule 9(1) of the Rules, which permits appointment by transfer subject to the conditions prescribed therein. It does not permit absorption from one cadre to another cadre. The Competent Authority in the cases of the Petitioners has ordered absorption by relaxing the rules, which is in deviation of the scheme of the Act framed pursuant to the dictates of Article 240, read with the qualifications incorporated in the Rules of 1974. We may observe

that Section 5 of the Act does not give any discretion to the Selection Authority to bypass the restriction by relaxing the Rules. If such discretion is allowed to prevail, it would destroy the fabric of Civil Service, which is protected by the mandates of Articles 240 and 242 of the Constitution. It is also a misconception that Rule 9-A permits transfer of a non-Civil Servant to a Cadre, Service or Post meant for a Civil Servant, recruited in the Cadre or Service or Post after competitive process. Such an appointment by transfer in the nature of absorption would only be permissible, if the pre-conditions laid under Rule 9-A of the Rules are met.

120. At the time of hearing of Petitions No.71/2011 and others the learned Additional Advocate General, as well as the Petitioners appearing in these Petitions, attempted to justify absorption on the basis of legislative instruments, which were declared unconstitutional. In these review proceedings, the Petitioners have changed their stance claiming their absorption on the basis of Rule 9(1) of the Rules. We have separately dealt with the scope of Rule 9(1) of the Rules. Under Rule 9(1), appointment by transfer would only mean an ordinary transfer from one post to another post, subject to the restrictions contained in the Rules of 1974. Neither a person can be absorbed under these Rules nor a Civil Servant or non-Civil Servant or a deputationist could be allowed to travel horizontally outside his cadre to penetrate into a different cadre, service or post through an appointment by transfer. Rule 9(1) cannot override the provisions of Section 8 of the Act, which have been introduced by the Legislature for proper administration of Service law. For the aforesaid reasons, in addition to our findings recorded in the judgment under review, we

are of the considered view that the Petitioners have failed to make out any justifiable ground to seek review of the judgment.

ABSORPTION IN UNIFIED GROUP

CRP.409/2013 Mr. Aqail Awan for the Petitioner 1-3
Crl.R.P.81/2013 & CRP.412/2013

121. It was contended by M/s Aqil Awan, Shoaib Shaheen, Muhammad Munir Peracha and Tariq Mehmood, learned ASCs, that the impugned judgment is only applicable to Civil Servants and does not cover non-civil servants. We, with respect, disagree with the contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their service Rules. The contention of the learned Counsel was that the Petitioners were non-Civil Servants and were absorbed from different organizations to Sindh Councils Unified Grades Service under Rule 9(1) of the Rules of 1974, read with Rule 12(5) of the Unified Grades Service Rules 1982. We have already held that the power to appoint by transfer under Rule 9(1) would only extend to a Civil Servant. The Sindh Councils Unified Grades Service Rules 1982 regulate the terms and conditions of the employees appointed therein. Rule 3(1) provides composition of Service, whereas Sub-Rule (2) of Rule 3 spells out its Sub-Banches. Rule 3(4) places a restriction on the members for transfer from one Branch or Sub-Branch to another Branch or Sub-Branch within the service group. Rule 12 of the (Unified Group) Service Rules deals with the seniority of the members. Rule 12(5)(a) confers powers of transfer

by Appointment on the competent authority. The Petitioners, who were not members of the Unified Services and were wrongly absorbed in the Service of Unified Group, in deviation of the Service Rules of 1982 cannot be allowed to continue in the Unified Services Group. The Chief Minister or the Board cannot induct any stranger in the service of Unified Group either by exercising powers under Rule 9(1) of the Rules of 1974 or by Rule 12(5) of the Rules of 1982. Any such induction is against the recognized norms of Service law and, therefore, the Petitioners were liable to be repatriated to their parent departments forthwith in terms of the judgment under review. ‘Absorption’ of the Petitioners under the garb of ‘Appointment by Transfer’ in the Unified Services Group has directly affected the rights of the employees in the service, guaranteed under Articles 4 and 9 of the Constitution. Such act on the part of the Chief Minister or the Board had circumvented the very framework of the Service Rules of 1982 by introducing a parallel system based on discrimination and favouritism, which the law does not recognize.

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 Articles 240, 242, 4,8,9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, learned ASC 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.

123. The contention of Mr. Adnan Iqbal Chaudhry, learned ASC was that the provisions of Section 9-A of the Act could not be interpreted to exclude other categories of Civil Servants except police force. According to him any Civil Servant other than the Police Officer, can also perform gallantry act beyond the call of duty. We are not persuaded by the arguments of the learned Counsel for the Petitioner as the terms ‘Gallantry’ and ‘Beyond the Call of Duty’ have to be interpreted by invoking the Rule of ‘ejusdem generis’. The expression ‘Gallantry’ used in Section 9-A of the Act has not been defined either in the Act or in the Rules, therefore, we have to give to term ‘Gallantry’ the ordinary dictionary meaning while interpreting it. The term ‘Gallantry’ means ‘Brave, Courageous, valiant, fearless, bold and daring’. All these adjectives directly relate to the nature of duty which a Civil Servant performs. These adjectives can only be attached to security personnel. Therefore, we can safely hold that the term ‘Gallantry’ as used in Section 9-A of the Act could only apply to Police Personnel and award and reward on their gallantry performance be conferred upon them and not to other species of Civil Servants. However, such award or reward should be given under a transparent process after objective assessment of their velour by a committee, in a just manner under the prescribed Rules.

124. Petitioners in Crl.R.P.No.74 of 2013, Engineers by profession, appearing in person have contended that they were

given out of turn promotions in the year 2004, as they made efforts to provide water to the persons at the tail, and in discharge of their duties they were exposed to criminal prosecution. This is the normal duty of a Civil Servant of the Irrigation Department and it cannot be construed to be a Gallantry act beyond the call of duty. Besides, we have already held that grant of out of turn promotion is unconstitutional, therefore the Petitioners' claim does not merit acceptance.

CRL. R.P.84/2013

Khurram Waris vs. Chief Secretary Sindh etc

125. Mr. Irfan Qadir, learned ASC appearing on behalf of Khurram Waris (*in Crl. Review Petition No.84/2013*), has contended that the Petitioner was granted out of turn promotion for his gallantry act beyond the call of duty by risking his life and displaying extraordinary bravery. We are provided an extract from his service profile by the Sindh Government. According to the Service profile of the Petitioner, he is a Sub-Inspector in BS-14 and was granted out of turn promotion three times; (i) from Sub-Inspector to the rank of Inspector in BS-16, (ii) from Inspector to the rank of DSP in BS-17 and (iii) from DSP to the rank of SP in BS-18. This Court, after hearing the Sindh Government and other parties, had struck down the legislative instruments which gave protection to the out of turn promotions by the judgment under review, declaring it as unconstitutional.

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.

127. We do support that the morale of the Police personnel be boosted as intended in the legislative instruments, which were struck down by us and on their exceptional acts of gallantry, they should be given awards and rewards on merits; but even this has not been done by the Sindh Government. In recent past, a Senior Police Officer, who was known for his bravery, has lost his life in an attack by the terrorists and his family was not offered compensation publically. Likewise, another senior police officer, who is also known for his courage, in combating terrorism in Karachi, was attacked by the terrorists and had received serious injuries but survived. The Sindh Government has not so far publically announced a reward for him, which is pathetic. In fact in para 164 of the judgment under review, we had directed the Sindh Government to constitute a Committee under Rule 8-B, to evaluate the performance of the Police Officers upon whom the proposed awards or rewards have to be bestowed. We recommend that the Police Officers, who risk their lives in the given most unstable conditions of Karachi, should be given adequate protection and in case, where the Police Officers while fighting against terrorism have lost their lives, their families should be looked after by the Sindh Government. The Sindh Government should adopt the policies of the Armed forces, where in such like cases, the personnel and their families are taken care of under a prescribed procedure.

128. For the aforesaid reasons, which we had already recorded in the judgment under review, we are not persuaded by the contentions of the learned ASC to change our earlier view. This Review Petition merits dismissal.

**WHETHER THE JUDGMENT UNDER REVIEW
OUGHT TO HAVE BEEN MADE PROSPECTIVE**

129. The Learned Additional Advocate General Sindh and almost all the Counsels representing the petitioners have contended that the Judgment under review ought to have been applied prospectively. The learned Counsels have jointly contended that the benefits accrued to the Petitioners by the 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. Mr. Irfan Qadir, learned ASC, has contended that the judgment is in personam and would not apply to his clients. Syed Iftikhar Hussain Gillani, learned Sr. ASC has contended that judgments always apply prospectively and not retrospectively. In this regard he has placed reliance 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). We have taken note of such contentions of the learned Counsels at the time of hearing of the original Petitions, and were not persuaded for reasons stated in paras 174 and 175 of the judgment under review. 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.

131. In such like circumstances, by striking down the legislative instruments, the Court was obliged to provide a corresponding remedy to the aggrieved Civil Servants who had suffered because of the unconstitutional and illegal benefits accrued to the beneficiaries of the impugned legislations. As a result of the judgment under review, the rights of the meritorious Civil Servants as provided under the Constitution and law have been restored, ensuring, *inter alia*, their inter-se seniority and legitimate expectations of attaining upper ladder of their careers.

132. We hold that the cases relied upon by Syed Iftikhar Hussain Gillani, learned Sr. ASC, and the other learned Counsel are distinguishable on facts. In the present case if the contentions of the learned Counsel are accepted then on the one hand the ill-gotten benefits would receive judicial approval against the provisions of the Constitution and Law and, on the other hand, the

sufferers of the benefits accrued to the Petitioners would be left with no remedy or recompense. In other words, the progression and career of the meritorious Civil Servants would suffer irretrievably, whereas the beneficiaries of unconstitutional and illegal measures would thrive and progress their careers unimpeded if the judgment is made applicable prospectively. Whereas in the case **'Regarding Pensionary Benefits of the Judges of Superior Courts** (supra) relied upon by the learned ASC, no one will be burdened except the public exchequer.

133. This Court, in the case of **Dr. Mobashir Hassan and others vs. Federation of Pakistan and others** (PLD 2010 SC 265), while striking down the N.R.O, had directed to withdraw the benefits extended to the accused persons under the N.R.O and, consequently they were ordered to be retried.

134. The learned Counsel for some of the Petitioners have objected to the cut-off date of 1994 for the purposes of application of this judgment. We have clarified this fact in our judgment under review that this date was provided to us by the learned Additional Advocate General, on instructions of S&GAD. We confronted the learned Additional Advocate General to satisfy us as to the reasons for mentioning the year 1994. He contended that in the original Constitution Petition No.D-932/2009 of High Court of Sindh, Karachi, filed by Dr. Nasimul Ghani Sahito and others, the absorption of the Officers from 1994 onwards was challenged and therefore, he, on instructions of the S&GAD, intimated this Court that the legislative instruments, which were impugned in Constitution Petitions No.71/2011, 21, 23 & 24 of 2013 before this

Court, extend protection to the Officers absorbed and/or granted out of turn promotions or back-dated seniority from 1994 onwards.

We will not delve into this factual controversy of the cut-off date as we believe, we have enunciated the principles in the judgment under review strictly in the light of the Constitutional and statutory provisions, which are not time bound.

MALA FIDE

135. The contentions of the learned Additional Advocate General Sindh and some of the Petitioners' Counsel that the judgment under review has attributed mala fide to the Legislature is also without substance. No such finding has been recorded in the judgment under review. However, one of the Hon'ble Judges of the Bench, while concurring with the findings of the judgment under review, had added a note wherein it had been maintained that in the given circumstances of the case it was difficult to attribute *bona fide* to the legislature. It had been clearly observed in that note that mala fide cannot be attributed to the legislature. Therefore, the contentions of learned Additional Advocate General and Counsel are devoid of any force.

SCOPE OF SECTION 24 OF THE ACT.

136. During hearing of the Review Petitions, we have noticed that the competent authority in a large number of cases, had passed orders of absorptions of the Civil Servants/Government Servants/Employees of Autonomous Bodies, semi-Autonomous Bodies and Corporations, and had granted them back-dated seniority besides the out of turn promotion, by using the expression 'In Relaxation of Rules'. Ex-facie, these powers were exercised by the Competent Authority by resorting to Section 24 of

the Act, which is an enabling provision and confers residuary powers upon the competent authority, to redress the grievance of an individual in a hardship case.

137. The Competent Authority under Section 24 of the Act can grant benefit to an individual if it considers it just and equitable, without offending and impairing the statutory rights of other Civil Servants/Employees. The exercise of powers under Section 24 of the Act by the Competent Authority in cases of the Petitioners travelled beyond the scheme of the Act, framed under the mandate of Articles 240 read with Article 242 of the Constitution. The Competent Authority can exercise powers under Section 24 of the Act, by relaxing rules, if there is a vacuum in law, but such powers cannot be exercised under the garb of the term “Relaxation of Rules” with the intent to bye-pass the mandate of law for extending favours to a person or an individual, offending and impairing the statutory rights of other Civil Servants. The Competent Authority, by an executive order, cannot frame Rules in exercise of powers under Section 24. The authority conferred under Section 24 of the Act is confined to hardship cases, without negating the vested rights of the other Civil Servants and/or causing prejudice to their interests.

MECHANISM FOR UPGRADATION OF POSTS

138. During the hearing of the review petitions, we have noticed that the Sindh Government has upgraded certain posts of individuals without any mechanism of upgradation to benefit them. The expression ‘upgradation’ is distinct from the expression ‘promotion’ which has not been defined either in the Act or the Rules framed there-under, and is restricted to the post and not

with the person occupying it. The upgradation cannot be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in public interest. In the absence of these pre-conditions, upgradation is not permissible. We have noticed that some of the civil servants have been promoted to higher posts against the tenural limitations, without qualifying the requisite departmental examinations/trainings under the garb of upgradation. Such civil servants having not been promoted in accordance with law need to be reverted to their substantive ranks/posts which they were holding immediately before their upgradation and their seniority shall be determined along with their batchmates. The Sindh Government shall undertake this exercise and report compliance within 4 weeks through the Chief Secretary, Sindh.

ABOLITION OF POSTS

139. During the hearing of the Review Petitions, we have noticed that the Sindh Government has abolished some posts in individual cases with the object to accommodate civil Servant or Government Servant to appoint him by transfer to a post, service or cadre contrary to the restrictions contained in Rule of 1974 against his eligibility. The term ‘abolition’ has not been defined in the Sindh Civil Servants Act, 1973. However, this expression has been used in Rule 9-A of the Rules of 1974. A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case, if the department requires restructuring, reform or to meet exigency of service in public

interest. The department can abolish a post for justiciable reason. Therefore, in future if a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition.

WHETHER A CIVIL SERVANT CAN APPROACH THE HIGH COURT OF SINDH IN A SUIT OR IN CONSTITUTION PETITION IN RELATION TO TERMS AND CONDITIONS OF HIS SERVICE

140. We have noticed that since more than a year, the High Court of Sindh has been entertaining Civil Suits of Civil Servants relating to their terms and conditions of service. This issue was taken note of by us in our orders dated 30.08.2012 (in Cr.Misc. Applns No. 42-K of 2012 and others) and 03.01.2014 (in Civil Petition No. 345-K of 2013), relevant portions of which are reproduced below : -

"We have heard the learned ASC, learned AAG and Secretary Services and have also perused the record. It is an admitted fact that the Applicant is on deputation and issue of right of audience of a deputationist has been fully dealt with in the Judgment dated 10.1.2011 of this Court in Civil Petition No.802-K of 2011. The Applicant after the Judgment of this Court dated 10.1.2011 and order of this Court passed on 2.5.2012 did not relinquish the charge and challenged the notification of his repatriation before Sindh High Court, which notification was issued on 2.5.2012 pursuant to the directives of this Court and obtained status-quo order. The High Court, in exercise of its Constitutional jurisdiction, could not pass an order of status quo in respect of a notification (No.S.O.II (SGA&CD)1-169 dated 2.5.2012, which on the face of it shows that it was issued by the Government of Sindh in strict compliance of the order of the Supreme Court dated

2.5.2012. However, a learned Division Bench of the High Court of Sindh in an unprecedented manner, in violation of Article 189 of the Constitution, not only entertained the petition of the applicant praying therein for such relief and passed such order, but repeated this illegality by passing similar orders in some other petitions. It seems that the respondents in these cases were also passively party to such illegality as they did not respond to such illegality by raising such objection, which was otherwise evident from the very language of the said notification. We expect that in future the High Court of Sindh would be vigilant while entertaining petitions of such nature. A copy of this order may be sent to the Registrar, High Court of Sindh for perusal of the Honourable Chief Justice of the High Court and its circulation amongst other Honourable Judges of the High Court of Sindh."

Civil Petition No.345-K of 2013

"The issue of intervention of Sindh High Court in service matters has also been noticed by this Court on 20.12.2013 in Civil Petition No.1927 of 2013 whereon a Misc. Application bearing No.7632/2013, following order was passed:-

- "3. Subject to all just exceptions, this CMA is allowed.*
- 4. We have noted with concern that off late interference has been made by the High Courts in exercise of jurisdiction under Article 199 of the Constitution notwithstanding the Constitutional bar contained in Article 212 of the Constitution. In the referred circumstances, we are persuaded to direct the Registrar, High Court of Sindh, Karachi, to give a detail list of all those pending cases in which order of a departmental authority in a service matter has been challenged and stay has been granted. The report shall be submitted within two weeks of the receipt of this order."*
- 7. We have been provided with a list of the suits and Constitutional Petitions relating to service matters of the police officers pending in the Sindh High Court and in many of these cases, interim*

orders have been passed. We are further informed that pursuant to the judgment of this Court referred to hereinabove the Inspector General of Police, Sindh, has issued a Standing order to re-fix the seniority position of different police officers on their demotion in line with the findings of the judgment of this Court and in a suit bearing No.970 of 2013, the Sindh High Court has suspended the operation of said Standing Order, as a result of which the Sindh Government cannot fix seniority position of the police officers, which run in many thousands.

8. *The learned Additional AG further informed us that pursuant to suspension of operation of the Standing Order, many police officers who were sent on training had to be withdrawn and some of them had filed different Constitution Petitions, which included Petitions No.4414 of 2013, 4447 of 2013, 4722 of 2013 and 4775 of 2013, impugning their withdrawal from police training and the learned Division Bench of Sindh High Court has directed them to become party in the suit in which interim orders were passed.*
9. *Prima facie, we fail to understand as to how could the Sindh High Court while exercising jurisdiction as a Civil Court under Civil Procedure Code or even under the Constitution can overlook the provisions of Article 212 of the Constitution, which bars their jurisdiction. Besides, pursuant to the judgment of this Court neither a party can approach the Sindh High Court directly nor the latter can entertain any proceedings either on the Original side or under Article 199 of the Constitutional jurisdiction on any of these issues decided by this Court. Moreover, seniority of a Civil Servant relates to the terms and conditions of a Civil Servant and the Service Tribunal has the jurisdiction to decide it.*
10. *We are also surprised to notice that inspite of the specific directions contained in the judgment of this Court, which judgment was ordered to be circulated amongst the learned Judges, the Suit No.102 of 2013 is still pending with interim order, which is violative of Article 189 of the Constitution. We are disturbed to notice that Sindh High Court has assumed the jurisdiction of Sindh Service Tribunal and is entertaining civil suits and Constitution*

petitions overlooking the bar contained under Article 212 of the Constitution.

11. *In these circumstances, we feel it more appropriate that this petition and the list of cases submitted by Mr. Ali Sher Jakhrani, AIGP, Legal, through Mr. Muhammad Sarwar Khan, Additional AG, Sindh, be placed before the Honourable Chief Justice of Pakistan, for his kind perusal and passing appropriate orders, which may be taken up alongwith Petition No.1927 of 2013 in which a directive was issued by this Court to the Registrar of Sindh High Court to submit a list of pending cases relating to service matters, as reproduced hereinabove, so that the parameters under which High Court while exercising jurisdiction either under CPC or the Constitution, can be determined and issue be settled once for all and or in the alternative the issue can be taken up alongwith the Review Petition filed by the Sindh Government against the referred judgment of this Court, as the intervention of the nature by the High Court would defeat the effect of the judgment of this Court and the beneficiaries of the instruments which were declared ultra vires of the Constitution should be dealt with in terms of the judgment of this Court without loss of time. Prima facie, beneficiaries of the instruments which were declared ultra vires of the Constitution through the different proceedings initiated by them in the Sindh High Court in fact have attempted to defy the judgment of this Court and are liable to be proceeded against for committing willful contempt."*

141. Besides the aforesaid orders, even in the judgment under review, we have observed as under:-

"177. Before parting with the judgment, we are surprised if not shocked to see that the Sindh High Court has entertained a Civil Suit No.102 of 2013 filed by Mirza Shahbaz Mughal relating to out of turn promotion, which is one of the issues pending adjudication before this Court. In this respect the background is that a Criminal Misc.Application No.278/2013 was filed by Syed Mehmood Akhtar Naqvi, in which he has given brief story of Shahbaz Mughal, who was appointed ASI on 29.01.1996 and promoted as Sub-Inspector on 17.12.2001 and was confirmed as Sub-Inspector on 18.12.2003. He was promoted as Inspector on 26.04.2004 on adhoc basis with the condition that he will not claim seniority over his seniors and will retain his original position in the

promotion list and his promotion will be regularized on his turn alongwith his batch mates vide order dated 18.02.2009. However, he was promoted out of turn on adhoc basis as DSP in his own pay and scale. An application was made to the Chief Minister by his mother and his seniority was fixed and regularized on 01.04.2011. On the intervention of this Court on 03.09.2012 out of turn promotion granted to him along with Hamid Ali Bhurgari and Abdul Jabbar Khan and their inter-se seniorities were revised and he was reverted to his original rank of Sub-Inspector.

178.
 179.
 180.

181. In fact, order of the nature has disturbed us and in such like situation earlier this Court has passed orders when the Sindh High Court entertained Constitutional Petitions and suspended Notifications of the Sindh Government which were issued under the directives of this Court. AG office has also failed to discharge its duties by not bringing the real facts to the notice of the Sind High Court, which has resulted in suspension of the Notification. In any event the proceedings in Suit will be regulated by the findings in these proceedings.”

142. The High Court of Sindh, overlooking the aforesaid observations, has continuously entertained the Civil Suits and Constitutional Petitions in defiance of Article 189 of the Constitution. We did communicate to the High Court of Sindh through the Registrar that the High Court of Sindh does not have jurisdiction over the aforementioned issues and that a Civil Servant can only approach the Services Tribunal for redress of his grievances, but this direction has not been cared about by some of the learned Judges, overlooking the provisions of Articles 175, 189 and 212 of the Constitution.

143. Section 9 of Civil Procedure Code confers general jurisdiction upon Courts to try all suits of civil nature. In order to appreciate the scope of Section 9 of CPC, the same is reproduced herein under:

“9. Courts to try all Civil Suits unless barred. – The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil

nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation: *A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.”*

144. Civil Courts are Courts of ultimate jurisdiction with regard to a civil right, duty or obligation, unless their jurisdiction is either expressly or impliedly barred. Section 9 of the Code only confers jurisdiction upon Courts and does not grant a substantive right of action. The right of action is to be established by reference to the substantive law. After the promulgation of the Constitution of 1973, the jurisdiction of civil courts has been restricted in respect of the matters of Civil Servants relating to their terms and conditions of service. Article 240 of the Constitution in Part XII Chapter-I deals with structure of Civil Services. Pursuant to Articles 240 and 242 of the Constitution, the Sindh Assembly promulgated Sindh Civil Servants Act, 1973, on 5th December 1973, to regulate the appointment of persons to, and the terms and conditions of service of persons in the service of Pakistan in connection with the affairs of the province of Sindh. The language of the preamble is reproduced hereunder:-

“To regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan in connection with the affairs of the Province of Sindh.

WHEREAS it is expedient to regulate by law, the appointment of persons, to, and the terms and conditions of service of persons in, the service of Pakistan in connection with the affairs of the Province of Sindh and provide for matters connected therewith or ancillary thereto:”

145. The Preamble to the Civil Servants Act, in fact, reflects the language of Article 240 of the Constitution. On the 5th December, 1973, the Sindh Assembly also promulgated the Sindh

Service Tribunals Act, 1973 by which Service Tribunal was established to exercise jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants. The Preamble to the Sindh Service Tribunals Act is reproduced herein under:-

“Whereas, it is expedient to provide for the establishment of Administrative Tribunals, to be called Service Tribunals, to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, and for matters connected therewith or ancillary thereto:”

146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunal Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under CPC cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:-

“175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.”

149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to

terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under Section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.

151. We, for the aforesaid reasons, conclude that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil Servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 and the law.

152. During the present proceedings, we were informed by the learned Additional Advocate General Sindh and other petitioners that the Civil Servants have filed suits and petitions before the High Court of Sindh on the subject, which was conclusively determined by this Court in its judgment under review. We called for the list of the Constitution Petitions as well as of the suits which were filed before the High Court of Sindh, and we are shocked to notice that numerous petitions and suits filed by the Civil Servants were pending and in some cases even restraining orders had been passed in the matters strictly falling outside the ambit of the suit or writ petition and the only and proper forum available in such cases was the Tribunal.

153. More alarmingly, we also observed that some of the suits and petitions were clearly in violation of the principles set by this Court in the judgment under review. The admission of these suits and petitions by the Learned Judges concerned obviously confront and defy Article 189, if not attract the provisions of Article 209 of the Constitution.

154. Hence, the suits and C.Ps which have been filed by the officers who were de-notified by the Sindh Government in compliance with the judgment under review, shall stand abated as the High Court of Sindh lacks the jurisdiction to hear such suits and CPs in view of the bar under Article 189. However, the Plaintiffs or Petitioners, whose suits or CPs stand abated by this judgment can approach this Court if he has not filed Review Petition earlier.

155. The second category of the Petitions relates to the Civil Servants, who have filed Petitions or Suits against orders of departmental authorities which have no nexus with the findings of

the judgment under review. The list provided to us by the Registrar reflects that the Civil Servants have filed as many as 2, 278 Constitutional Petitions besides a substantial number of Suits in the High Court of Sindh in relation to their terms and conditions of service.

156. We direct the Hon'ble Chief Justice of the High Court of Sindh to constitute a Special Division Bench comprising Senior Judges of the Court to scrutinize the aforesaid Constitutional Petitions, in the light of the principles enunciated by this Court in these proceedings. In case, the learned Special Division Bench comes to the conclusion that the subject matter of the Constitution Petitions relates to the terms and conditions and or the disciplinary proceedings of the Civil Servants, they shall forthwith remit such Constitutional Petitions to the Sindh Service Tribunal or the Federal Service Tribunal, as the case may be.

157. Likewise, the Hon'ble Chief Justice of High Court of Sindh shall also constitute a Special Bench comprising the Senior Judge of the Court, who will examine the nature of Civil Suits filed by the Civil Servants and transfer them to the Sindh Service Tribunal or the Federal Service Tribunal, as the case may be, in case such suits pertain to the terms and conditions of their service including disciplinary proceedings, forthwith under intimation to this Court. The Federal Service Tribunal or the Sindh Service Tribunal, on receipt of the R&PS of the Constitution Petitions or Suits, shall treat them as Appeals deemed to have been filed before them on the date when presented before the High Court of Sindh and decide them in accordance with law. The question of

limitation, if involved, will be considered by the respective Tribunals, in accordance with law, in the peculiar facts and circumstances of the cases.

158. In the same manner, the Civil Suits filed by the employees of statutory bodies or Government Servants relating to their terms and conditions of service inclusive of the disciplinary proceedings, who are serving in the organizations having statutory service Rules, shall be transferred to be heard by a Division Bench in Constitutional jurisdiction treating them as Constitutional Petitions for disposal in accordance with law. The Chief Justice of the High Court of Sindh shall constitute the Special Benches within a week from the date of communication of this judgment. The Special Benches, as directed above, shall take up the cases on day to day basis and complete the aforesaid exercise within two months from the date of constitution of the Benches. The Registrar, High Court of Sindh, shall submit periodic compliance report after every two weeks for our perusal in Chambers.

159. We, for the aforesaid reasons, dismiss all these review petitions along with the C.M.As (*except the cases dealt with separately in Review Petitions and Civil Suits*) in the light of our findings recorded hereinabove, which are in addition to the findings recorded in the judgment under review.

160. We direct the Chief Secretary, Sindh, to create surplus pool within the parent department, of the officers/officials who have been de-notified and create vacancies to accommodate them, within a period of two months from the date of communication of this judgment. The officers/officials who have been repatriated to their parent departments shall be entitled to salaries and other

benefits from the date they were relieved to join their parent departments. Their seniority shall be maintained in their parent departments with their batch-mates, as if they were never relieved from their parent departments. Expiry of period of lien shall not come in the way of the officers to deprive them from joining the parent department. In case, if the parent department has been abolished, the competent authority, shall appoint them by transfer in terms of Rule 9-A, subject to the restrictions contained therein, in line with the findings recorded by us in these proceedings. We make it clear to the Sindh Government that if any other officer, who was covered by the judgment under review or by this judgment, is still working in Sindh Government in willful defiance of the judgments, he shall be repatriated and or transferred to his parent department, post or cadre forthwith. Pendency of proceedings filed by any such officers/officials who have been ordered to join their parent department or otherwise continuing in defiance of the judgment of this Court by obtaining any restraining order from any forum including the High Court of Sindh shall not come in the way of the Sindh Government in implementing this judgment.

161. The Sindh Government is directed to implement the judgment in letter and spirit. Non-compliance of any part of this judgment shall expose the Chief Secretary, Sindh, Secretary Services, Secretary Law, concerned Secretary of the department or any officer found instrumental in this behalf besides the beneficiary to contempt proceedings. Compliance report shall be submitted by the Chief Secretary, Sindh through the Registrar of this Court for our perusal in Chambers, within 15 days from the date of communication of this judgment.

**REPATRIATION OF OFFICERS TO
FEDERAL GOVERNMENT**

162. By the judgment under review, we had directed the Sindh Government to repatriate the officers beneficiaries of the legislation, which was struck down by the judgment under review. We are informed that many Departments of the Federal Government have declined to accept the officers repatriated by Sindh Government in compliance with the judgment under review. The Additional Advocate General, who appeared in the Review Petition has brought to our notice the grievances of the officers, which belong to the Federal Government or to the institution run under the patronage of Federal Government inter alia, on the ground that their period of lien with the parent Department has expired and or there was no vacancy to accommodate them.

163. This Court has already held in the judgment under review that initial order of their transfer from the parent departments to the Sindh Government was not backed by the mandate given by the civil servant law, which is promulgated pursuant to Articles 240 and 242 of the Constitution. Therefore, such orders by the parent Departments are without lawful authority. Consequently, the expiry of the period of the lien will have no bearing.

164. The list of the officers is reproduced herein below:

**REPORT REGARDING PRESENT STATUS OF OFFICERS / OFFICIALS OF FEDERAL
GOVERNMENT & OTHER PROVINCIAL GOVERNMENTS WHOSE ABSORPTION IN
SINDH GOVERNMENT WAS CANCELLED**

1. Services, General Administration And Coordination Department

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
1.	Dr. Muhammad Ali (BS-21), on deputation with Federal Government.	Zarai Taraqiati Bank Limited	PSS (BS-20)	<p>On cancellation of his absorption, the Establishment Division was requested vide letter dated 03.07.2013 for Honourable retention of Dr. Muhammad Ali alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the Zarai Tarraqiati Bank Limited has informed that he has not joined his duty in the Bank further informing that his name was struck from the Bank staff strength with effect from 13.03.2006 and he ceases to have any lien in the Bank vide letter dated 21.11.2006.</p>

2.	Dr. Atta M. Panhwar (BS-20), Secretary, Livestock & Fisheries Department.	Malir Development Authority / Federal Environmental Board	Ex-PCS (BS-20)	<p>On cancellation of his absorption, the Establishment Division was requested vide letter dated 03.07.2013, for Honourable retention of Dr. Atta Muhammad Panhwar alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that Ministry of Water & Power informed them that he was working in Alternative Energy Board, Ministry of Water & Power. It was also informed by the Ministry of Water & Power that upon his appointment as Director General, Malir Development Authority, Local Government Department Sindh Karachi, his lien was terminated on 27.08.2013 and the whereabouts of the officer are not known. Mr. Atta Muhammad Panhwar has also requested Sindh Government for correction in the Notification of his repatriation indicating him as an officer of Malir</p>
				Development Authority rather than Federal Government. He also filed Suit No.2200 / 2014. The Honourable High Court vide its Order dated 29.10.2014 suspended operation of S&GAD's Notification dated 06.06.2014.
3.	Syed Abid Ali Shah (BS-20)	Ghee Corporation of Pakistan (Defunct)	PSS (BS-19)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Syed Abid Ali Shah along with 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the officer reported to the Establishment Division on 05.11.2013 and his case was being forwarded to the Ministry of Industries & Production for taking action for his joining / adjustment on priority.</p> <p>As per record, his date of birth is 01.06.1954. Thus, he retired from government service on 31.05.2014.</p>
4.	Mr. Rasool Bux Phulpoto (BS-21), on deputation with Federal Government	Ministry of Local Government, Government of Pakistan	PSS (BS-19)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Rasool Bux Phulpoto alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>However, in the meantime, he vide his application dated 22.11.2013, requested for cancellation of Notification regarding his absorption in PSS on the grounds that he was absorbed before the cut off date i.e. 1994. Accordingly, with the approval of the Competent Authority i.e. Chief Minister Sindh, the Notification of cancellation of his absorption was withdrawn. Disciplinary proceedings have also been initiated against him for causing the loss to the Government during his posting in the Pakistan Steel Mills Karachi. He has also retired from Government service on attaining the age of superannuation on 14.03.2014.</p>

5.	Mr. Talib Hussain Magsi, (BS.19), Director, Food Department.	Local Government Department, Government of Balochistan	Ex-PCS (BS-19)	<p>In pursuance of orders of the Hon'ble Supreme Court he stood relieved / repatriated to his parent department / Government.</p> <p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Talib Hussain Magsi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the Government of Balochistan has been informed of the repatriation of the officer.</p>
6.	Mr. Abdul Wahab Shaikh, Awaiting posting.	Intelligence Bureau, Government of Pakistan.	Ex-PCS(BS-19)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Abdul Wahab Shaikh alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that as per Intelligence Bureau, Mr.Abdul Wahab Shaikh Director has joined I.B on 16.07.2013 after repatriation from Government of Sindh.</p>
7.	Mr. Ali Azhar Khan Baloch (BS-21) appointed by transfer as Senior Joint Secretary (BS-21) in Secretariat Group, Government of Pakistan	Pakistan Steel Mills Corporation	PSS (BS-18)	<p>In pursuance of orders of Honourable Supreme Court of Pakistan passed in Criminal Original Petition No.89 / 2011, his absorption in the Provincial Secretariat Service along-with others was withdrawn / cancelled ab-initio vide SGA&CD's Notification dated 02.07.2013 and he stood relieved to join his parent organization i.e. Pakistan Steel Mills Corporation.</p> <p>However, the Establishment Division issued notification whereby pursuant to the approval of the Prime Minister, his services were placed at the disposal of Sindh Government vide notification dated 09.10.2013.</p> <p>The Establishment Division was requested to modify the above order and adjust Mr. Ali Azhar Khan Baloch</p>

				in his parent organization i.e. Steel Mills Corporation, Ministry of Production, Government of Pakistan. He also submitted his joining report in Sindh Government and a Summary for Chief Minister was floated apprising the Chief Minister of the above position. The Summary was returned back to reprocess the case in the light of Establishment Division's Notification dated 09.10.2013. The Establishment Division however vide its Notification dated 27.12.2013 repatriated him to his parent department i.e. Pakistan Steel Mills under Ministry of Industries and Production.
8.	Mr. Ali Hassan Brohi (BS-20) Secretary, Supply & Prices Department.	Ministry of Sports & Culture, Government of Pakistan	PSS (BS-18)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Ali Hassan Brohi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that the Ministry of Inter Provincial Coordination, Pakistan Sports Board is not aware of his latest status, further informing that NOC for his absorption / appointment by transfer in Sindh Government was issued by them subject to the condition that no lien will be kept for the officer and his name was struck off from roll of Pakistan Sports Board and as such he ceases to have any link with the department since 1995.
9.	Mr. Maqbool Ahmed Memon (BS-18) Deputy Secretary, Agriculture Department.	Sehwan Development Authority / Sui Southern Gas Company	Ex-PCS (BS-18)	He was repatriated to his parent Department i.e. Sehwan Development Authority (SDA)/SSGC vide Notification dated 02.07.2013. The Secretary Sehwan Development Authority stated that due to want of vacancy the said officer could not be adjusted in SDA. He has not reported to Local Government Department. Besides, his parent department is also SSGC.

2. Planning and Development Department

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
10	Mr. Inauyatullah Qureshi	Planning Commission, Planning Division, Government of Pakistan	Director (BS-19) Monotoring Evauation Cell, Planning and Development Department, Government of Sindh.	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Inayatullah Qureshi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that the Ministry of Planning & Development has informed that the officer has reported and joined his duties in the Ministry vide Notification dated 29.10.2013.
11.	Mr. Ghulam Murtaza Abro	NES Lahore PAK,	Assistant Chief (BS-18) Planning & Development.	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Ghulam Murtaza Abro alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that letter / reminders issued to Ministry of Water & Power. No response is received.

3. Forests & Wildlife Department :

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
12.	Mrs.Asma Shahid Siddiqui	Monitoring & Evaluation Cell, Forest Department, Government of Punjab	Range Forest Officer (BPS-16)	On cancellation of her absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mrs.Asma Shahid Siddiqui alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that the case concerns with the Government of Punjab who have

				already coordinated with the Government of Sindh. Moreover, the Government of Sindh vide their letter 12.03.2014 informed that the Government of Punjab has been informed of the officer's repatriation.
13.	Mr.Sikandar Ali Siyal	Food & Agriculture Division, Islamabad.	Assistant (BPS-11)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Sikandar Ali Siyal alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that as the Ministry of Food & Agriculture stood devolved, the matter was earlier taken up with M/O National Food Security who informed that none officers / officials amongst those mentioned in the list belong to that Ministry and regarding Mr.Siyal they further informed that he belonged to Forestry, the Planning & Development Project. Food & Agriculture Division (Devolved) and that Forestry is working under Climate Change Division, therefore, they requested that his case may be forwarded to that Division. Ministry of Climate Change was accordingly requested for status whose reply is still awaited.</p>

9. Food Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
14	Mr.Lal Khan Jatoi	Employees Oldage Benefit Institution (EBOI)	Deputy Director Food (BPS-18)	In compliance to Order of Honourable Court, his absorption was withdrawn. He stands relieved from Food Department to join his parent Organization in Federal Government.
15	Mr. Sarfaraz Ahmed Tunio	Sui Southern Gas Company	Deputy Director Food (BPS-18)	In compliance to Order of Honourable Court, his absorption was withdrawn. He stands relieved from Food Department. The Managing Director, SSGC requested for present status of Mr.Tunio who has been informed that the officer stands relieved to report to his parent Organization and he is no more employee of Food Department, Government of Sindh.

12. Rural Development Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
16	Mr. Muhammad Hanif Memon	Peoples Program Wing, Government of Pakistan	Assistant Director (Dev)(BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Muhammad Hanif Memon alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that as per Rules of Business, there is no entity viz Peoples Program Wing. The Organization seems to be related to defunct Peoples Works Program. The status of Organization was ascertained from Cabinet Division who have informed that the officer has not yet joined the Cabinet Division (Devolution Cell).</p>

13. Health Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
17	Dr. Lubna Mahmood Shah	Pakistan Steel Mills, Ministry of Production, Government of Pakistan	Chief Medical Officer (BS-19), Civil Hospital, Karachi	<p>On cancellation of her absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Dr.Lubna Mahmood Shah alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that Ministry of Industries have, in reply dated 27.02.2014, inter-alia informed that on absorption in Government of Sindh, the Health Department her name was struck off from strength of Pakistan Steel and her lien was not maintained by Pakistan Steel and as such at present she is not on the roll of Pakistan Steel. However, she stands relieved from Sindh Government.</p>

14. Works & Services Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
18	Mr. Jam Anis-ur-Rehman	Sui Southern Gas Company	Executive Engineer (BS-18)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Jam Anis-ur-Rehman alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that Sui Southern Gas Company Limited, Ministry of Petroleum, Gas & Natural Resources have informed that the officer has not reported for duties.</p>
19	Mr. Zahid Hussain Lashari	Sui Southern Gas Company	Executive Engineer (BS-18)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Zahid Hussain Lashari alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that Sui Southern Gas Company Limited, Ministry of Petroleum, Gas & Natural Resources have informed that the officer has not reported for duties.</p>
20	Mr. Akhtar Nabi Dogar	Sukkur Electric Power Company	Executive Engineer (BS-18)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Akhtar Nabi Dogar alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that Ministry of Water & Power has been requested for status regarding joining back of the officer. Response is awaited despite of issuance of reminders.</p>

15. Local Government Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
21	Agha Shafique Ahmed Durrani	Pakistan International Airlines	(BS-19)Lyari Development Authority	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Agha Shafique Ahmed Durrani alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that as per Pakistan International Airline Agha Shafique Ahmed Durrani was repatriated in PIAC and subsequently he was released from service on account of his early retirement.</p>
22	Mr. Irshad Ahmed Magsi	Zarai Taraqiat Bank Limited	SCUG Service (Admn Branch)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Irshad Ahmed Magsi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that as officer was working in Local Government Department, Government of Sindh, Mr.Irshad Ahmed Magsi repatriated and relieved to immediately report to his parent department. Status has been sought from ZTBL Government of Sindh was informed accordingly of the position who have vide their letter dated 12.03.2014 have advised the officer to immediately report to his parent Ministry / Division / Organization and further telling the officer that in case of any difficulty to bring the matter to the notice of concerned Ministry / Division / Organization as well as Secretary Establishment Division.</p>

23	Mr.Tariq Mughal	Port Qasim Authority	BS-17	In compliance to Order of the Honourable Supreme Court, his absorption was cancelled vide Notification dated 02.07.2013. However, subsequently his services were placed at the surplus pool of Local Government Department vide Local Government Department's Notification dated 11.04.2014. The Local Government Department vide its another Notification dated 09.07.2014 placed his services at the disposal of Administrator, Karachi Metropolitan Corporation. The Notification of placement of his services at the surplus pool of Local Government Department and placement of his services at the disposal of Administrator KMC dated 11.04.2014 and 09.07.2014 have been cancelled and he has been directed to report to his parent Department i.e. Port Qasim Authority vide Notification dated 15.11.2014.
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16. Labour Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Withdrawal of absorption	Present Status
24	Mr. Owais Maqsood Mughal	National Bank of Pakistan	Deputy Director (BPS-17), Sindh Employees Social Security Institution (SESSI)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Awais Maqsood Mughal alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the Ministry of Finance was requested for status regarding joining back of the officer. In response, the Ministry has informed that NBP was consulted in the matter which informed that the officer was an employee of NBP and worked from 26.06.2006 to 27.06.2007. It has further been added that on his resignation from the service, he was relieved from the Bank accordingly and that since his relieving on 27.06.2007, he is not associated with the bank in any capacity whatsoever.</p>

17. Police Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Absorption withdrawn	Present Status
25	Mr. Muhamamd Malik	Federal Investigation Agency (FIA)	Senior Superintendent of Police (BS-19)	In compliance to Orders of Honourable Court, he reported to his parent Department on 21.08.2013. He retired from Government on 30.09.2013.
26	Mr. Dost Ali Baloch	Intelligence Bureau, Government of Pakistan	Superintendent of Police (BS-18)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Dost Ali Baloch alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that the parent Department of Mr. Dost Ali Baloch i.e. Intelligence Bureau has informed that Mr. Dost Ali Baloch individually requested for his status and he was informed that NOC was issued to him for his absorption in the Sindh Police without any lien and he severs all connections with the Intelligence Bureau. However, he did not report to Intelligence Bureau. He has also filed C.P No.D-1261 / 2011 before the Honourable High Court of Sindh. The decision is still awaited.
27	Mr. Abdul Hadi Bullo	Office Management Group, Establishment Division, Government of Pakistan	Superintendent of Police (BS-18)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Abdul Hadi Bullo alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that OMG is being his parent Cadre, officer's case is being dealt with OMG Section, who have informed E-Wing that the officer has filed a Writ Petition in the Honourable High Court of Sindh requesting to set aside his repatriation orders issued by Government of Sindh. Moreover, Government of Sindh vide their letter dated 12.08.2014 have confirmed that the officer has litigated against

				withdrawal of his absorption and the Honourable Sindh High Court has passed orders on 24.09.2013 to maintain status quo and decision is awaited. The officer vide his letter dated 24.03.2014 has informed of above position i.e. litigation and vide notification No.PF.144/93-OMG-II dated 04.08.2005, he had severed all connections with Office Management Group.
28	Mr. Shahid Hussain Mahesar	Intelligence Bureau, Government of Pakistan	Superintendent of Police (BS-18)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Shahid Hussain Mahesar alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the parent Department of Mr. Shahid Hussain Mahesar i.e. Intelligence Bureau has informed that Mr. Shahid Hussain Mahesar individually requested for his status and he was informed that NOC was issued to him for his absorption with the Sindh Police without any lien and he severs all connections with the Intelligence Bureau. However, he did not report to Intelligence Bureau. He has also filed C.P No.D-74 / 2011 before the Honourable High Court of Sindh.</p>
29	Mr. Muhammad Riaz Soomro	Anti-Narcotics Force, Government of Pakistan	Deputy Superintendent of Police (BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Muhammad Riaz Soomro alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the Ministry of Narcotics Control has informed that he has not contacted / reported to Anti-Narcotics Force.</p> <p>With the approval of the Competent Authority i.e. Chief Minister Sindh the Notification regarding withdrawal of absorption of Mr. Muhammad Riaz Soomro was withdrawn vide Notification dated 11.05.2014.</p>

				In pursuance of directives dated 15.08.2014 passed by the Honourable Supreme Court of Pakistan in Civil Petition No.694-K /2013 filed by Mehar Ali Dayo and with the approval of the Competent Authority i.e. Chief Minister Sindh, the Notifications of withdrawal of cancellation of absorption of Mr. Muhammad Riaz Soomro was cancelled / withdrawn vide Notification dated 20.08.2014 and he stood relieved to report to his parent Department.
30	Mr. Muhammad Rizwan Soomro	National Accountability Bureau, Government of Pakistan	Deputy Superintendent of Police (BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Muhammad Rizwan Soomro alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the services of Mr. Muhammad Rizwan Soomro have been taken by the National Accountability Bureau as informed by the NAB.</p> <p>With the approval of the Competent Authority i.e. Chief Minister Sindh the Notification regarding withdrawal of absorption of Mr.Muhammad Rizwan Soomro was withdrawn vide Notification dated 11.05.2014.</p>
31	Mir Hussain Ahmed Lehri	Balochistan Police	Deputy Superintendent of Police (BS-17)	In pursuance of directives dated 15.08.2014 passed by the Honourable Supreme Court of Pakistan in Civil Petition No.694-K /2013 filed by Mehar Ali Dayo and with the approval of the Competent Authority i.e. Chief Minister Sindh, the Notifications of withdrawal of cancellation of absorption of Mr.Muhammad Rizwan Soomro was cancelled / withdrawn vide Notification dated 20.08.2014 and he stood relieved to report to his parent Department.
				On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mir Hussain Ahmed Lehri alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.

				The Establishment Division, vide its letter dated 31.03.2014, informed that the case concerns Government of Balochistan who vide their letter dated 12.03.2014 have informed that the Government of Balochistan have been informed of officer's repatriation.
32	Mr. Zameer Ahmed Abbasi	National Accountability Bureau, Government of Pakistan	Deputy Superintendent of Police (BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Zameer Ahmed Abbasi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the services of Mr.Zameer Ahmed Abbasi have been taken by the National Accountability Bureau as informed by the NAB.</p> <p>With the approval of the Competent Authority i.e. Chief Minister Sindh the Notification regarding withdrawal of absorption of Mr.Zameer Ahmed Abbasi was withdrawn vide Notification dated 11.05.2014.</p> <p>In pursuance of directives dated 15.08.2014 passed by the Honourable Supreme Court of Pakistan in Civil Petition No.694-K /2013 filed by Mehar Ali Dayo and with the approval of the Competent Authority i.e. Chief Minister Sindh, the Notifications of withdrawal of cancellation of absorption of Mr.Zameer Ahmed Abbasi was cancelled / withdrawn vide Notification dated 20.08.2014 and he stood relieved to report to his parent Department.</p>
33	Mr.Sheraz Asghar Shaikh	Pakistan Electroinc Media Regulatory Authority (PEMRA), Government of Pakistan	Deputy Superintendent of Police (BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr. Shiraz Asghar Shaikh alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the PEMRA has informed that he is no more employee of PEMRA after his absorption in Sindh Government, as he severs all his connections with PEMRA.</p>

34	Mr. Muhammad Naeem	National Database Registration Authority (NADRA), Government of Pakistan	Deputy Superintendent of Police (BS-17)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Muhammad Naeem alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that NADRA informed that at the time of his absorption in Sindh Police his lien was not marked and his name was struck off the strength of NADRA further adding that he is no more employee of NADRA and thus his reversion cannot be entertained at this stage.</p>
35	Mr. Ali Gohar Baladi	Anti-Narcotics Force, Government of Pakistan	Stenographer (BS-16)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Ali Gohar Baladi alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the Ministry of Narcotics Control informed that he has not contacted / reported to Anti-Narcotics Force.</p>
36	Mr. Nisar Ahmed Bullo	Balochistan Police	Inspector (BS-16)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Nisar Ahmed Bullo alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.</p> <p>The Establishment Division, vide its letter dated 31.03.2014, informed that the case concerns Government of Balochistan who vide their letter dated 12.03.2014 have informed that the Government of Balochistan have been informed of officer's repatriation.</p>
37	Mr. Zulfiqar Ali Bullo	Balochistan Police	Inspector (BS-16)	<p>On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Zulfiqar Ali Bullo alongwith 37 other officers / officials of Federal Government and the</p>

				Provincial Governments as well, whose absorption was cancelled.
				The Establishment Division, vide its letter dated 31.03.2014, informed that the case concerns Government of Balochistan who vide their letter dated 12.03.2014 have informed that the Government of Balochistan have been informed of officer's repatriation.
38	Mr. Gul Hassan Zardari	Intelligence Bureau, Government of Pakistan	Sub-Inspector (BS-14)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Gul Hassan Zardari alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.
				The Establishment Division, vide its letter dated 31.03.2014, informed that the officer reported for joining at Intelligence Bureau. The Intelligence Bureau informed the officer that NOC was issued to him for his absorption by the Sindh Police without any lien and he severs all connections with the Intelligence Bureau.
39	Mr. Abdul Razzak	Frontier Constabulary Peshawar	Assistant (BS-11)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Abdul Razzak alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.
				The Establishment Division, vide its letter dated 31.03.2014, informed that the letter seeking status issued to Ministry of Interior. Reminders issued. Response awaited.
40	Mr. Muhammad Saeed Khan	Frontier Constabulary Peshawar	Assistant (BS-11)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Muhammad Saeed Khan alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled.
				The Establishment Division, vide its letter dated 31.03.2014, informed that the letter seeking status issued to Ministry of Interior. Reminders issued. Response awaited.

41	Mr. Ghulam Mustafa Zardari	Anti-Narcotics Force, Government of Pakistan	Assistant Sub-Inspector (BS-09)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Ghulam Mustafa Zardari alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that as per Ministry of Narcotics Control, he has not contacted / reported to ANF so far.
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18. Solicitor Department / Law Department:

S#	Name of officer / official	Department / Organization at the time of absorption	Absorption withdrawn	Present Status
42	Mr. Dur Muhammad Panhwar	Office of Controller of Navel Accounts Karachi	Superintendent (BS-16)	On cancellation of his absorption, the Establishment Division, vide SGA&CD's letter dated 03.07.2013, was requested for Honourable retention of Mr.Dur Muhammad Panhwar alongwith 37 other officers / officials of Federal Government and the Provincial Governments as well, whose absorption was cancelled. The Establishment Division, vide its letter dated 31.03.2014, informed that the letter has been issued to M/O Finance to obtain status regarding joining back of the officer. Government of Sindh vide letter dated 12.03.2014 informed that the officer has filed C.P NO.D-3255 / 2013 before the Honourable High Court of Sindh Karachi and decision is awaited.

165. We, in the peculiar circumstances of the matter, direct the aforesaid officers to report to the Secretary Establishment Division, Islamabad, within 15 days from the date of this judgment. The Secretary Establishment shall create a Devolution Cell in the respective parent Departments and, on availability of the vacancy in the parent Departments, they will be posted. In case, the Department of the Federal Government and or the Organization to which the officer belongs has been devolved, the Secretary Establishment shall post them in terms of Section 11-A of the Civil Servants Act to another Department in

conformity with the scheme of the Civil Servants Act. All these officers shall be entitled to their salaries and other perks from the date they were relieved from Sindh Government. They will also be entitled to their inter-se seniority and promotion, subject to the Rules, with their batchmates as if they were never relieved from their parent Departments.

166. The Attorney General for Pakistan shall keep in touch with the Secretary Establishment and ensure that this part of the judgment is implemented in the above terms. The Attorney General shall report compliance within two months from the date of communication of the judgment.

C.R.P.NO. 81 OF 2013

(Tariq Mughal vs. Chief Secretary Sindh)

167. One of the Petitioners, Tariq Mughal, had filed Crl. Review Petition No.81/2013, challenging the judgment under review. The Petition was heard on 21.10.2014 and judgment reserved, alongwith the other Review Petitions. On 12.11.2014 he made a Criminal Misc. Application No.nil/2014 for withdrawal of his Crl. Review Petition No.81/2013. Once his Crl. Review Petition was heard at length by us in Court, there was no occasion to seek withdrawal of the Petition without any justification. We, in the peculiar circumstances declined the request of the Petitioner Tariq Mughal for withdrawal of his Crl. Review Petition No.81/2013.

168. On receipt of the application for withdrawal of Civil Review Petition by Tariq Mughal, we had asked the Additional Advocate General Sindh to confirm as to whether Tariq Mughal was repatriated to his parent Department on issuance of the notification. In response, we received a brief note from S&GAD

containing service profile of Tariq Mughal, which reflects that originally he was an Engineer (Mechanical) in BS-17 in Port Qasim and transferred on deputation to the Sindh Unified Grade Service for 3 years. During his period of deputation, on 1.10.2011, he was absorbed in the Sindh Unified Grade Service. On 02.07.2013, the Sindh Government issued notification in compliance with the judgment under review withdrawing his absorption. Instead of repatriating him to the Port Qasim Authority, the Secretary Local Government Department had placed his services in the surplus pool of Local Government and, subsequently, he was posted in Sindh Local Government Department.

169. When this Court enquired about the status of the Petitioner, the Local Government Department issued notification on 15.11.2014, repatriating him to his parent Department i.e. Port Qasim Authority.

170. After perusal of the brief note of the S&GAD, we are of the view that the Petitioner Tariq Mughal had wrongly continued in the Sindh Local Government Department in connivance with the high ups of the Sindh Government. It appears to be an alarming situation, where the Secretary, Sindh Local Government Department has willfully defied the judgment of this Court by placing the services of Tariq Mughal in the surplus pool of the Sindh Local Government Department. Tariq Mughal was required to report to his parent Department which he willfully avoided.

171. We, accordingly, direct the Sindh Government to ensure that Tariq Mughal stands relieved forthwith to join his parent Department. We restrain ourselves from initiating contempt proceedings against Tariq Mughal and the then Secretary Local

Government, who were in league to defeat the findings of this Court which resulted in his repatriation. The Chief Secretary Sindh shall submit a compliance report within 15 days from the date of communication of the judgment. The application for withdrawal of the Criminal Review tainted with malice, is dismissed alongwith the Review Petition for the reasons already detailed in the judgment under review. The Chairman, Port Qasim Authority shall allow joining to Tariq Mughal, and expiry of lien period will not come in his way. The Petitioner, however, shall also be entitled to inter-se seniority with his batchmates as if he was never relieved from the Port Qasim Authority.

Crl. Review Petition No.38/2014

(Mrs. Asma Shahid Siddiqui, in person)

172. The Petitioner, in person, submitted that she was serving in the Forest Department, Government of Punjab as Forest Ranger in BS-16 on regular basis. On 11.2.1997, her services were transferred to the Forest Department, Sindh Government, in the same grade while placing her seniority at the bottom. She was posted as Forest Officer in BS-16 in the Department with the consent of both the Provincial Governments and subsequently, she was absorbed in the Sindh Province in terms of the provisions of Sl. No.4 of the ESTACODE which deal with the wedlock policy. Her absorption in Sindh Forest Department was made in conformity with Section 24 of the Act read with Rule 9-A of the Rules of 1974. The Petitioner has stated that she had been serving as District Forest Officer in the Province of Sindh for the last 17 years and she was repatriated to the Province of Punjab in compliance with the judgment under review.

173. In the peculiar circumstances of the case, we are of the considered view that her case is an exception to the findings recorded by us in the judgment under review as she was transferred and absorbed in terms of the provisions of ESTACODE on the basis of wedlock policy, in the same Basic Scale and Department in Sindh, in which she was serving in the Province of Punjab since 1997. Therefore, she was wrongly de-notified. We, accordingly, direct the Chief Secretary, Sindh to immediately withdraw the notification of her repatriation and restore her posting to her original position in the Province of Sindh as if she was never repatriated. She shall be given all the salaries and perks of the intervening period. The compliance report shall be submitted by the Chief Secretary, Government of Sindh, which shall be placed for our perusal in Chambers within two weeks from the judgment.

174. For the aforesaid reasons, the Criminal Review Petition No.38/2014, is allowed in the above terms.

Crl.R.P.No.79/2013

(Syed Shakir Hussain vs. Province of Sindh etc)

175. The learned Counsel for the Petitioner contended that in pursuance of the judgment under review, out of turn promotion of the Petitioner was withdrawn. However, while withdrawing his out of turn promotion, the Competent Authority has fixed his seniority below his batchmates as most of them, who were junior to him, were promoted in the intervening period. This is not the spirit of the judgment under review. We, accordingly, direct the Chief Secretary, Government of Sindh to ensure that the seniority of the Petitioner is fixed with his batchmates, in the same order as

if he was never given out of turn promotion, and if his batch mates were promoted in the intervening period, he shall also be promoted with them, maintaining his original inter-se seniority. The matter shall be resolved by the Chief Secretary or by the Competent Authority within two weeks of this judgment and the Petitioner shall be entitled to all his perks and salary benefits along with the difference, if any, from the date of his de-notification till fixation of his seniority.

176. The Criminal Review Petition No.79/2013, filed by the Petitioner is allowed in the above terms. The Chief Secretary shall submit compliance report within two weeks from the date of communication of this judgment, for our perusal in Chambers.

CRP NO. 71 OF 2013

(Jaffar Abbasi Vs. Province of Sindh etc)

177. The Petitioner Jaffar Abbasi was de-notified and reverted back to his parent department by the Sindh Government in compliance with the judgment under review, as he was absorbed in the Provincial Secretariat Service from Public Service Commission Department. He filed the Review Petition, which was argued by his Counsel, Mr. Tariq Mehmood on 10.06.2014 and was reserved for judgment.

178. In September 2014, when the other Review Petitions were taken up for hearing, the Petitioner's Counsel sought withdrawal of his Review Petition on the ground that he has filed a Constitution Petition before the High Court of Sindh and has obtained an interim order. This information was shocking for us. We declined the request of the learned ASC for withdrawal of the

Review Petition and directed the Registrar High Court of Sindh to send us the R&Ps of the Constitution Petition filed by the Petitioner.

179. On perusal of the R&Ps, we had noticed that on 01.07.2013, the Petitioner filed a Constitution Petition No. D-2817 of 2013 before the High Court of Sindh, on the same subject which was pending in C.R.P.No.71/2013. On 3.7.2013 The Petition was fixed before a Division Bench No.V, headed by Mr. Justice Syed Hasan Azhar Rizvi, which Bench passed the following order : -

- “1. Granted
- 2. Granted with all just exceptions.

3&4. It is stated by the learned counsel that the petitioner is not a deputationist and is working in the department which has been assigned to him after passing the competitive examination. He states that under the garb of the judgment given by the Honourable Supreme Court of Pakistan, he is now being transferred from his department. He states that the respondents may be directed to follow and interpret the judgment of the Honourable Supreme Court dated 12.06.2013 in its letter and spirit which is not being complied with by them. Let notice be issued in this regard to the respondents as well as A.G. for 6.8.2013.”

180. The Order Sheet shows that the matter was fixed on 6.8.2013, when the Board was discharged. On 8.8.2014, the Office fixed the matter on 25.9.2014. However, on 11-09-2014, an application for urgent hearing was allowed by the Division Bench No.V and the matter was taken up in Court on the same day. The Division Bench comprising Justice Syed Hasan Azhar Rizvi and Justice Aziz-ur-Rehman, suspended the notification, issued by the Sindh Government in compliance with the judgment under review, while passing the following order without hearing the Advocate General, Sindh, who was on notice : -

“Urgent application granted.
Learned Counsel for the Petitioner submits
that a notification dated 1.09.1999 enclosed as

Annexure "B" at page-33 with the memo of Petition was issued whereby the Competent Authority was approved the appointment of the Petitioner on the post of Deputy Secretary (Regulation) BPS-18 in the Sindh Public Service Commission and transferred him permanently from commission to S&GAD as Deputy Secretary (Budget). However, by another Notification dated 02.11.1999 the aforesaid Notification was withdrawn/cancelled, which is enclosed as Annexure "C" at page-35 with the memo of Petition. Petitioner filed departmental Appeal to the Competent Authority thereafter, challenged the said Notification before the Sindh Services Tribunal at Karachi in Appeal No.56/2000, which was allowed by order dated 21.06.2005 whereby the impugned Notification dated 02.11.1999 was set-aside and the Notification dated 01.09.1999 was restored, said judgment of learned Services Tribunal was challenged by one Imran Ali Soomro before the Hon'ble Supreme Court of Pakistan by filing Civil Appeal No.1229/2005, which was dismissed by orders enclosed as Annexures "G&H" with the memo of Petition as such the judgment of the Services Tribunal attained finality. Learned Counsel for the Petitioner further states that the Petitioner was appointed on the basis of the Notification dated 01.09.1999 and his appointment was upheld by the Judicial Orders upto the Apex Court. Respondents have wrongfully and illegally mentioned in the name of the Petitioner at Sr.No.20 in the Notification dated 02.07.2013. As per learned Counsel the case of the Petitioner does not fall within the purview/ambit of judgment passed in Criminal Original Petition No.89/2011 passed by the Hon'ble Supreme Court of Pakistan reported in 2014 PLC (CS) 82. Case of the Petitioner as per learned Counsel is neither of absorption nor out of turn promotion as such his case is outside the scope of the notification dated 02.07.2013. Issue notice to the Respondents and Advocate General Sindh for 13.10.2014. In the meantime, the operation of the impugned Notification to the extent of Petitioner viz. Muhammad Jaffer Abbasi mentioned at Sr.No.20 is hereby suspended, till next date of hearing."

181. The High Court of Sindh was not competent to entertain the Constitution Petition of the Petitioner under Article 199 of the Constitution, as the Petitioner was seeking suspension of the notification issued by the Sindh Government in compliance with the judgment of this Court. The High Court of Sindh cannot sit in appeal against the findings recorded by this Court, in defiance of the mandate of Article 189 of the Constitution. Besides, the Petitioner has already filed a Review Petition in this Court for

remedy of his grievance, which was heard on 10.06.2014 and the judgment was reserved. The jurisdiction of High Court of Sindh is otherwise ousted by the bar of Article 212 of the Constitution.

182. We have noticed that the High Court of Sindh, while overlooking the mandates of Articles 189 and 212 of the Constitution, has started entertaining Petitions under Article 199 of the Constitution filed by Civil Servants which has paralyzed the Service Tribunals. In order to comprehend the true picture, we have called for the R&P of the Constitution Petition No. 2817 of 2013 filed by the Petitioner. We had noticed that the Petitioner, after the judgment in Review Petition was reserved in June 2014, had filed the Petition before the High Court of Sindh and obtained interim order, with the sole object to defeat the judgment of this Court. His case of erroneous absorption in Provincial Secretariat Service is fully covered by the findings recorded by this Court in the judgment under review. The Petitioner, being an Officer of the Public Service Commission, was wrongly absorbed in the Provincial Secretariat Service, which is a distinct specie of service and has its independent recruitment Rules and Service Structure. The Petitioner was not eligible to be appointed by transfer under Rule 9(1) of the Rules of 1974 and was erroneously absorbed in the Provincial Secretariat Service, which service could only be joined after qualifying the required competitive examination. The Civil Servants Act and Rules framed thereunder do not permit such absorption. We, for the reasons already recorded by us in our impugned judgment, dismiss the Civil Review Petition, holding that the Petitioner was rightly de-notified by the Sindh Government in compliance with the judgment under review. Consequently the Constitution Petition No.D-2817 of 2013 stands abated.

183. The Petitioner's conduct of approaching High Court of Sindh, during the pendency of his Review Petition, *prima facie*, amounts to contempt of the authority of this Court. We, accordingly direct the Office to issue Show Cause notice to the Petitioner under Article 204 read with Section 17(1) of the Contempt of Court Ordinance 2003, calling upon him to submit his explanation as to why he should not be proceeded against for willfully defying and defeating the judgment of this Court dated 12.6.2013, by filing the Constitution Petition No.2817/2013, in the High Court of Sindh on the same subject and obtaining the restraining order, after availing the remedy of Review Petition. The Office shall make a separate file of the proposed Criminal proceedings by assigning number.

Crl.R.P No.80 OF 2014

(Mirza Shahbaz Mughal vs. Province of Sindh etc)

184. Through these proceedings, the learned ASC Mr. Abid Zuberi has prayed that the proceedings in Suit No. 102/2013 filed by the Petitioner before the learned High Court of Sindh be allowed to continue. He has sought expungement of the remarks passed by this Court against the Petitioner in the judgment under review.

185. On 01.02.2013, the Petitioner had filed Civil Suit No. 102 of 2013 in the High Court of Sindh against the Sindh Government and its officials for "Declaration and Permanent Injunction" with the following prayers:-

"PRAYER"

It is, therefore, prayed that this Hon'ble Court may be pleased to pass judgment and decree in favour of the Plaintiff as under:

A. *Declare that the Notification dated 13-1-2012 issued by Defendant No.1 withdrawing the*

name of the Plaintiff from the Notification dated 3-09-2012 is in accordance with law.

- B. *Declare that the Impugned Letter dated 28-1-2012 issued by the Defendant No.2 is illegal, malafide, without jurisdiction, unwarranted in law and fact as well as in violation of principles of Natural Justice.*
- C. *Suspend the Impugned Letter dated 28-1-2012 issued by the Defendant No.2.*
- D. *Grant permanent Injunction prohibiting/restraining the Defendants, their employees or any person acting under them or on their behalf from taking any coercive action against the Plaintiff in pursuant to Impugned Letter dated 28-1-2013.*
- E. *Grant permanent Injunction prohibiting / restraining the Defendants, their employees or any person acting under them or on their behalf from withdrawing Notification dated 13-1-2013.*
- F. *Grant any other relief deemed just and appropriate in the circumstances of the case.*
- G. *Grant costs of the suit.*

186. Alongwith the Suit, an application under Order XXXIX Rules 1 and 2 CPC was also filed and on 04.02.2013, a State Counsel appeared on behalf of the Sindh Government and sought time. The learned High Court passed status-quo order, which continued. On 15.05.2013, the Petitioner made three Misc. Applications, one application for urgent fixation of the matter, second application for suspension of the Notification dated 07.05.2013, by which the Petitioner's earlier Notification dated 14.03.2013 for appointment as DSP in Sindh Police was withdrawn, and third application was under Order XXXIX Rule 2(3) CPC, seeking initiation of contempt proceedings against the Defendant Additional Chief Secretary (Home Department) for willful disobedience of the 'status-quo' order of the Court.

187. The learned High Court on 16.05.2013, allowed the urgency application and, while issuing notices in the other two

applications, suspended the Notification dated 07.05.2013 of the Additional Chief Secretary (Home Department).

188. The background of the notification of 07.05.2013 of the Sindh Government was that during the hearing of the arguments in C.P.No.71/2011 and other Petitions in Criminal Original Petition No. 89-K of 2011, two CMAs numbered as 245/2013 and 247/2013 were filed, complaining that the Sindh Government had appointed 10 D.S.Ps without observing requisite Codal formalities. On 06.05.2013, this Court enquired from the Additional Advocate General Sindh, representing the Sindh Government, to satisfy the Court as to how the Sindh Government could appoint D.S.Ps without recourse to the procedure prescribed under the service law. The Additional Advocate General sought time for instructions and on the following day, he made a statement that all the D.S.Ps appointed directly, including the Petitioner, have been de-notified by notification dated 07.05.2013.

189. The Petitioner challenged the notification dated 07.05.2013 in the said civil suit and obtained a restraining order, enlarging the scope of the suit. On the date when the notification dated 07.05.2013 was placed before us, we were not informed that a suit was filed by the Petitioner. However, a complaint was sent to this Court that inspite of the Notification dated 07.05.2013, the Petitioner is continuing as DSP on the basis of an order in the Suit No. 102 of 2013, and therefore, R&Ps of the said Suit was called.

190. After perusal of the R&Ps, we in paras 177 to 181 of the judgment under review had taken note of the conduct of the Petitioner who was willfully defeating the orders of this Court passed at times. We, therefore, directed the learned High Court of

Sindh to dispose of the suit on the basis of the findings recorded by us in the judgment under Review. This has not been done by the learned High Court of Sindh, though the impugned judgment was circulated amongst the Judges of the Court through the Chief Justice.

191. It is contended by Mr. Abid S. Zubair, ASC that the Petitioner was lawfully appointed as DSP and the judgment under review does not cover the case of the Petitioner. He prayed that the suit filed by the Petitioner before the High Court of Sindh be allowed to continue and its maintainability be determined by the said Court. We inquired from the learned counsel to satisfy us as to how a Civil Servant can file a Suit relating to the terms and conditions of his service. We further asked to satisfy us as to how the Petitioner was granted back dated seniority and out of turn promotion. He could not offer any plausible explanation to the queries. We have perused the service profile of the Petitioner provided by the S&GAD.

192. We have noticed that the Petitioner was appointed as ASI on 29.01.1996 in Larkana (Range) under the Police Order 2000, as a Probationer. He was confirmed as A.S.I. He was promoted to the rank of Sub Inspector on 17.12.2001 and was confirmed as such on 18.12.2003. He was extended undue favours and appointed by promotion as Inspector on 26.04.2004 on adhoc basis with the rider that he will not claim seniority over his seniors, and will retain his original seniority in the promotion list. The order of his promotion further qualifies that his promotion will be regularized on his turn along with his batch mates.

193. A further favour was extended to the Petitioner on 18.02.2009, when the then CCPO Karachi recommended to post him as DSP on his own pay and scale which recommendation was accepted on 20.05.2009. The grounds recommending the Petitioner for out of turn promotion were illegal and untenable in law. We have gone through the Minutes of the Committee, recommending the appointment of the Petitioner on OPS as DSP, reproduced herein below:

"The committee has examined the record as well as comments furnished by the then Capital City Police Officer, Karachi under his office letter No. CCPO/KHI/E.I/93359 dated 10.08.2010. The committee has also observed that the performance of Mirza Shahbaz Mughal while working as PSO to CCPO, Karachi on officiating basis, on law & order situation in Karachi, have full grasp over his duties, which facilitated to achieve disposal of pending & complicated cases even holidays, which can be termed outstanding for his exceptional performance.

He not only performed superb in reorganization of office. He has excellent analytical skills with capacity to plan, organize and execute his plan, which help full to CCPO Karachi in public dealing for their problems and pursue for its redressal.

Besides above, in the following filed assignments, his performance remained excellent and up to the mark:

1. As SHO, PS Gulistan-e-Johar on 26.04.2004, after exchange of firing he arrested 2 bandits and recovered looted booty dinar 475,000/- and illicit weapons from their possession (FIR No. 59/2004 u/s 353/324/34 PPC).
2. As SHO PS Gulistan-e-Johar on 29.06.2004, near Safoora Chowk arrested 2 suspicious alongwith motorcycle and recovered one pistol 30 bore loaded and looted booty Rs.3510/- (FIR No. 117/2004 u/s 353/324/34 PPC).
3. On 10.08.2004, during patrolling among bungalows of Block-8, arrested suspicious person and one pistol 30 bore loaded with 3 cartridges an twin edged dagger having blade more than 8.

The officer was recommended for promotion to the next higher rank in recognition of his excellent performance in arrest of notorious street criminals,

number of gun runners, during peddlers to traffickers alongwith recoveries and lodged FIRs, however, after due consideration he was promoted as DSP on officiating basis. He is working as DSP since last more than 21 months.

In view of the above the committee has recommended that the request of Mrs. Zahida Sarwar for placing the name of Mirza Shahbaz Mughal in the seniority list of DSsP of Sindh Police, may be allowed and matter may be referred to competent authority for regularization of Mirza Shahbaz Mughal as DSP.”

194. The undue favours extended to the Petitioner-Sub Inspector, in an unprecedented manner on the aforesaid grounds, could hardly be construed valid to excel his rank to that of a DSP. It is the duty of a Police Officer to arrest culprits and bring them to book. These acts of the Petitioner, in no way, could be construed as gallantry act beyond the call of duty of a Police Officer. What was more surprising was that the Committee, on the aforesaid grounds, had recommended the Petitioner for his regularization in the rank of D.S.P. through the then I.G Police and the then Additional Chief Secretary, who endorsed these recommendations. The regularization of the Petitioner as DSP, was treated as a fresh appointment on regular basis in order to save his appointment as D.S.P against the law enunciated by this Court in an unprecedented manner, which we believe, has never happened before in Police Force.

195. The Petitioner was placed at Sl.No.283 in the seniority list of the Sub-Inspectors. It is claimed that his appointment as DSP was regularized in exercise of powers conferred under Section 24 of the Act read with Rule 19 of the Rules of 1974. The competent authority can neither appoint nor regularize the services of the Petitioner under section 24 of the Act, which is an enabling provision and does not confer authority on the competent

Authority to pass such orders to the disadvantage of other Civil Servants. We would be dealing with the scope of Section 24 of the Act separately. Appointment of a Civil Servant is provided under Section 5, subject to the prescribed manner, which requires that any officer in BS-17 can only be appointed on the recommendation of the Public Service Commission, which, after advertising the post, takes examination of the candidates and declares their results on merit. The powers under Section 24 of the Act cannot circumvent the mandate for appointment of a Civil Servant as provided by the Articles 240 and 242 of the Constitution. Reference to Rule 19 of the Rules of 1974 is also alien to the case of the Petitioner. The powers under Rule 19 could only be exercised in the public interest, in exigencies and pending nomination of a candidate by the Commission with the qualification that such powers are subject to the procedure laid down by Part-III of the initial appointment under the Rules of 1974.

196. We have failed to understand as to how the Petitioner, through such unwarranted means, can continue in the Police Force as D.S.P. The Petitioner, at no point of time, was ever confirmed in the rank of Inspector, therefore he could not have been appointed on OPS as DSP nor could his services be regularized unless he was a confirmed Inspector or had served for five years in order to qualify to be considered for promotion to the post of DSP. Under the Civil Servants Act, seniority of the police officers is reckoned from the date of their regularization, as provided under section 8(4) of the Civil Servants Act. Since the Petitioner was never promoted on his turn as Inspector, nor was confirmed in the rank of Inspector and his batch mates are still serving as Sub Inspectors, therefore, he cannot be regularized as

DSP nor his regularization can be treated as fresh appointment as DSP.

197. The procedure for appointment to the post of DSP has two modes (i) by promotion, where an Inspector confirmed in his substantive rank has served for five years and is otherwise senior amongst his batch mates, or (ii) by initial recruitment, as prescribed by the Rules. The Petitioner is not covered by this mode as he does not qualify the ternural limitation prescribed for promotion. By Act No. XI of 1989, the Sindh Assembly has created ‘Sindh Public Service Commission’ and under Section 10 of the said Act, the Sindh Government has framed the Rules calls “**Sindh Public Service Commission (Functions) Rules 1990**” [hereinafter referred to as “the Rules 1990”]. In terms of Rule 3(1)(i) it is provided that all civil posts connected with the affairs of the Province in Basic Pay Scale 16 to 22, except those specified in the schedule, shall be filled by the Sindh Public Service Commission through competitive process. Such posts are required to be advertised publically. In the case in hand, this mandatory mode, required under the rules, was not followed while notifying the Petitioner as a fresh appointee, who was already in police service in the rank of Sub-Inspector. The case of the Petitioner is fully covered by our judgment under review as he was given out of turn promotion and was given back dated seniority and his regularization or adjustment as DSP was not backed by any law which could confer power on the Competent Authority to treat him as a fresh appointee. The competent Authority shall forthwith post him as Sub-Inspector.

198. We may observe that on 6.5.2013, two CMAs numbered as 245/2013 and 247/2013, containing list of other nine persons who were also appointed as D.S.P. without recourse to the provisions contained in the Rules, 1974, alongwith the Petitioner, were filed. The said Rules require that a post of BS-17 can only be filled through Public Service Commission after advertisement. The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments can not withdrawn any post from the purview of the Public Service Commission as has been done in the case of the DSPs, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission.

199. We, for the aforesaid reasons, hold that the Petitioner was rightly reverted to the rank of Sub-Inspector in terms of the letter of Dr. Muhammad Amin Yousuf Zai DIG (Establishment). The Competent Authority shall fix the inter-se seniority of the Petitioner with his batchmates. The Petitioner shall restore all the

benefits including salaries drawn by him as DSP to the Sindh Government from the date of the judgment under review. The concerned Department shall deduct and/or adjust the aforesaid benefits in installments from his future salary within a span of 03 years and report compliance.

200. The Petitioner shall be issued a Show Cause Notice under Section 17(1) of the Contempt of Court Ordinance 2003, read with Article 204 of the Constitution, calling upon him to furnish explanation as to why contempt proceedings should not be initiated against him for willful defiance of the orders dated 30.08.2012 and 07.05.2013, besides the impugned judgment. The office shall make a separate file of the proposed contempt proceedings by assigning it a separate number. This Review Petition is dismissed with costs. The suit of the Petitioner stands abated being barred not only under Article 212 of the Constitution, but also under Article 189.

201. We must record our displeasure over the officers, who were instrumental in extending undue favours to the Petitioner. We direct the competent Authority to initiate departmental proceedings against the then CCPO Karachi, the then Additional Chief Secretary Sindh and members of the Committee, who recommended the Petitioner for appointment as DSP, and report compliance within two weeks for our perusal in Chambers.

C.P. No.968/2014

(Saleem Ullah vs. Province of Sindh etc)

202. The Petitioner's Counsel, Mr. Tariq Mehmood, has contended that the Petitioner was appointed as Assistant Executive Engineer (AEE) in BS-17 in Karachi Water and Sewerage Board

(KW&SB) whereas one Muhammad Harris was appointed as AEE in BS-17 in the Communication and Works (C&W) Department. The Petitioner and Muhammad Harris applied for mutual transfer. On 12.6.1995, their application for mutual transfer was allowed. Thereafter, on application of Muhammad Harris, he was absorbed in KW&SB, whereas the Petitioner was absorbed in C&W Department. The Petitioner was not a Civil Servant and therefore, he could not have been transferred and absorbed in C&W Department either under Section 24 of the Civil Servants Act or under Rule 9(1) of the Rules 1974.

203. It is settled law that a non-Civil Servant cannot be conferred the status of a Civil Servant, which the Petitioner has acquired by absorption in C&W Department. Therefore, the Petitioner was rightly de-notified. Consequent upon the detailed reasons given in the judgment under review, the absorption of the Petitioner in the C&W Department, was un-warranted. This Civil Petition, for the aforesaid reasons, merits dismissal. The Petitioner shall immediately join his parent Department i.e. KW&SB and Muhammad Harris shall be reverted back to his parent department i.e. C&W Department. The Petitioner as well as Muhammad Harris shall be entitled to their inter-se seniority with their batchmates from the date on which they were transferred from their parent Departments.

Crl.R.P.40/2014

(Ata Muhammad Memon vs. Chief Secy. Govt. of Sindh)

204. The Petitioner, in person, contended that on 4.8.1987, he was appointed as Assistant Engineer in KDA on temporary basis. On 27.4.1989, he was transferred on mutual basis to Public

Health Engineering and was posted in Hyderabad, where he was working till he was de-notified in compliance with the judgment under review. The Petitioner stated that after his de-notification he had joined KMC as the KDA, which was his parent department, had devolved. He submitted that he had not been allowed to join, inter alia, on the ground that the judgment under review does not cover his case.

205. We have laid down the principles which covers the case of the Petitioner. The absorption of the Petitioner in the Public Health Engineering, was un-warranted. Therefore, we direct the Chief Secretary Sindh, to create a surplus pool in KMC and the Petitioner shall be posted in the pool till he is posted against a vacancy in the Department. He would be entitled to his inter-se seniority with his batchmates with whom he was working in KDA at the relevant time before his absorption to the Public Health Engineering. The Petitioner shall be given salary from the date he was de-notified, within 15 days from the date of communication of this judgment. At the same time the Officer with whom he was mutually transferred, shall be reverted back to his parent Department with the same benefits as detailed above. The Chief Secretary Sindh shall submit compliance report for our perusal in Chambers. The Review Petition is disposed of in above terms.

Crl.R.P.No.41/2014

(Ali Murad Abro vs. Chief Secy. Govt. of Sindh)

206. The Petitioner, in person, stated that he was appointed on 28.7.1987, as Assistant Engineer BS-17 in the KDA on permanent basis. On 26.2.1995, he was mutually transferred to C&W Department on a joint application, with Muhammad Ameer, who was also Assistant Engineer in BS-17 in the C&W

Department. After the judgment under review, he was de-notified and sent back to the Local Government Department and since then he has not been given posting. He has stated that Muhammad Ameer, who was mutually transferred with him, has also not been repatriated to the C&W Department in compliance with the judgment.

207. The Chief Secretary Sindh is directed to ensure that the judgment of this Court is implemented in letter and spirit and the Petitioner and Muhammad Ameer are transferred forthwith to their respective parent Departments. They would be entitled to their salaries from the date of their de-notification as well as their inter-se seniority with their batchmates from the date of their mutual transfer. The Review Petition is disposed of in above terms. The Chief Secretary shall report compliance within 15 days from the date of communication of judgment.

Crl. R.P. No.77 of 2013

(Talib Magsi vs. Province of Sindh etc)

208. The learned Counsel for the Petitioner contends that the Petitioner originally was an Officer in the Local Government Department, Balochsitan, and was promoted to BS-18. He claims that the Petitioner's son was attacked and was moved to Agha Khan Hospital, Karachi, for medical treatment. He applied for his transfer to Sindh Government on humanitarian ground. It is claimed that under Section 10 of the Balochistan Civil Servants Act, he was transferred to Sindh Government and on 5.10.2010 he was appointed as Director Food on deputation. On 3.9.2010, the Chief Minister Sindh, in exercise of powers under Section 24 of the Act of 1973, on an application by the Petitioner, who was on

deputation, absorbed him in the Sindh Government in Ex-PCS cadre. After the judgment under review, the Petitioner was de-notified by the Sindh Government and was ordered to be repatriated to Balochistan.

209. We have dealt with the issue of absorption of a Civil Servant. The Petitioner hails from Balochistan. The Chief Minister, Sindh cannot order absorption of any Civil Servant of a different Province who is on deputation to Sindh Government. Section 24 of the Act or Rule 9(1) of the Rules of 1974, cannot be resorted to for appointment by transfer of a Civil Servant who does not belong to the Sindh Government. The Petitioner could neither have been transferred permanently to the Sindh Government, nor could he be absorbed in Ex-PCS cadre for the reasons given in the impugned judgment. The Petitioner did not have the status of a Civil Servant while serving on deputation in Sindh Government nor could he continue on deputation for an indefinite period. His absorption in Ex-PCS cadre was contrary to the language of Section 5 of the Act, which does not authorize the Chief Minister to appoint the Petitioner by offending the Rules of 1974.

210. We, for the aforesaid reasons, do not find any merit in the Review Petition which is accordingly dismissed. Pendency of any proceedings of the Petitioner before any forum will not come in the way of Sindh Government in repatriating the Petitioner to the Province of Balochistan.

Crl.RP. No.70/2013. (Yar Muhammad Bozdar.)
Crl.R.P.No.72/2013. (Syed Altaf Ali and others)

211. The Petitioners claim to have been nominated by the Chief Minister as Assistant Commissioners under Rule 5(4)(b) of

the West Pakistan Civil Service (Executive Branch) Rules, 1964. The grievance of the Petitioners is that on account of paras 102 to 111 of the judgment under review, their nominations were withdrawn and they were reverted back to their parent Departments. We have already dealt with this issue in the aforesaid paras. During the hearing of the Review Petition, we have noticed that no mechanism has been provided for nomination of the officers. It is the sole discretion of the Chief Minister to recruit/nominate an employee to the post of Assistant Commissioner in exercise of powers under Rule 5(4)(b) of the Rules of 1964. The discretion to exercise the powers needs to be structured by framing policy, which should encourage merit. On query from the learned Additional Advocate General, Sindh as to how the employees are chosen from different Departments for nomination as Assistant Commissioners; he, on instructions, informed the Bench that no policy has been framed and it is the sole discretion of the Chief Minister. These Rules are not meant to ignore transparency in nomination as such appointments are made by bypassing the regular procedure provided for appointment of a Civil Servant in BS-17. We have noticed that most of these appointments were made amongst the employees, who have been excluded from the purview of the Public Service Commission. Therefore, in absence of policy for nomination to the post of Assistant Commissioner, blue eyed of the high ups will get these jobs. We, therefore, direct the Sindh Government to frame a transparent policy for nomination of these officials, which could ensure that meritorious employees of the Departments mentioned in the Rules of 1964, could be nominated on merits, after proper scrutiny.

212. The Petitioners were found in excess of the quota as per the list provided to us by the Sindh Government and, therefore, for the reasons already recorded by us in the judgment under review, they were not entitled to continue in their Offices. These Review Petitions having no merit are, accordingly, dismissed.

C.M.A.No.4568 of 2013 in C.R.P.No.Nil of 2013.
(Rafique Ahmed Abbasi vs. Chief Secy. Govt. of Sindh)

213. The Petitioner, through these proceedings, seek review of the judgment, *inter alia*, on the ground that he was lawfully granted out of turn promotion and after the judgment under review of this Court, he was reverted to the rank of Inspector though his batchmates had been extended favours and their seniority was fixed one step higher than the Petitioner. The issue of out of turn promotion, which has been declared unconstitutional, cannot be allowed to be reopened. However, the grievance of the Petitioner in regard to his seniority can be examined by the Sindh Service Tribunal.

214. Therefore, in order to meet the ends of justice, we remand this case to the Sindh Service Tribunal, which shall treat this Review Petition as Service Appeal and shall decide the same in accordance with law, in line with the principles laid down in this judgment and the judgment under review. The Petitioner shall be at liberty to amend the proposed Appeal appropriately, if so advised. The Tribunal shall, after issuance of notice to the Petitioner and his other batch-mates, determine their seniority in accordance with law. This Review Petition is disposed of in the above terms.

SUIT NO. 1029 OF 2014

(Muhammad Ali Baloch vs. Province of Sindh etc)

215. During the hearing of the Criminal Review Petition filed by the Sindh Government as well as by the beneficiaries, we directed the Sindh Government to provide us the list of the beneficiaries who had obtained restraining orders against the notification issued by the Sindh Government in compliance with the judgment under review.

216. The Sindh Government provided us the list of the Civil Suits and the Constitution Petitions filed by the Petitioners and many other Civil Servants, challenging the notification of the Sindh Government dated 02.07.2013, issued in compliance with the judgment under review.

217. We were sent the list by the Sindh Government in which Suit No. 1029 of 2014, filed by Muhammad Ali Baloch was also mentioned. The Plaintiff Muhammad Ali Baloch had obtained restraining order by seeking suspension of the notification dated 2.7.2013 of the Sindh Government. We may observe that Muhammad Ali Baloch was repatriated to his original post of Assistant Director (Computer Branch) on declaration that he was wrongly absorbed in the regular Police Force.

218. This Notification dated 02.07.2013 was challenged by him by way of Departmental Appeal (Representation) in terms of Section 23 of the Sindh Civil Servants Act and, subsequently, in Appeal No. 144/2013, before the Sindh Service Tribunal. The Service Tribunal, after hearing the parties, held that the judgment under review was fully applicable to the case of Muhammad Ali Baloch and his absorption in the regular Police Force was found to

be unwarranted. Against this judgment, a Civil Petition for leave to Appeal No. 74-K/2014 was filed by Muhammad Ali Baloch before this Court, which was fixed before a three member Bench at Karachi, and one of us (Justice Amir Hani Muslim) was heading the Bench. On 25.02.2014, the matter was fixed before the Bench at Karachi Registry. The Counsel of Muhammad Ali Baloch, Dr. Farough Naseem, after arguing the matter at some length, withdrew the Appeal on instructions of Muhammad Ali Baloch, who was present in Court. On withdrawal of the Appeal, the judgment of the Service Tribunal attained finality.

219. Since we were given the number of Suits/Petitions pending in which the High Court of Sindh has passed restraining orders, we noticed that Suit No.1029 of 2014 was filed by Muhammad Ali Baloach in the High Court of Sindh. This Suit was not mentioned in the list provided to us by the Registrar of the High Court of Sindh, therefore, on our direction the office inquired from the Registrar as to why the said Suit has not been mentioned in the list. We were informed that it was by mistake of the office of the High Court of Sindh and accordingly the R&P of the suit was called. After perusal of the record of the Suit, we noticed with shock that the Plaintiff was presented in the office of the High Court of Sindh on 23.6.2014 and permission for fixation of the case was granted by an Additional Judge (Justice Aamir Raza Naqvi) in an unprecedented manner on the same day. The matter was placed before Justice Saeeduddin Nasir with the following three office objections:-

- “1. Proper Court fee to be affixed.
- 2. List of legal heirs be filed.
- 3. Addresses for service be filed.”

220. Justice Saeeduddin Nasir, on the same day, while suspending Notification dated 2.7.2013, issued by the Sindh Government in compliance with the judgment under review of this Court, passed the following order :-

- “1. Granted.
- 2. One week time is allowed to the plaintiff to affix the court fee on the plaint.
- 3. It is contended that the plaintiff was appointed as A.D (Computer) in Special Branch, Police Department in BPS-17, later on the said post was abolished vide order dated 11.12.2013 and the plaintiff was appointed as Deputy Superintendent of Police. Subsequently, vide notification dated 13.11.2007 he was appointed as S.P. The learned counsel for the plaintiff states that due to order passed by the Hon’ble Supreme Court in Original Criminal No.89 of 2011 the plaintiff was likely to be demoted from the post of S.P to D.S.P. which was being held by the plaintiff prior to being out of turn promoted as S.P. but the defendant vide notification dated 2.7.2013 demoted the plaintiff as Assistant Director (Computer) which post has been abolished in 2003. It is further contended by the learned counsel for the plaintiff that the plaintiff had completed the field training command as Police Officer for more than ten years and qualifies to hold the post of D.S.P.

In view of the submission made by the learned counsel for the plaintiff, let notice be issued to the defendant for a date to be fixed by the office after summer vacation. In the meanwhile the operation of the notification dated 2.7.2013 to the extent of the plaintiff is suspended.”

221. The suit filed by Muhammad Ali Baloch contained the same reliefs in substance, which were denied to him up to this Court. The prayers in the Suit are reproduced herein below:-

- a. To declare that the plaintiff is entitled to hold the post of “Deputy Superintendent of Police” and defendants are liable to revive his status;
- b. Permanent Injunction restraining Defendants from removing/banishing the plaintiff from his aforesaid post of “Deputy Superintendent of Police” and interim and final directions to deliver the post of Deputy Suptt. of Police in whatsoever manner;
- c. Cost of the proceedings throughout;

d. Any other relief which this Honourable Court deem proper may also be granted.

222. In the plaint, it was pleaded that the Service Tribunal had passed judgment on 30.12.2013 dismissing his Appeal. However, since the post of Assistant Director (Computer) had been abolished, he filed C.P.No.D-388 of 2014 and C.P.No.D-2660 of 2014 in the High Court of Sindh, which are pending adjudication. He pleaded that since no orders were passed in the Petitions due to pendency of a large number of cases in the High Court of Sindh, he made representation to the Chief Minister but to no avail. Consequently, he had filed suit, inter alia, on the ground that his absorption in Police Force is similar in nature to the case of Ataullah Chandio, who was from Law Department and was allowed to be absorbed in Police Force.

223. Muhammad Ali Baloch, after exhausting all his legal remedies up to this Court, has started a fresh round of litigation on the pretext that the post of Assistant Director (Computer) was abolished, therefore, he was not given posting. In the first place, abolition of the post of Assistant Director (Computer) does not render him surplus owing to the fact that an IT Wing exists in the Police Department, and he could have been posted in the said Wing by creating a post of Assistant Director (Computer), or in any other department of the Sindh Government, in terms of Rule 9-A of the Rules of 1974. He, however, could not seek relief as prayed either in the Suit or in the Constitution Petitions pending in the High Court of Sindh. The findings recorded by the Service Tribunal against Muhammad Ali Baloch, have attained finality on his withdrawal of the Civil Petition from this Court. The Service Tribunal in its detailed judgment has held that Muhammad Ali

Baloch was wrongly appointed by transfer under Rule 9(1) as DSP in regular Police in defiance of the restrictions contained under the Recruitment Rules, which do not permit his horizontal movement to penetrate in Provincial Police Service as DSP which is a distinct cadre. Muhammad Ali Baloch was appointed as Assistant Director in (Computer Wing), which cannot be construed to be an appointment in regular Police Force. We have already interpreted the scope of Rule 9(1) of the Rules of 1974. Muhammad Ali Baloch was not eligible to be appointed by transfer as DSP for want of required qualification, experience, expertise as contained under Rule 9(1) read with Rule 3(2), 7 and 8 of the Rules of 1974. He was rightly repatriated to the Computer Wing in Police Department.

224. In the Suit, Muhammad Ali Baloch has concealed the fact that he approached this Court challenging the judgment of the Sindh Service Tribunal and on 25.02.2014, his Counsel, after arguing the Petition at some length, had withdrawn the Civil Petition in his presence.

225. Once a Civil Servant has exhausted all the legal remedies, he cannot initiate a second round of litigation by filing Constitution Petition or Suit on the same subject. The learned High Court, in the first place, should not have entertained the Suit or Petition in view of the bar contained under Article 212 of the Constitution, as Muhammad Ali Baloch is a Civil Servant and the issues raised before the High Court, fall within the domain of the Sindh Service Tribunal, which had already recorded the findings against him. It is established law that a Civil Servant cannot raise any issue which pertains to terms and conditions of his service, particularly, when such issue has finally been decided by this

Court. The learned Judge (in Chambers) Mr. Saeeduddin Nasir, has not applied his mind while entertaining the Suit on 23.6.2014, and had suspended the notification issued by the Sindh Government, which was issued in compliance with the judgment of this Court, maintained by the Sindh Service Tribunal, and his Civil Petition against the judgment of the Tribunal had attained finality on its withdrawal. The learned Judge (in Chambers) has not even examined the contents of the plaint which refer to the judgment of the Sindh Service Tribunal and in a very casual manner has passed the order suspending the notification.

226. We are at a loss to understand as to how the learned Judge (in Chambers) could sit in Appeal against the findings of this Court in the face of the language of Article 189 of the Constitution which mandates that, "***Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan.***" If such practice is allowed to continue, it will render the hierarchy of this Court ineffective as mandated by the Constitution.

227. For the aforesaid reasons, we hold that Muhammad Ali Baloch has willfully committed contempt of this Court by re-agitating the issues through the Constitution Petitions No. D-388 of 2014 and D-2660 of 2014, and the Suit, which attained finality after the judgment of this Court and the Sindh Service Tribunal, as noticed hereinabove, with the ulterior motive to defeat the findings of this Court. His case is fully covered by the judgment of this Court in the case of **Abdul Majid and another vs. Qazi Abbas**

Hussain Shah (1995 SCMR 429), in which, in the similar circumstances, contempt proceedings were initiated by this Court.

228. We therefore, direct the Office to issue Show Cause Notice to Muhammad Ali Baloch under Section 17(1) of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution calling upon him to explain as to why he should not be proceeded against for committing contempt of this Court. The proceedings filed by Muhammad Ali Baloch before the High Court of Sindh in Suit No. 1029/2014 and in Constitution Petitions No. D-388 of 2014 and D-2660 of 2014 stand abated. Sindh Government shall appoint him in any Department, within 15 days from the date of communication of this Judgment, as Assistant Director (Computer), which was his substantive post before his absorption in Sindh Police force as DSP and report compliance. He, however, will be entitled to inter-se seniority amongst his batchmates before his absorption.

Suit No.519 of 2014 (Ali Ahmed Lund)

229. In order to find out the latest status of different Suits and Constitutional Petitions filed by the Civil Servants before the High Court of Sindh after the orders dated 30.8.2012, 3.1.2014 and the judgment under review, we asked the Registrar of the High Court of Sindh to provide us list of Suits and Constitutional Petitions filed before the High Court of Sindh. While going through the list, we called for the R&Ps of Suit No.519 of 2014 and Suit No.1052 of 2014 and the connected High Court Appeals to examine as to whether the aforesaid orders of this Court are taken note of by the High Court of Sindh while entertaining the Civil Suits.

230. We noticed that Suit No.519 of 2014 was filed by Ali Ahmed Lund who, in collateral proceedings, was ordered to be repatriated to his parent department in the Federal Government, when he was serving on deputation as D.C.O in the Sindh Government. We called the R&P of the suit, and upon perusal we noticed that he sought in the Suit alteration in his date of birth with the following prayer:-

- "a) Declare that as per Matriculation Certificate, NADRA record, and in the Service Record, the correct date of birth of plaintiff is 2.4.1956, and he is deemed to stand retired on 1.4.2016 and not on 1.4.2014 as per the erroneous Seniority List dated 25.9.2009.*
- b) Declare that the Seniority List dated 25.9.2009 of officers working in BS-20 under Respondent No.2 is null and void to the extent of the date of birth of the plaintiff which is wrongly mentioned as 2.4.1954 instead of 2.4.1956 as mentioned in Service Record.*
- c) Direct the defendants to rectify the seniority list dated 25.9.2009 and mentioned the correct date of birth of the plaintiff which is 2.4.1956 and duly corroborated by his Matriculation Certificate and CNIC issued by the NADRA and by service record.*
- d) To restrain the defendants of any person acting through or under them from taking any coercive action against the plaintiff viz his retirement from service and service record which shows the correct age of the plaintiff as 2.4.1956 or by prematurely issuing Notification of Retirement and or acting upon the same prejudicially to the plaintiff on the basis of erroneous date of birth which is only reflected in seniority list.*
- e) Damages against the defendants at Rs.110 Million jointly and severely.*
- f) For any other/additional relief(s) that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case;*
- g) Cost of the suit."*

231. The suit was filed by him on 1.4.2014, pleading therein that he was born on 2.4.1956 and his date of birth was incorrectly recorded in the service record as 2.4.1954. In the

pleadings, he admitted that he acquired knowledge of his incorrect date of birth in the year 2009 when seniority list was floated. He made representations at times for correction in his date of birth till 26.11.2013 and since no response was received, therefore, he filed the Civil Suit.

232. On perusal of the record, we further observed that on 27.3.2014, Ali Ahmed Lund has filed a Constitutional Petition No.D-1566 of 2014 on the same subject with the following prayer:-

- a) *To declare that as per Matriculation Certificate and NADRA record, the correct date of birth of the Petitioner is 2.4.1956 which has erroneously been entered/mentioned in his service record by the Respondent No.3 as 2.4.1954 which is liable to be rectified/cured with immediate effect.*
- b) *To direct the Respondents to rectify the date of birth of the Petitioner in their record as 2.4.1956 instead of 2.4.1954 and till the virtual correction, it may be read and understood as 2.4.1956.*
- c) *To permanently restrain the Respondent No.3 or anyone else working on his behalf to issue any notification of the retirement of the Petitioner according to erroneous date of birth of the Petitioner i.e 2.4.1954 mentioned/entered in their record.*
- d) *To direct the Respondents to act in accordance with law and not to misuse/abuse of his official powers conferred upon them under the law.*
- e) *Any other relief(s) warranted by the facts and circumstances of the case.”*

233. Apparently, on his failure to get the interim relief in the Writ Petition in which notice was ordered by the learned Division Bench, he opted to file the aforesaid Civil Suit, concealing the fact that he had filed a Constitutional Petition prior to filing of the suit on the same subject.

234. On 10.4.2014, he was granted interim order of status-quo by the learned Judge in Chambers (Justice Nadeem Akhter) in the following terms:-

"Learned Counsel for the plaintiff has filed a statement along with some documents, which are taken on record. The documents filed today show that the plaintiff is still working as the Secretary to Government of Sindh/Chairman Sindh Cooperative Housing Authority. It is urged that there is a serious apprehension that in case ad interim orders on this application are not passed, the plaintiff may either be removed from his service or any other coercive action may be taken against him by the defendant. The bailiff's report dated 9.4.2014 shows that the defendants have been duly served. Till the next date of hearing, the defendants are directed to maintain status quo."

To come up on 25.4.2014."

235. On 29.5.2014, the learned Judge in Chambers (Justice Mohammad Shafi Siddiqui) while dismissing the suit passed the following order:-

"Mr. Ghulam Akbar Jatoi Advocate undertakes to file power (of Attorney) on behalf of plaintiff.

Adjournment application has been filed by the previous Counsel for the plaintiff who is stated to be unwell. The application is taken on record. Office is directed to assign CMA number to this application. However, the application is dismissed on account of the fact that plaintiff has engaged another Counsel. The plaintiff is also present in person who confirms that he has engaged Mr. Ghulam Akbar Jatoi.

Learned Counsel for the plaintiff argued that this suit has been filed to rectify the error in the date of birth of the plaintiff as 2.4.1956 instead of 2.4.1954. It is contended by Mr. Jatoi that alongwith the plaint they have filed certificate of Matric, Board of Intermediate, NIC as annexures and has also shown smart card recently issued. He also states that even in the old and new passports the date of birth is mentioned as 2.4.1956. He submits that it is the right of the plaintiff to get the date of birth corrected in all official records including the service record.

Learned State Counsel has assisted this Court and submits that the Annual Confidential Report is being issued since he became civil servant and joined the service and he has been mentioning his date of birth as 2.4.1954 and as such this delay in rectification of the service record is uncalled for and it only smelts malafide. Learned State Counsel further submits that in terms of Rule 12A of the Civil Servants

(Appointment, Promotion and Transfer) Rules, 1973 the date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible.

Learned Counsel for the intervener also relied upon recent pronouncement of Hon'ble Supreme Court and submitted that suit is not maintainable.

Heard the learned Counsels and perused the record. Admittedly the certificates as well as the identity card which are annexed with the plaint show the date of birth of the plaintiff as 2.4.1956, however, the question before the Court is not the rectification of date of birth but in fact the question is as to whether such rectification can be made in the service record of the plaintiff. The plaintiff apparently passed CSS in 1983 and became civil servant in 1984 and he has been, since then, maintaining his date of birth as 2.4.1954. Previously before the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 it was the privilege of the employee to rectify the date of birth in the record including the service record whereas after insertion of Rule 12A which was inserted by SRO 521(1)/2000 dated 31st July 2000 it is not permissible for the applicant/employee to get his date of birth rectified. This question came before the Hon'ble Supreme Court in the case of **Ahmed Khan Dehpal vs. Government of Balochistan** (2013 SCMR 759) wherein it is observed that after so many years the idea to have the date of birth altered appeared to be an afterthought of the civil servant. In this case also it is almost after 30 years of service when it revealed to plaintiff that his actual date of birth is 2.4.1956. It was observed by the Hon'ble Supreme Court that the question was as to how the civil servant, who joined the service in 1982, could not know about his actual date of birth despite the passage of more than two decades, especially when at various stages during his studies as well as service he filled many examination forms, pro formas as well as service book. In the judgment of the Hon'ble Supreme Court the case of the employee/civil servant was that even in the documents of Matric and Intermediate certificates date of birth was wrongly mentioned whereas in the instant case learned Counsel for the plaintiff pleaded that though the date is rightly mentioned, however in the service record it is wrongly mentioned as 2.4.1954 instead of 2.4.1956.

In view of the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules 1973 such right of correction in the date of birth was taken away absolutely and it was clarified that once the date of birth in the record at the time of joining is mentioned the same shall be final and no alteration is permissible.

Such insertion of 12A is logical as at the twilight of the career it could only be termed as malafide. The instant suit filed by the plaintiff is not

simplicitor a correction of the date of birth in fact it is correction in date of birth in the service record. Had it been simple suit for declaration that his date of birth is to be rectified, Rule 12A of 1973 would not have been applied but in instant case, service record was sought to be corrected and in terms of Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 such is barred. The strength and power of Rule 12A is statutory.

The issue of maintainability of the suit was framed earlier and parties were also put on notice. Even on the last date the plaintiff was present alongwith his Counsel and also today he is present alongwith his newly engaged Counsel and I appreciate that he and his Counsel tried to assist the Court. As far as the maintainability of the suit is concerned, the point involved has already been decided in the case referred above and in view of the judgment of the Hon'ble Supreme Court the suit is not maintainable. The suit is therefore, dismissed along all pending applications.

The plaintiff seems to have reached the age of superannuation on 1.4.2014 and hence any salary, perks, privileges or any other benefits availed subsequent to the age of superannuation shall be returned forthwith."

236. On 3.6.2014, Ali Ahmed Lund, filed High Court Appeal No.157 of 2014, challenging the order of the learned Single Judge, who dismissed his Suit. On 11.9.2014, the High Court Appeal was fixed for *Katcha Pashi* before learned Division Bench-V, comprising Justice Hassan Azhar Rizvi and Justice Aziz-ur-Rehman, which was allowed in the following terms:-

"Today parawise comments have been filed on behalf of Respondent No.2 which are taken on record. Learned counsel for Appellant states that impugned order was passed on 29.5.2014 when inter-alia the injunction application was fixed for hearing. Per learned Counsel, no proper opportunity was given to the counsel for the Appellant to argue his case. In view of the pro and contra pleas raised before the learned trial court requires evidence, therefore, after setting aside order dated 29.5.2014, we remand the case to the learned trial court to decide the controversy involved afresh. The notification however, issued by the Respondent regarding the appointment of officer in place of the Appellant shall not be effected or otherwise be prejudiced in any manner. Appeal stands disposed of a/w the pending application.

Petition No.d-2386/2014 tagged with this case is hereby de-tagged and the same be heard on 23.1.2014"

237. On 21.11.2014, after remand another Injunction Application was filed by the Plaintiff Ali Ahmed Lund, who stood retired on 1.4.2014, pursuant to the notification issued by his parent Department i.e. Ministry of Trade and Commerce, which was allowed, by the learned Judge (Mr. Justice Saeeduddin Nasir) in Chambers, in the following terms:-

"In view of above observations the operation of order dated 9.4.2014 is suspended till the next date of hearing.

The defendant No.4 may allow joining the plaintiff as well as posting order in accordance with joining order dated 12.9.2014.

This order shall not have any adverse affect on the appointment of any officer in place of the appellant."

238. We have noticed that the Counsel representing the State did bring to the notice of the learned Judge in Chambers of the High Court the case of Ahmed Khan Dehpal vs. Government of Balochistan (2013 SCMR 759), which was not taken note of. We can safely assume that neither the learned Judge in Chambers nor the Appellate Bench have carefully read the provisions of Section 4 (1) of the Federal Service Tribunal Act 1973 which confers exclusive jurisdiction upon the Federal Service Tribunal to adjudicate upon the matters relating to the terms and conditions of service of a Civil Servant inclusive of the disciplinary proceedings. Article 212 of the Constitution places fetters on the jurisdiction of a Civil Court and a High Court to entertain matters relating to terms and conditions of service of a Civil Servant. We have already dealt with the scope of Article 212 of the Constitution separately. The mode of correction in the date of birth of a Civil Servant is provided under Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is part of terms and conditions of service of a Civil Servant and cannot be resorted to

through the Civil Suit. It has also been well established by now that a Civil Servant cannot seek alteration in his date of birth at the verge of his retirement or otherwise in a suit and in this respect principles laid down in the case of Dr Muhammad Aslam Baloach vs Government of Balochistan (2014 SCMR 1723) are fully attracted.

239. Ali Ahmed Lund was a Civil Servant from the Federal Government, serving in Trade and Commerce Group since 1984 and was on deputation with the Sindh Government when he filed the Constitutional Petition and the Suit before High Court of Sindh. He was required to approach the Federal Service Tribunal for redressal of his grievance. The learned Judge in Chambers and the Appellate Bench misdirected themselves while holding that issue of alteration in date of birth requires factual enquiry and, therefore, Suit was competent. By Section 3(3) of the Sindh Service Tribunals Act, the Tribunal has been conferred exclusive powers of a Civil Court while holding enquiry. This aspect of the matter lost sight by the two forums while passing the orders in Suit and in the High Court Appeal coupled with the bar of jurisdiction under Article 212. The learned Judge in Chambers overlooked the fact while directing the Sindh Government to allow joining and give posting order to Ali Ahmed Lund who was on deputation. A deputationist cannot seek his posting in a borrowing department once he was relieved of his duties for any reason. The High Court of Sindh was not competent to entertain Suit of the nature for correction of the date of birth, which form part of terms and conditions of service in view of the bar contained in Article 212 of the Constitution.

240. We for the aforesaid reasons, are of the considered view that Ali Ahmed Lund, who remained on deputation in Sindh for more than 15 years according to the brief note provided to us by S&GAD, could not competently file a Civil Suit or Constitutional Petition which he had withdrawn on 27.10.2014, seeking alteration in his date of birth that too at the verge of his retirement. Thus for the aforesaid reasons, the Civil Suit No.519 of 2014 stands abated. However, it will be open for the Plaintiff to approach this Court through a Review Petition, if he feels aggrieved of this judgment.

Suit No.1052 of 2014 (Mir Aijaz Hussain Talpur)

241. Mir Aijaz Hussain Talpur, an officer of the District Management Group, who was serving on deputation in the Province of Sindh, filed Suit in the High Court of Sindh. He was posted as Secretary, Co-operation and on his transfer, he filed the aforesaid Civil Suit on 10.6.2014, with the following prayer:-

- a) To declare that the notification No.SO-I(SGA&CD)-3/65/93 dated 23.11.2013 issued by the defendant No.1 on a closed weekly holiday i.e Saturday the 23rd November, 2013 thereby removing/transferring the plaintiff from the post of Secretary Co-operation, being in gross violation of rule 35 of the Sindh Government Rules of Business, Esta Code, Civil Servants Act, 1973 the Rules made thereunder and Articles 5, 9, 189 & 190 of the Constitution of Pakistan is ab-initio, illegal unlawful and void and as such is liable to be struck down.
- b) To grant mandatory injunction, suspend the operation of the impugned order No.SO(SGA&CD)-8/2/2005 Karachi dated the 2nd January 2014 being ab-initio as well as to suspend all the orders, transfers postings and whatever and direct the defendant No.1 to reinstate the plaintiff forthwith on his original posting i.e Secretary Co-operation.
- c) To grant mandatory injunction, suspend the operation of the order dated 3.6.2014, vide No.SGA&CD-8/2014 government of Sindh Services, Karachi and declare the same ab-

initio null and void and direct the defendant No.11 and 5 to transfer and post the plaintiff as Secretary Co-operation, Government of Sindh.

- d) *To grant permanent injunction restraining the defendants, their subordinates officers successors, authorities or any other officer claiming on their behalf from taking any coercive action against the plaintiff including but no limited to taking any coercive actions, departmental action transferring or initiating any criminal case FIR or placing the Plaintiff as OSD or to do anything which is detrimental to the reputation dignity as well as career of the Petitioner.*
- e) *To hold and declare that neither any suspension order dated 10.1.2014 against the plaintiff is in force nor his suspension notification 13.5.2014 was notified by Sindh Government timely as such the plaintiff is not lying under suspension and he is entitled to hold the post of Secretary Cooperation Department wherfrom he was illegally removed and suspension notification dated 13.5.2014 does not carry any legal value being null and void.*
- f) *To grant such other better relief which this Honorable Court may deem fit and proper under the circumstances of the case.*
- g) *To grant cost of the suit and cost.*
- h) *Any other relief which honorable Court may deem fit to grant.”*

242. On 21.11.2014, the learned Judge in the Chambers (Justice Saeeduddin Nasir) granted ad interim relief to the Plaintiff, relevant para of the order is reproduced below:-

“2. In view of the submissions made by the learned counsel for the plaintiff, the defendants are restrained from taking any departmental action including transferring or initiating any criminal case against defendant or placing the plaintiff as OSD or to do anything which is detrimental to the reputation and dignity of the plaintiff.

3&4. The operation of the Notifications No.SO-1 (SGA&CD)-3/65/93 dated 23.11.2013, impugned order No.3/1-0/2013 D-1, Islamabad dated 10.01.2014 Order No.SO-1(SGA&CD)-8/2/2005 dated 13.5.2014 is suspended till next date of hearing.”

243. One Shahzar Shamoon, Defendant No.3 in the Suit, a civil servant from Sindh, challenged the above order in High Court Appeal No.288 of 2014, which was fixed on 24.11.2014, before a learned Division Bench of the High Court of Sindh, comprising Justice Hassan Azhar Rizvi and Justice Aziz-ur-Rehman. After hearing, the learned Bench passed the following order, partially suspending the order dated 21.11.2014 passed in Suit No.1052 of 2014 of Mir Aijaz Talpur:-

- “1. *Urgent application is allowed.*
- 2. *Deferred for the time being.*
- 3. *Exemption is allowed subject to all just exceptions.*

4&5. Learned counsel for the appellant has drawn our attention to the order dated 10.1.2014 passed in C.P.No.D-4971/2013 whereby petition was dismissed wherein Notification No.SOI(S&GAD)-3/65/93 dated 23.11.2013 has been challenged, certified copy of the order is enclosed as Annexure ‘C/1’ at page 99 of the file. Learned Counsel for the appellant contends that respondent No.1 filed another petition bearing C.P.No.D-2386/2014 and almost with the same prayer the respondent No.1 filed Suit No.1052/2014. The said suit was fixed in Court on 3.4.2014 and the Court has directed the counsel for respondent No.1 to satisfy the Court on the maintainability of that suit, however, the respondent No.1 by suppressing material facts and by misleading the trial Court has succeeded to obtain impugned order dated 21.11.2014. Learned Counsel for the appellant has drawn our attention to an order dated 11.9.2014 passed in HCA No.157 of 2014 operative part of the said order is read as under:-

“The notification however, issued by the respondent regarding the appointment of officer in place of the appellant shall not be effected or otherwise be prejudiced in any manner. Appeal stands disposed of a/w the pending application.”

The learned counsel for the appellant has also drawn our attention to the order passed on the same day by the same learned Judge in Suit No.519/2014, wherein it was observed that “this order shall not have any adverse affect on the appointment of any officer in place of the appellant.”

Issue notice to the respondents, learned Advocate General, Sindh and learned DAG for 9.12.2014. Till the next date of hearing, operation of the impugned order dated 21.11.2014 passed in Suit No.1052/2014 enclosed as Annexure ‘A’ shall remain suspended.”

244. On 24.11.2014, the matter was placed before Justice Mohammad Shafi Siddiqui, who passed the following order:-

"This is an urgent application filed along with application under Order VII Rule 11 CPC. Learned Advocate General contends that in pursuance of the order passed by the Hon'ble Supreme Court the suit is not maintainable.

Notice to the plaintiff for a date to be fixed in the first week of December, 2014.

Mr. Faisal Siddiqui files Vakalatnama on behalf of defendant No.3 which is taken on record."

245. On 1.12.2014, all the applications in the Suit were fixed before Justice Mohammad Shafi Siddiqui, and the following order was passed:-

*"1. Granted.
2. Mr. Farooqui waives notice of the application, copy whereof has been supplied to him. Counter-affidavit/rejoinder, if any, be filed and exchanged before next date.*

Since on account of sad demise of Justice (R) Saleem Akhtar the Court work is suspended, the matter is adjourned to 4.12.2014 when learned counsel for the parties are directed to assist the Court regarding maintainability of the suit as prima facie it appears that the relief that is being sought in this suit has already been held to be not maintainable in terms of order passed by learned Division Bench in C.P.No.D-4971 of 2013, operative part of which is available at page 235 of the file. Even otherwise the plaintiff has challenged the transfer and posting, which are within the ambit of terms and conditions of service, and as such there are serious questions regarding maintainability of the suit."

246. We, after perusal of the aforesaid record in suits and H.C.A, are of the considered view that the issue raised by the parties relates to their terms and conditions of service and cannot be entertained by a High Court either in its Constitutional jurisdiction or in its Original Civil jurisdiction or in High Court Appeal, being barred under Article 212 of the Constitution. We, for the reasons already recorded by us separately on the scope of Article 212 of the Constitution, are of the considered view that the

Suit No.1052/2014, filed by Mir Aijaz Hussain Talpur and the High Court Appeal No.288/2014, filed by Shahzar Shamoon, stand abated for want of jurisdiction of the High Court. However, it would be open for the aggrieved party to approach the concerned Service Tribunal or this Court in Review, if so advised.

247. Before parting with this judgment, we have noticed that a civil servant cannot approach the Service Tribunal unless he exhausts the remedy of departmental appeal/representation under Section 22 of the Sindh Civil Servants Act, 1973. Section 4 (i) (a) of the Sindh Service Tribunals Act, 1973, provides that a Civil Servant can approach the Tribunal, subject to his exhausting remedy under Section 22 of the Sindh Civil Servants Act, after lapse of 90 days from the date on which such appeal/application was so preferred. In other words, a Civil Servant aggrieved by an order of the department has to file a representation or Appeal within 30 days of passing of such order and if the said authority does not decide his appeal/representation within 90 days, he can prefer an appeal before the Tribunal, after lapse of time as contained under Section 4(a) of the Sindh Service Tribunals Act. These provisions of Section 22 of the Sindh Civil Servants Act and Section 4 of the Sindh Service Tribunals Act require to be re-examined after insertion of Article 10A in the Constitution, as it restricts a Civil Servant from seeking expeditious remedy from the Tribunal which is constituted under the command of the Constitution.

248. We have also examined the service laws of other Provinces and the Federation and find that they have similar provisions in their service laws, as contained in Sindh Service

laws. The provisions of Section 22 of the Sindh Civil Servants Act and the Section 4 of the Sindh Service Tribunals Act, restrict a Civil Servant to get efficacious and expeditious remedy against the order of the department till the expiry of almost 120 days. After the promulgation of Article 10-A, we find it imperative to re-examine the existing law which apparently bars the filing of appeal in the Service Tribunal before the passage of mandatory 90 days, but practically for 120 days. The law also needs to be looked afresh, because writ jurisdiction in the matters relating to terms and conditions of service against the executive by the aggrieved Civil Servant is barred under Article 212 of the Constitution.

249. Moreover, this Court has also time and again emphasized upon reinforcement of good governance and strict observance of rules by the public functionaries. In the case of Syed Mehmood Akhter Naqvi vs. Federation of Pakistan (PLD 2013 SC 195), this Court has clearly reiterated the settled principles of good governance by stating that the public functionaries are not obliged to follow illegal orders of higher authorities. The principle has since been reiterated in order to enforce good governance and adherence to rule of law in public service.

250. However, a situation could and does arise, in which a civil servant may face wrath and vendetta of his superiors, if he refuses to carry out the illegal orders. In such a situation, he has the only right or option to make a representation etc to the concerned authority to seek redress of the wrong committed against him, but in many such cases his representation may be ignored or outright rejected by the authorities under the political influence or for ulterior motives. In that case, an aggrieved Civil

Servant is left with no option but to wait for mandatory 120 days, enabling him to file an appeal etc before the Tribunal. However, in the intervening period, an aggrieved Civil Servant faces uncompensable hardship and damage to his career, name and reputation.

251. As a result of existing disadvantages, cumbersome and prolonged processes of seeking remedies and relief from the administration or Service Tribunal, the honest, efficient and law-abiding Civil Servants are frequently left with a helpless situation of facing victimization at the hands of the administration and political executive, which tremendously affect their morale, motivation, character and even their prospects touching the pinnacle of career by the dint of honesty, efficiency and diligence.

252. In view of the aforesaid problems faced by the Civil Servants due to lengthy process of filing appeal in the Tribunal and availing of relief, it is imperative to provide an efficacious and expeditious alternate remedy to the Civil Servants by way of allowing them to approach the Service Tribunal, Federal or Provincial, without waiting for a period of 90 days, as contained under Section 4 (i)(a) of the Service Tribunals Act, by preferring an Appeal against the orders. Therefore, we are of the view that following issues are required to be answered at the touchstone of Article 10-A of the Constitution:-

1. *Whether Section 4(i)(a) of the Service Tribunals Act, restricting a Civil Servant from filing appeal to the Tribunal after lapse of 90 days is violative of the spirit and command of Article 10-A of the Constitution.*
2. *Whether time frame provided by Section 4 of the Service Tribunals Act, debarring an aggrieved Civil Servant to approach the Service Tribunal amounts to denial of the relief to him in terms of Articles 4, 9 and 25 of the Constitution.*

253. We, therefore, for the aforesaid reasons, feel it necessary to take up these issues in suo motu jurisdiction under Article 184 (3) of the Constitution, in separate proceedings as the issues, *inter alia*, are of public importance and have far reaching effects on the service structure of the Civil Servants in the Federation and the Provinces.

254. This judgment shall also be sent to the Chief Justices of all the High Courts through Registrars for their information, perusal and circulation amongst all the Hon'ble Judges. This judgment shall also be sent to the Chief Secretaries of all the Provinces as well as the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction that they shall streamline the civil service structure in light of the principles laid down in this judgment. In addition, the office shall also send copies of this judgment to the Chairmen of the Federal Service Tribunal, Islamabad and the Sindh Service Tribunal, Karachi, through their Registrars, for information and compliance.

Approved for reporting

Sohail/Saeed/**

Announced in open Court on 05.01. 2015 at Karachi.