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CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Saturday, 29 August 2026

Upload Window: 27-29 August 2026 — with 24-26 August and carried-forward Sindh items

FCC: 1 judgment | SC: 1 judgment | LHC: 3 judgments | SHC: 4 judgments | IHC: no new entries

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FCC	SC	LHC	SHC	TOTAL

Operative orders quoted verbatim. Legal principles extracted directly from judgment text.

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Exclusions and coverage notes: twelve candidates were identified across the upload window (one Supreme Court, one Federal Constitutional Court, three Lahore High Court and seven Sindh High Court); nine were curated for reporting. (a) Const. P. 875/2025 (National Bank of Pakistan v. Mirza Hamayun, 2026 SHC KHI 1583) was again excluded because the file served by the Sindh High Court portal under that listing's own hash is not the judgment at all but an unrelated eight-line order sheet in Const. Petition No. S-262 of 2025 dated 19.08.2026 directing the Deputy Commissioner (South) Karachi to furnish a report on the Bantva Dispensary Hospital. The portal defect first recorded in the 25 August briefing therefore persists, and the judgment remains unavailable in authentic form. (b) Const. P. 889/2025 (M/s A.Z. Apparel (Pvt) Ltd v. Taqees (Pvt) Ltd, 2026 SHC KHI 1588, 25 August) and Const. P. 673/2026 (Mrs. Zunaira wd/o Arshad Ali v. Muhammad Yousuf, 2026 SHC KHI 1587, 24 August) were read in full but not carried into this issue: the first turns on a fact-bound refusal to disturb concurrent findings under section 12(2) CPC where the applicant's own admissions defeated the pleas of fraud and want of jurisdiction, and the second restates settled law that interlocutory orders of a Rent Controller which the statute makes non-appealable cannot be challenged under Article 199 (President, All Pakistan Women Association v. Muhammad Akbar Awan, 2020 SCMR 26; Mst. Zarina Khan v. Farzana Shoaib, 2017 SCMR 330). Both remain on file and are available on request. (c) No Islamabad High Court judgment falling within the window met the reporting threshold. (d) The Federal Constitutional Court entry is the separate Additional Note of Syed Arshad Hussain Shah, J. in Civil Appeals No. 192-P of 2010; the majority judgment of the Chief Justice in those appeals was reported in the 25 August briefing and is not repeated here.

Federal Constitutional Court of Pakistan

1 judgment

LAND ACQUISITION ACT, 1894 S. 18; CODE OF CIVIL PROCEDURE, 1908 S. 148 — A CONCURRING NOTE CONFINING THE CONSEQUENCES OF THE MAJORITY'S PROSPECTIVE RULING: ENHANCED COMPENSATION ALREADY RECEIVED IN GOOD FAITH UNDER SADDAQAT ALI KHAN IS NOT TO BE REFUNDED, AND NON-PARTY LANDOWNERS MAY STILL SEEK TIME UNDER S. 148 CPC TO COME IN

Additional Note from Mr. Justice Syed Arshad Hussain Shah in Civil Appeals No. 192-P of 2010

ADDITIONAL NOTE RECORDED CONCURRING WITH THE MAJORITY JUDGMENT; APPROVED FOR REPORTING

Additional Note in Civil Appeals No. 192-P of 2010 (the Fazale Haq College land acquisition appeals), Federal Constitutional Court of Pakistan · Bench: Mr. Justice Syed Arshad Hussain Shah (separate Additional Note, concurring); majority judgment authored by Mr. Chief Justice Amin-ud-Din Khan · Decided: No date is recorded on the face of the Additional Note; it issues with, and concurs in, the majority judgment in Civil Appeals No. 192-P of 2010 · Uploaded: 25.08.2026

FACTS

The majority judgment in Civil Appeals No. 192-P of 2010, authored by the Chief Justice and covered in the briefing of 25 August 2026, set aside the impugned judgment to the extent that it extended the benefit of enhanced compensation to landowners who had neither invoked the reference remedy under section 18 of the Land Acquisition Act, 1894 nor remained parties to the reference proceedings, and held that henceforth landowners who have neither objected to the acquisition proceedings nor pursued any legal remedy or litigation shall not be entitled to claim enhanced compensation. In so holding the majority declared that Saddaqat Ali Khan (PLD 2010 SC 878) did not lay down the correct law. Syed Arshad Hussain Shah, J. concurred in that reasoning and in the law laid down that courts shall remain within the four corners of law, but recorded a separate Additional Note addressed solely to the consequential position of landowners who had already received enhanced compensation on the faith of Saddaqat Ali Khan while it held the field, and of landowners who had not been party to the acquisition proceedings.

LEGAL ISSUE

Where a superior court departs from a precedent that had been acted upon, what is to become of monies already paid out and received in good faith under the overruled decision; and what procedural avenue, if any, remains open to landowners who were not party to, and did not agitate, the acquisition proceedings.

HOLDING

The learned Judge, expressly disclaiming any intention to detract from, qualify or affect the reasoning or conclusions of the majority, added two limited observations. First, landowners who have already received enhanced compensation pursuant to Sadaqat Ali Khan shall not be called upon to refund or reimburse the amount so received; the observation is confined to recovery of amounts already paid and received in good faith under a judicial determination then holding the field, and is supported by the reasoning of the Judges Pension Case (PLD 2013 SC 829), where recipients had practised no fraud and had received monies under a judicial dispensation then considered a valid enunciation of law. Second, landowners who were not party to, or did not agitate, the acquisition proceedings shall be entitled to avail the benefit of section 148 CPC if they now come forward to join the proceedings in pending cases at any stage. The Note closes by placing these observations in the context of fairness, bona fide reliance upon a subsisting judicial pronouncement, and avoidance of undue hardship.

LEGAL SIGNIFICANCE

This Additional Note is of practical importance well beyond the acquisition context: it supplies a template for the restitutionary consequences of prospective overruling. Where a litigant has received a benefit under a decision that is later held not to lay down the correct law, the Note treats bona fide receipt under a judgment then holding the field as a complete answer to a claim for refund, drawing directly on the reasoning of the Judges Pension Case. Practitioners advising clients exposed to recovery proceedings following a change in the law now have a clear and recent statement of the principle from the Federal Constitutional Court. The second observation is equally useful: it keeps the door open under section 148 CPC for non-party landowners in pending cases, so that the majority's prospective bar operates as a rule for the future rather than as a trap for those still able to come forward. It should be read together with the majority judgment, which it neither contradicts nor dilutes.

LEGAL PROPOSITIONS (VERBATIM)

— the landowners who have already received enhanced compensation pursuant to the judgment rendered in the case of Sadaqat Ali Khan (supra) shall not be called upon to refund or reimburse the amount so received.

— This observation is confined to the question of recovery of amounts already paid and received in good faith under a judicial determination then holding the field.

— Needless to mention that the landowners who were not part y to, or did not agitate the acquisition proceedings , shall be entitled to av ail the benefit of Section 148 CPC, in case they now come forward to join the proceedings in pending cases at any stage .

— This limited observation, be taken in the context of fairness, bona fide reliance upon a subsisting judicial pronouncement, and avoidance of undue hardship, without in any manner detracting from the ratio, reasoning or conclusions of the main judgment.

LEGAL PRINCIPLES EXPOUNDED

Amounts already paid and received in good faith under a judicial determination then holding the field are not liable to be refunded merely because the decision has since been held not to lay down the correct law.

Source: *the landowners who have already received enhanced compensation pursuant to the judgment rendered in the case of Sadaqat Ali Khan (supra) shall not be called upon to refund or reimburse the amount so received.*

Authority: *Saddaqat Ali Khan (PLD 2010 SC 878), held by the majority not to lay down the correct law; Judges Pension Case (PLD 2013 SC 829)*

Where no fraud or foul play is alleged and monies were received in bona fide belief of entitlement under an apex court dispensation, enforcing refund may cause innumerable predicament and is not to be ordered.

Source: *it is nobody's case that they have practiced and played any fraud or committed some foul in gaining and p rocuring the pension, so as to disentitle them to retain such*

Authority: *PLD 2013 SC 829 (Judges Pension Case)*

Landowners who were not party to, and did not agitate, acquisition proceedings retain the benefit of section 148 CPC and may join pending proceedings at any stage.

Source: *Needless to mention that the landowners who were not part y to, or did not agitate the acquisition proceedings , shall be entitled to av ail the benefit of Section 148 CPC, in case they now come forward to join the proceedings in pending cases at any stage .*

Authority: *Section 148, Code of Civil Procedure, 1908; section 18, Land Acquisition Act, 1894*

A separate or additional note which addresses only the consequential aspect of a judgment does not detract from, qualify or affect the ratio, reasoning or conclusions of the main judgment.

Source: *This limited observation, be taken in the context of fairness, bona fide reliance upon a subsisting judicial pronouncement, and avoidance of undue hardship, without in any manner detracting from the ratio, reasoning or conclusions of the main judgment.*

Authority: *Additional Note of Syed Arshad Hussain Shah, J. in Civil Appeals No. 192-P of 2010*

OPERATIVE ORDER

Additional Note recording concurrence with the majority judgment, subject to two limited observations: (i) landowners who have already received enhanced compensation pursuant to Sadaqat Ali Khan shall not be called upon to refund or reimburse the amount so received; and (ii) landowners who were not party to, or did not agitate, the acquisition proceedings shall be entitled to avail the benefit of section 148 CPC should they now come forward to join the proceedings in pending cases at any stage.

■ **View Full Judgment**

Supreme Court of Pakistan

1 judgment

KHYBER PAKHTUNKHWA EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2018 SS. 3, 4, 5(IV), 6(2); GENERAL CLAUSES ACT, 1897 S. 20A; CONSTITUTION OF PAKISTAN, 1973 ART. 212 — WHERE A STATUTE ITSELF REGULARISES SERVICE WITH EFFECT FROM ITS COMMENCEMENT, BELATED GAZETTE PUBLICATION OF THE CONSEQUENTIAL NOTIFICATION IS A DIRECTORY LAPSE WHICH NEITHER POSTPONES THE ACCRUED RIGHT NOR REORDERS INTER-SE SENIORITY

Sahibzada Hassan Ali and others v. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others

CIVIL PETITIONS CONVERTED INTO APPEALS AND ALLOWED; JUDGMENT OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL SET ASIDE; APPROVED FOR REPORTING

Civil Petitions No. 5091 to 5093 of 2025 and Civil Petitions No. 986-P to 988-P of 2025 (against the consolidated judgment dated 12.09.2025 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals No. 1427-1429/2024) · Bench: Justice Muhammad Ali Mazhar (author); Justice Musarrat Hilali · Decided: Heard 19.05.2026; judgment dated 19th May, 2026 at Islamabad · Uploaded: 27.08.2026

FACTS

The petitioners were appointed against project posts by Notification dated 30.06.2016 after complying with all codal formalities. The Government of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Employees Regularization of Service Act, 2018 on 07.03.2018, by which at least 52 different projects were regularized. The petitioners were regularized by Notifications dated 28.08.2018 and 17.10.2018 with effect from the commencement of the Act, i.e. 07.03.2018. Owing to the conduct of the lower staff of the Department and the Government Printing Press, those Notifications were published in the Official Gazette only on 21.08.2024, though expressly with effect from 07.03.2018 and with a direction that inter-se seniority would be maintained as per the rules. The Department determined inter-se seniority under section 6 of the Act of 2018 and issued a Final Seniority List by Notification dated 13.02.2019, followed by further lists from time to time. When the Final Seniority List for 2024 issued on 14.03.2024, some employees (the private respondents, who had been appointed freshly on 13.08.2018) filed a joint departmental representation on 30.07.2024, which was rejected on 13.08.2024. Their service appeals were allowed by the Khyber Pakhtunkhwa Service Tribunal, which set aside the Seniority List holding that, in terms of section 5 of the Act of 2018, the petitioners were not regular civil servants until gazette publication on 21.08.2024 and were therefore not entitled to seniority. The petitioners had been shown senior to the respondents in five successive seniority lists for 2019, 2020, 2021, 2022 and 2023 without objection.

LEGAL ISSUE

Whether the requirement in section 5(iv) of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 that services shall be deemed regularized only on publication of names in the Official Gazette is mandatory or directory; and whether a delay of nearly six years in gazette publication of a regularization notification, which itself operated retrospectively from the date of commencement of the Act, can defeat seniority accrued to the regularized employees as against later fresh entrants.

HOLDING

The Court held that where the parent law commands publication but does not declare that non-publication renders the action null and void or unenforceable, such a clause is by and large directory. The Act of 2018 itself regularized services from the date of its commencement; the notification was merely a formal ratification of a right which accrued the moment the statute was enacted. Because the notification conferred a benefit and imposed no new liability, penalty or tax, the lag in publication was a mere procedural delay attributable to inter-departmental lapses over which the employees had no control. Inter-se seniority was in any event governed by the self-contained mechanism in section 6(2), namely continuous officiation, with age as the tie-breaker. The Tribunal had wrongly elevated the belated publication over the statutory scheme. The petitions were converted into appeals, allowed, the impugned judgment set aside and the petitioners' seniority restored to its original condition.

LEGAL SIGNIFICANCE

This is the Supreme Court's most developed recent statement on the mandatory/directory divide in gazette-publication clauses, and it settles the point for the growing body of provincial regularization legislation. It draws a clear line: publication requirements protect citizens against secret laws, hidden taxes and penalties, and so bite where an instrument curtails rights or imposes liabilities; they do not operate to defeat a beneficial status which the statute itself has already conferred. The judgment consolidates a long line of authority from Chief Commissioner, Karachi v. Jamil Ahmed (PLD 1961 SC 145) to Bahadur Khan v. Federation of Pakistan (2017 SCMR 2066) and expressly reconciles it with Muhammad Suleman v. Abdul Ghani (PLD 1978 SC 190). Its extension of Actus Curiae Neminem Gravabit to the State, and its articulation of the 'Model Employer' standard, give practitioners a workable framework for challenging seniority and pension determinations founded on nothing more than administrative delay. It is directly useful wherever a department seeks to date an employee's rights from the paperwork rather than from the statute.

LEGAL PROPOSITIONS (VERBATIM)

— If the parent law commands the publication of notification but it does not unequivocally p roclaim that non - publication of notification will render the action null and void or unenforceable, such clause by and large may be construed as directory.

— The moment the statute was enacted, the legal right to be regularized accrued to the eligible employees.

— The services were regularized by means of Act of 2018 from the date of Act, though the official notification was published with delay in the Official Ga zette but the retroactive regularization will remain valid.

— An employee cannot be made a victim or scapegoat due to delay in the publication.

— the formal date of publication cannot serve as the sole litmus test; rather, the overarching scheme, legislative intent, and foundational philosophy of the law must be kept in view.

LEGAL PRINCIPLES EXPOUNDED

A statutory direction to publish in the Official Gazette is construed as directory, not mandatory, unless the parent law itself attaches the consequence of nullity or unenforceability to non-publication.

Source: *If the parent law commands the publication of notification but it does not unequivocally p roclaim that non - publication of notification will render the action null and void or unenforceable, such clause by and large may be construed as directory.*

Authority: *Section 5(iv), Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018; section 20A, General Clauses Act, 1897; Chief Commissioner, Karachi v. Jamil Ahmed (PLD 1961 SC 145); Saghir Ahmed v. Province of Punjab (PLD 2004 SC 261); Bahadur Khan v. Federation of Pakistan (2017 SCMR 2066)*

Where a statute confers regularization by force of its own terms, the right accrues on enactment and the consequential notification is only a formal ratification; retroactive regularization therefore survives delayed publication.

Source: *The services were regularized by means of Act of 2018 from the date of Act, though the official notification was published with delay in the Official Ga zette but the retroactive regularization will remain valid.*

Authority: *Sections 3, 4 and 5, Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018*

The bar on retrospective operation of notifications applies to instruments which impair vested rights or impose new liabilities, and not to instruments which confer a benefit.

Source: *The notification bestowed beneficial right rather than levying any adversative liability, penalty, or tax, therefore, the lag in publication can be treated as mere procedural delay*

Authority: *Sohail Ahmed v. Province of Sindh (2017 PLC (C.S.) 510); Muhammad Suleman v. Abdul Ghani (PLD 1978 SC 190); Government of Sindh v. M/s Khan Ginners (PLD 2011 SC 347)*

The maxim Actus Curiae Neminem Gravabit binds the State as much as the Court: the State must act in accordance with law and cannot take advantage of its own administrative wrong.

Source: *An elementary canon of service law edicts that an act of the State or Court shall prejudice no man.*

Authority: *Legal maxim Actus Curiae Neminem Gravabit; doctrine of indoor management; Article 25 and service-law jurisprudence*

The State and public authorities are held to a 'Model Employer' standard and must act fairly and justly without exploiting technicalities; an employee is not to be prejudiced by bureaucratic delay or in-house oversight.

Source: *An employee cannot be made a victim or scapegoat due to delay in the publication.*

Authority: *Doctrine of good governance; grounds of judicial review of administrative action (illegality)*

Inter-se seniority of employees regularized under the Act of 2018 is determined by continuous officiation in the service or cadre, with the older employee ranking senior where the date of continuous officiation is the same.

Source: *The inter - se seniority of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre*

Authority: *Section 6(2), Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018*

OPERATIVE ORDER

Civil petitions converted into appeals and allowed. The consolidated judgment dated 12.09.2025 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals No. 1427-1429/2024 is set aside and the seniority of the petitioners is restored to its original condition.

■ View Full Judgment

Lahore High Court

3 judgments

PAKISTAN PENAL CODE, 1860 SS. 318, 319, 320, 321, 322; CODE OF CRIMINAL PROCEDURE, 1898 S. 497 AND SECOND SCHEDULE; PUNJAB MOTOR VEHICLE ORDINANCE, 1965 — POSSESSION OF A VALID AND EFFECTIVE DRIVING LICENCE IS THE LINE OF DEMARCATION BETWEEN QATL-I-KHATA UNDER S. 320 PPC AND QATL-BIS-SABAB UNDER S. 322 PPC

Riaz Hussain v. The State and another

POST-ARREST BAIL PETITION DISMISSED; APPROVED FOR REPORTING

Criminal Miscellaneous No. 5377-B of 2026, Lahore High Court, Multan Bench, Multan (2026 LHC 5349) · Bench: Mr. Justice Tanveer Ahmad Sheikh · Decided: 20.08.2026 · Uploaded: 28.08.2026

FACTS

The petitioner was arrayed as an accused in FIR No. 1101 of 2025 dated 15.11.2025 registered at Police Station Saddar Shujaabad, District Multan, for an offence under section 322 PPC. According to the prosecution case, four young men, two sons of the complainant together with a cousin whose marriage was scheduled for the following day and a friend, were proceeding on a motorcycle when a bus driven negligently and rashly on the wrong side collided with them at Adda Nasir Mor at about 7.00 p.m.; all four died at the spot. The petitioner was not named in the FIR. The owners of the bus were joined in the investigation on 20.11.2025 and stated under section 161 Cr.P.C. that the petitioner was their driver and the bus had been handed over to him; a supplementary statement of the complainant nominating the petitioner followed on 23.12.2025. Bail was refused by the Magistrate Section 30, Shujaabad and by the Additional Sessions Judge, Shujaabad by order dated 24.06.2026. The petitioner held an HTV licence but had not been issued a Public Service Vehicle (PSV) licence, which is required for driving a bus. He argued that section 322 was not attracted, that on the FIR the bailable offence under section 320 PPC was made out, and that as section 322 invites only diyat it fell outside the prohibitory clause of section 497 Cr.P.C.

LEGAL ISSUE

Whether death caused by rash or negligent driving falls under section 320 PPC (punishment for qatl-i-khata by rash or negligent driving) or section 322 PPC (punishment for qatl-bis-sabab), and what turns on the driver's possession of a valid and effective licence; and whether an offence punishable only with diyat is for that reason alone outside the embargo of section 497 Cr.P.C.

HOLDING

After a combined study of sections 318 to 322 PPC, the Court held that the words 'unlawful act' in section 321 draw the line of demarcation between the two offences. A person holding a valid and effective licence who causes death by rash and negligent driving commits qatl-i-khata, because although he has no intention to kill, his act of driving is lawful. A person not holding a licence, or not holding a valid or effective licence, who causes death by rash or negligent driving commits qatl-bis-sabab, because his act of driving is itself illegal and unlawful, and section 322 PPC applies to him. The petitioner held an HTV licence but no PSV licence, a special driving endorsement required for commercial passenger transport, and was therefore not authorised to drive a public transport vehicle; his driving was in flagrant violation of the Punjab Motor Vehicle Ordinance, 1965. On the bail plea, the Court held that although section 322 invites only diyat, the Second Schedule to the Cr.P.C. shows the offence as cognizable and non-bailable, and the fact that an offence is punishable only with diyat is not by itself sufficient for release on bail; each case must be scrutinised on its own circumstances. Guidance was taken from Majid Nadeem v. The State (2011 SCMR 1227). The delay in recording the statements nominating the petitioner arose in the natural course of investigation and could not be resolved in his favour. Bail was refused.

LEGAL SIGNIFICANCE

This is the clearest recent statement of a distinction that arises daily in traffic-fatality prosecutions and is frequently argued the wrong way round. By locating the difference between sections 320 and 322 PPC in the lawfulness of the act of driving rather than in the degree of negligence, the judgment gives investigating officers, trial courts and defence counsel a single, checkable criterion: does the accused hold a valid and effective licence of the class required for the vehicle he was driving. The Court's treatment of the PSV endorsement as a distinct requirement, so that an HTV licence holder driving a bus is an unlicensed driver for this purpose, materially widens the practical reach of section 322. The second holding is equally useful at the bail stage: it forecloses the recurring argument that an offence carrying only diyat must be bailable, by reading section 322 against the Second Schedule and the 1990 amendment of Chapter XVI of the PPC.

LEGAL PROPOSITIONS (VERBATIM)

— The word "unlawful act" is of much significance, which draws a line of demarcation between above said two offences.

— I am of the confirmed view that when a person carrying a valid and effective license drives a vehicle and causes the death of a person by rash and negligent driving, his act would be covered by the offence of qatl-i-khata . He has no intention to kill, but his act of driving is lawful.

— On the other hand where a person, not holding a license, or a valid/effective driving license causes the death of somebody by his rash or negligent driving, although he has also no intention to kill, but his act of driving is illegal and unlawful

— Intention or knowledge is not a "sine qua non" for the applicability of both the said offences.

— The fact that it is punishable only with Diyat is not sufficient by itself for the release of an accused on bail, because each and every case has to be scrutinized in the light of its own surrounding circumstances.

— A person driving the vehicle illegally/unlawfully puts not only his own life, but also life of the persons travelling with him as well as life of the public at risk.

LEGAL PRINCIPLES EXPOUNDED

The expression 'unlawful act' in section 321 PPC is the criterion which demarcates qatl-i-khata from qatl-bis-sabab; intention or knowledge is not a sine qua non for either offence.

Source: *The word "unlawful act" is of much significance, which draws a line of demarcation between above said two offences.*

Authority: *Sections 318, 319, 320, 321 and 322, Pakistan Penal Code, 1860*

A licensed driver who causes death by rash and negligent driving commits qatl-i-khata under section 320 PPC, his act of driving being lawful.

Source: *I am of the confirmed view that when a person carrying a valid and effective license drives a vehicle and causes the death of a person by rash and negligent driving, his act would be covered by the offence of qatl-i-khata . He has no intention to kill, but his act of driving is lawful.*

Authority: *Sections 318, 319 and 320, Pakistan Penal Code, 1860*

A driver holding no licence, or no valid or effective licence for the class of vehicle driven, who causes death by rash or negligent driving commits qatl-bis-sabab and attracts section 322 PPC, because the act of driving is itself illegal and unlawful.

Source: *On the other hand where a person, not holding a license, or a valid/effective driving license causes the death of somebody by his rash or negligent driving, although he has also no intention to kill, but his act of driving is illegal and unlawful*

Authority: *Sections 321 and 322, Pakistan Penal Code, 1860; Punjab Motor Vehicle Ordinance, 1965*

A Public Service Vehicle licence is a distinct endorsement required for commercial passenger transport, so that a holder of only an HTV licence driving a bus is not authorised to drive a public transport vehicle.

Source: *"Public service vehicle license" is a special driving endorsement required to drive commercial passenger transport like van, coaster and bus.*

Authority: *Punjab Motor Vehicle Ordinance, 1965*

That an offence is punishable only with diyat does not by itself entitle an accused to bail; section 322 PPC is shown as cognizable and non-bailable in the Second Schedule to the Cr.P.C. and each case must be assessed on its own circumstances.

Source: *The fact that it is punishable only with Diyat is not sufficient by itself for the release of an accused on bail, because each and every case has to be scrutinized in the light of its own surrounding circumstances.*

Authority: *Section 497 and Second Schedule, Code of Criminal Procedure, 1898; amendment of Chapter XVI of the Pakistan Penal Code, 1990; Majid Nadeem v. The State and another (2011 SCMR 1227)*

OPERATIVE ORDER

Petition held to have no force and dismissed. Observations declared tentative in nature and not to influence the learned trial court in any manner.

View Full Judgment

PAKISTAN PENAL CODE, 1860 SS. 489-B, 489-C; CODE OF CRIMINAL PROCEDURE, 1898 S. 497(2) — POSSESSION SIMPLICITER OF COUNTERFEIT CURRENCY DOES NOT MAKE OUT S. 489-B PPC, AND A CASE THAT AT MOST FALLS UNDER S. 489-C IS ONE OF FURTHER INQUIRY OUTSIDE THE PROHIBITORY CLAUSE

Muhammad Sarwar v. The State and another

POST-ARREST BAIL GRANTED; APPROVED FOR REPORTING

Crl. Misc. No. 35608-B of 2026, Lahore High Court, Lahore (2026 LHC 5345) · Bench: Mr. Justice Muhammad Amjad Pervaiz · Decided: 19.08.2026 · Uploaded: 27.08.2026

FACTS

The petitioner sought post-arrest bail in FIR No. CCC-LHR-20/2026 dated 02.03.2026 for offences under sections 489-B and 489-C PPC registered at Police Station Corporate Crime Circle, Lahore. Pursuant to secret information regarding a gang involved in the illegal business, possession and transportation of counterfeit Pakistani currency notes, an FIA raiding team apprehended the petitioner and, on personal search, allegedly recovered counterfeit notes amounting to Rs. 200,000 (200 notes of Rs. 1,000 denomination). It was further alleged that at the time of arrest the petitioner confessed to counterfeiting currency notes and selling them over the preceding year. The raid was conducted at a busy public place, yet no independent witness was associated with the proceedings. There was no evidence of any past or prospective buyer or customer. The law officer opposed bail on the ground that further evidence might surface upon arrest of the absconding co-accused.

LEGAL ISSUE

Whether recovery of counterfeit currency notes from an accused's possession, coupled with an alleged extra-judicial confession made at the time of arrest, is sufficient at the tentative assessment stage to attract section 489-B PPC, or whether the case at most falls under section 489-C PPC and is accordingly one of further inquiry under section 497(2) Cr.P.C.

HOLDING

On tentative assessment, the Court held that no independent witness had been associated although the arrest took place at a busy public place; that the so-called confession was inadmissible; that there was no evidence of counterfeiting or of sale in the market and none as to any past or prospective buyer; and that the material available was insufficient to attract the mischief of section 489-B PPC. At most a case under section 489-C PPC was made out, for which the maximum punishment is seven years or fine or both, which does not fall within the prohibitory clause of section 497 Cr.P.C. Whether sections 489-B or 489-C are ultimately attracted is for the trial court to determine after recording evidence. The Court restated that at bail stage only a tentative assessment is permissible and deeper appreciation of the record cannot be undertaken; that the benefit of doubt goes to the accused even at bail stage; that the evidence being documentary and already with the prosecution, tampering could not arise; and that bail is not to be withheld as punishment. The apprehension of further evidence surfacing on the arrest of a co-accused was answered by observing that the surfacing of new facts is a valid ground to seek cancellation of bail. Bail was granted on bonds of Rs. 100,000 with one surety.

LEGAL SIGNIFICANCE

The judgment is a compact and citable restatement of the 489-B/489-C boundary, which is routinely blurred in FIA counterfeit-currency prosecutions where possession alone is charged as trafficking. Its practical value lies in tying the classification directly to the bail outcome: because section 489-C carries a maximum of seven years, a case that at most falls there is outside the prohibitory clause of section 497 Cr.P.C., so the correct characterisation at the tentative stage is dispositive of liberty. The Court's treatment of a confession made to a raiding party as inadmissible, and its insistence on independent witnesses where a raid occurs in a public place, will be of use in challenging such recoveries generally. The passages on bail not being punitive or preventive, and on the asymmetry between reparable and irreparable error, draw together PLD 1972 SC 81 and PLD 2020 SC 456 in a form convenient for citation.

LEGAL PROPOSITIONS (VERBATIM)

— *Possession simpliciter of a counterfeit currency note does not constitute ingredients of section 489-B, P.P.C.*

— *It is settled legal position that at the bail stage deeper appreciation of the record cannot be gone into, but only a tentative assessment is to be made just to find out as to whether present applicants/accused are connected with the commission of offence or not.*

— *It is important to remember that bail is not to be withheld as a punishment.*

— *The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.*

— *the object of bail is to secure the attendance of the accused at the trial. The object is neither punitive nor preventive.*

— *Suffice it to say that surfacing of new facts and material tending to establish guilt of an accused is a valid ground to seek cancellation of bail.*

LEGAL PRINCIPLES EXPOUNDED

Mere possession of counterfeit currency notes does not make out the ingredients of section 489-B PPC; absent evidence of counterfeiting, sale or any buyer, the case at most falls under section 489-C PPC, which is outside the prohibitory clause of section 497 Cr.P.C.

Source: *Possession simpliciter of a counterfeit currency note does not constitute ingredients of section 489-B, P.P.C.*

Authority: *Sections 489-B and 489-C, Pakistan Penal Code, 1860; section 497, Code of Criminal Procedure, 1898; 1995 SCMR 48; 1996 P Cr.LJ 815; 2012 YLR 1228; 2021 SCMR 729*

At bail stage the court makes only a tentative assessment of connection with the offence and does not undertake a deeper appreciation of the record.

Source: *It is settled legal position that at the bail stage deeper appreciation of the record cannot be gone into, but only a tentative assessment is to be made just to find out as to whether present applicants/accused are connected with the commission of offence or not.*

Authority: *Section 497(2), Code of Criminal Procedure, 1898; 2012 YLR 1228*

Bail is not to be withheld as punishment; wrongful incarceration of an innocent man admits of no satisfactory reparation, whereas an erroneous grant of bail can be repaired by ultimate conviction.

Source: *The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.*

Authority: *PLD 1972 SC 81*

The object of bail is to secure the accused's attendance at trial and is neither punitive nor preventive; the presumption of innocence subsists until punishment is handed down after trial.

Source: *the object of bail is to secure the attendance of the accused at the trial. The object is neither punitive nor preventive.*

Authority: *PLD 2020 SC 456*

The apprehension that further incriminating material may surface on the arrest of a co-accused is not a ground to refuse bail, since the surfacing of new facts is itself a valid ground to seek cancellation.

Source: *Suffice it to say that surfacing of new facts and material tending to establish guilt of an accused is a valid ground to seek cancellation of bail.*

Authority: *2020 SCMR 1115; 2017 SCMR 1936*

OPERATIVE ORDER

Petition accepted. Petitioner admitted to post-arrest bail on furnishing bail bonds of Rs. 1,00,000 with one surety in the like amount to the satisfaction of the trial court, with liberty to the State or the complainant to seek cancellation should the petitioner or anyone acting on his behalf delay the conclusion of the trial. Observations declared tentative.

View Full Judgment

CODE OF CRIMINAL PROCEDURE, 1898 S. 497, THIRD AND FOURTH PROVISOS; PAKISTAN PENAL CODE, 1860 SS. 302, 324, 365-B, 496-A, 148, 149, 201 — STATUTORY DELAY BAIL IS A RIGHT ONCE THE THIRD PROVISO CONDITIONS ARE MET, AND PRIOR ABSCONDANCE IS NO BAR WHERE THE CASE FALLS WITHIN FURTHER INQUIRY

Muhammad Fazil v. The State etc.

POST-ARREST BAIL GRANTED ON THE GROUND OF STATUTORY DELAY; APPROVED FOR REPORTING

Crl. Misc. No. 1313-B of 2026, Lahore High Court, Multan Bench, Multan (2026 LHC 5338) · Bench: Mr. Justice Syed Farhad Ali Shah · Decided: 24.08.2026 · Uploaded: 27.08.2026

FACTS

The petitioner sought post-arrest bail in FIR No. 175 dated 17.04.2015 for offences under sections 302, 324, 365-B, 496-A, 337-A(i), 337-F(i), 148, 149 and 201 PPC registered at Police Station Saddar, District Dera Ghazi Khan. The prosecution case was that the petitioner, with fourteen co-accused riding five motorcycles and armed, reached the complainant's house and opened indiscriminate fire; the petitioner exhorted and fired a shot which struck Muhammad Riaz on the right shin, a co-accused then inflicted six hatchet blows to Riaz's head and face, others injured the complainant, and on leaving the accused abducted Mst. Zulaikha Bibi. The petitioner remained a fugitive and was apprehended after a long abscondance on 02.01.2024; the report under section 173 Cr.P.C. against him was submitted on 07.05.2024 and he was indicted on 24.06.2024. His earlier post-arrest bail petition on merits before the Supreme Court was dismissed as withdrawn on 29.04.2025 in Crl. P.L.A. No. 259/2025. Bail was pressed solely on statutory delay. Approximately two years, seven months and twenty-three days had elapsed without the statement of even a single prosecution witness being recorded. The trial court's report showed thirty-three dates fixed for prosecution evidence, with adjournments attributable to the accused not being produced from jail, the presiding officer being unavailable, and three joint requests; no adjournment was otherwise sought on the petitioner's behalf.

LEGAL ISSUE

Whether an accused facing a capital charge whose trial has not concluded within two years of detention is entitled as of right to post-arrest bail under the third proviso to section 497(1) Cr.P.C., and whether a long prior abscondance, or the prosecution's assertion of it, brings the case within the fourth proviso so as to defeat that right.

HOLDING

The Court held that the third proviso confers a right to release on bail where the trial of a person accused of an offence punishable with death is not concluded within two years of detention, and the accused can be held disentitled only if the delay is shown to have been caused or occasioned by an act or omission of the accused or someone acting on his behalf. On the trial court's report the delay could in no manner be attributed to the petitioner. To bring a case within the fourth proviso the prosecution must display its cards by reference to some material, and no such stance was found on the record. Applying Noor Agha v. The State (2025 SCMR 1679), the right arises where the third proviso conditions are met and the fourth proviso exceptions are not attracted. On abscondance, the Court held that where the case of an accused comes within the ambit of further inquiry his previous abscondance cannot be used as a hurdle to the grant of post-arrest bail, relying on Muhammad Aslam v. The State (2016 SCMR 1520) for the proposition that where a question of propriety is confronted with a question of right, the latter must prevail. Bail was granted on bonds of Rs. 10,00,000 with two sureties.

LEGAL SIGNIFICANCE

The judgment is a useful working guide to the allocation of the burden under the third and fourth provisos to section 497 Cr.P.C., an area where prosecutors routinely resist statutory-delay bail by pointing to abscondance or by asserting, without material, that the accused is a hardened or dangerous criminal. Two propositions are of immediate practical use: first, the fourth proviso is not self-executing and the prosecution must display its cards by reference to material before an accused can be excluded from the statutory right; second, prior abscondance goes to propriety and not to right, and cannot defeat a right that has otherwise accrued. The detailed recitation of thirty-three hearing dates and the attribution of each adjournment also models the evidentiary exercise a court is expected to undertake before deciding whose default caused the delay, and is a template for framing such an application.

LEGAL PROPOSITIONS (VERBATIM)

— The 3 rd proviso of section 497 Cr.P.C. unfolds that if the trial of a person accused of having committed an offence punishable with death is not concluded within two years of his detention, he becomes entitled to the concession of post-arrest bail.

— He can be held disentitled from the relief of post arrest bail under 3 rd proviso of section 497 Cr.P.C. only if it is demonstrated that such delay has been caused or occasioned by an act or omission of the accused seeking bail or by any other person acting on his behalf.

— Needless to mention here that in order to bring the case of an accused within the 4 th proviso of section 497 Cr.P.C., the prosecution has to display its cards in reference to some material.

— if the case of an accused comes within the ambit of further inquiry, his previous abscondance cannot be used as hurdle for the grant of post arrest bail.

— It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail.

LEGAL PRINCIPLES EXPOUNDED

The third proviso to section 497(1) Cr.P.C. creates a statutory right to bail where the trial of an accused facing a capital charge is not concluded within two years of detention.

Source: *The 3 rd proviso of section 497 Cr.P.C. unfolds that if the trial of a person accused of having committed an offence punishable with death is not concluded within two years of his detention, he becomes entitled to the concession of post-arrest bail.*

Authority: *Third proviso to section 497(1), Code of Criminal Procedure, 1898; Noor Agha v. The State and another (2025 SCMR 1679); Fayaz Khan v. Mohsin Shah and another (2026 SCMR 1076)*

An accused is disentitled to statutory-delay bail only where the delay is demonstrated to have been caused or occasioned by an act or omission of the accused or of a person acting on his behalf.

Source: *He can be held disentitled from the relief of post arrest bail under 3 rd proviso of section 497 Cr.P.C. only if it is demonstrated that such delay has been caused or occasioned by an act or omission of the accused seeking bail or by any other person acting on his behalf.*

Authority: *Third proviso to section 497(1), Code of Criminal Procedure, 1898; Muhammad Usman v. The State and another (2024 SCMR 28)*

The fourth proviso exceptions are not presumed; the prosecution must display its cards by reference to some material before an accused can be excluded from the statutory right.

Source: *Needless to mention here that in order to bring the case of an accused within the 4 th proviso of section 497 Cr.P.C., the prosecution has to display its cards in reference to some material.*

Authority: *Fourth proviso to section 497(1), Code of Criminal Procedure, 1898; Noor Agha v. The State and another (2025 SCMR 1679)*

Previous abscondance is a matter of propriety and cannot be used as a hurdle to post-arrest bail where the case of the accused falls within the ambit of further inquiry; where propriety is confronted with right, right prevails.

Source: *It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail.*

Authority: *Muhammad Aslam v. The State and others (2016 SCMR 1520); Hidayat Khan v. The State and another (2023 SCMR 172); Zahid Hussain Shah v. The State (PLD 1995 SC 49); Muhammad Iqbal v. The State (1999 PCr.LJ 948)*

OPERATIVE ORDER

Petition allowed. The petitioner, incarcerated since 02.01.2024 without material progress in trial, ordered to be released on bail on furnishing bail bonds of Rs. 10,00,000 with two sureties in the like amount to the satisfaction of the learned trial court.

■ **View Full Judgment**

Sindh High Court

4 judgments

ARBITRATION ACT, 1940 SS. 20, 26-A, 30, 33 — AN ARBITRAL AWARD WHICH THE ARBITRATOR HIMSELF FOUNDS ON AN EXPRESS FINDING THAT CREDIBLE EVIDENCE IS ABSENT DISCLOSES AN ERROR APPARENT ON ITS FACE AND IS OPEN TO LIMITED JUDICIAL INTERFERENCE

Zulfiqar Shakoor s/o Abdul Shakoor v. Sindh Workers Welfare Board

HIGH COURT APPEAL DISMISSED; JUDGMENT AND DECREE OF THE LEARNED SINGLE JUDGE MAINTAINED; APPROVED FOR REPORTING

High Court Appeal No. 429 of 2016 (D.B.), High Court of Sindh at Karachi; 2026 SHC KHI 1612 · Bench: Mr. Justice Arshad Hussain Khan; Mr. Justice Amjad Ali Sahito (author) · Decided: Heard 20.08.2026; judgment dated 28.08.2026 · Uploaded: 28.08.2026

FACTS

The dispute arose out of four construction contracts awarded by the Sindh Workers Welfare Board to the appellant contractor: two Model Schools at Lakhra and Ghotki dated 16.03.2004 for Rs. 41,745,660 and Rs. 41,446,245 respectively, and, dated 07.12.2004, the construction of one hundred houses at Ghotki for Rs. 39,047,550 and infrastructure works for those houses for Rs. 13,237,155. The General Conditions of Contract were incorporated into all four agreements and consultants were appointed for supervision and certification. Disputes arose over certification and payment of running bills, progress of works, extension and rescheduling of the contractual periods and termination. The appellant referred the disputes to the consultants under Clause 67.1 and, on failure of that mechanism and the respondent's failure to nominate an arbitrator, approached the Court under section 20 of the Arbitration Act, 1940; a Sole Arbitrator was appointed by order dated 19.07.2011. The Arbitrator held that the appellant had a contractual right to terminate under Clause 69.1 and awarded an aggregate of Rs. 29,910,192, including Rs. 5,000,000 towards overhead expenditure, with interest at 10% per annum on default. In relation to Contract No. 1 the Arbitrator expressly observed that there was 'hardly any credible evidence' concerning overhead expenditure, yet proceeded on the premise that such expenditure must have been incurred and fixed Rs. 5 million as a 'reasonable figure'; he rejected the claim of 20% loss of profit as exaggerated and unsupported by evidence, but awarded 10% as a 'reasonable assessment'. The learned Single Judge, by judgment dated 30.11.2016 and decree dated

09.12.2016 in Suit No. 987 of 2013, made the Award rule of the Court only to the extent of refund of retention money and security deposit of Rs. 36,37,460 with interest, and set aside the amounts awarded towards overhead expenditure and loss of profit.

LEGAL ISSUE

Whether, in exercising the limited supervisory jurisdiction under sections 30 and 33 of the Arbitration Act, 1940, a court may set aside heads of an arbitral award where the arbitrator has himself recorded that credible evidence in support of those heads was absent, or whether such interference amounts to an impermissible reappraisal of evidence and substitution of the court's own view for that of the arbitrator.

HOLDING

The Division Bench dismissed the appeal. It held that an arbitral award cannot be equated with a decree after a regular civil trial and that the supervisory jurisdiction of the court is circumscribed, but that the limited scope of intervention does not render every finding immune from scrutiny where the award itself discloses a legal infirmity or an error apparent on its face. The finding on lawful termination under Clause 69.1 and the entitlement to refund of retention money, being relatable to identifiable deductions from certified payments, were maintained. As to overhead expenditure, the infirmity arose from the Arbitrator's own reasoning: having recorded that there was hardly any credible evidence, he awarded Rs. 5 million on the assumption that expenditure must have been incurred, without identifying any document, calculation, rate, period, expenditure statement or account. Section 26-A requires reasons to be stated in sufficient detail precisely so that the court may ascertain whether the conclusion rests on a legally sustainable foundation. As to loss of profit, the Award identified no contractual profit margin, audited statement, comparative data, tender analysis, expert opinion or cost structure to support the figure of 10%, and a general admission that government contractors earn between 10% and 15% could not establish the anticipated net profit on these particular contracts. The Arbitrator had further applied the Contract No. 1 reasoning to Contracts Nos. 2, 3 and 4 without independent assessment of the evidence relating to each. The production of fourteen bound volumes could not by itself constitute proof of a head or quantum of damages absent a discernible nexus with the amount awarded. The principle that an arbitrator is the final judge of facts attaches to findings properly arrived at and does not immunise an expressly unsupported estimate.

LEGAL SIGNIFICANCE

This is a carefully reasoned Division Bench treatment of the boundary between limited supervision of an arbitral award and appellate re-adjudication, and it will be the leading Sindh authority on the point for some time. Its central contribution is the distinction it draws between erroneous appreciation of evidence, which is immune, and a finding rendered in the absence of any evidentiary support, which is not. The judgment gives section 26-A of the Arbitration Act, 1940 real work to do: the duty to give reasons in sufficient detail exists so that the court can test whether the award has a lawful and discernible evidentiary foundation, and an award that convicts itself out of its own mouth by recording an absence of credible evidence and then awarding a round sum will not survive. For construction practitioners the treatment of overhead expenditure and loss of profit is directly useful: both are recognised heads of consequential loss, but a contractual right to compensation is not an unrestricted authority to award an amount on the assumption that some loss must have been suffered, and each contract in a multi-contract reference requires its own evidentiary assessment.

LEGAL PROPOSITIONS (VERBATIM)

— an arbitral award cannot be equated with a decree rendered after a regular civil trial and subjected to appellate scrutiny as though the Court were exercising general appellate jurisdiction over findings of fact.

— the limited scope of judicial intervention does not render every finding of an Arbitrator immune from scrutiny, particularly where the Award itself discloses a legal infirmity or an error apparent on its face.

— A contractual right to compensation cannot be transformed into an unrestricted authority to award an amount merely on the assumption that some loss must necessarily have been suffered.

— The governing test, therefore, is not whether the Court would have arrived at a different conclusion, but whether the conclusion recorded by the Arbitrator possesses a lawful and discernible evidentiary foundation.

— A clear distinction must be maintained between an erroneous appreciation of evidence and a finding rendered in the absence of any evidentiary support.

— the mere production of voluminous documents cannot, by itself, constitute proof of a particular head or quantum of damages. What is required is a discernible nexus between the evidence produced and the amount ultimately awarded.

— The principle of finality attached to arbitral findings cannot be invoked to sustain a monetary award which lacks the evidentiary foundation required by law.

LEGAL PRINCIPLES EXPOUNDED

Arbitration being a consensual mode of dispute resolution, the court's supervisory jurisdiction under sections 30 and 33 is circumscribed and an award is not open to appellate scrutiny over findings of fact.

Source: *an arbitral award cannot be equated with a decree rendered after a regular civil trial and subjected to appellate scrutiny as though the Court were exercising general appellate jurisdiction over findings of fact.*

Authority: *Sections 30 and 33, Arbitration Act, 1940*

The limited scope of intervention does not immunise every arbitral finding; where the award itself discloses a legal infirmity or an error apparent on its face, judicial intervention is permissible.

Source: *the limited scope of judicial intervention does not render every finding of an Arbitrator immune from scrutiny, particularly where the Award itself discloses a legal infirmity or an error apparent on its face.*

Authority: *Sections 30 and 33, Arbitration Act, 1940; Umar Din through L.Rs. v. Mst. Shakeela Bibi and others (2009 SCMR 29)*

The governing test on review of an award is not whether the court would have reached a different conclusion but whether the arbitrator's conclusion possesses a lawful and discernible evidentiary foundation.

Source: *The governing test, therefore, is not whether the Court would have arrived at a different conclusion, but whether the conclusion recorded by the Arbitrator possesses a lawful and discernible evidentiary foundation.*

Authority: *Sections 26-A, 30 and 33, Arbitration Act, 1940*

Section 26-A requires reasons in sufficient detail so that the court may examine whether the reasoning is supported by the material placed before the arbitrator and is consistent with law; a speaking order is indispensable to the proper administration of justice.

Source: *The requirement embodied in Section 26-A necessarily implies that, while exercising its limited jurisdiction in relation to an arbitral award, the Court may examine whether the reasons recorded by the Arbitrator are supported by the material placed before him and are consistent with the applicable law.*

Authority: *Section 26-A, Arbitration Act, 1940*

A recognised head of consequential loss such as overhead expenditure or loss of profit must still be established by cogent and reasonably sufficient evidence bearing a rational and demonstrable nexus with the amount awarded.

Source: *A contractual right to compensation cannot be transformed into an unrestricted authority to award an amount merely on the assumption that some loss must necessarily have been suffered.*

Authority: *Sections 26-A and 30, Arbitration Act, 1940; General Conditions of Contract, Clauses 67.1 and 69.1*

Where a reference embraces several distinct contracts, a deficient evidentiary foundation under one contract cannot be carried across to the others without an independent examination of the evidence relating to each.

Source: *Once the evidentiary foundation for the claims towards overhead expenditure and loss of profit under Contract No.1 was found deficient, the same figures could not automatically be applied to the remaining contracts without an independent examination of the evidence pertaining to each individual contract.*

Authority: *Sections 26-A and 30, Arbitration Act, 1940*

Finality attaches to arbitral findings properly arrived at within the scope of the arbitral jurisdiction and cannot be invoked to sustain an expressly unsupported estimate.

Source: *The principle of finality attached to arbitral findings cannot be invoked to sustain a monetary award which lacks the evidentiary foundation required by law.*

Authority: *Sections 30 and 33, Arbitration Act, 1940*

OPERATIVE ORDER

High Court Appeal dismissed to the extent that it assails the setting aside of the amounts awarded towards overhead expenditure and loss of profit. The Judgment dated 30.11.2016 and Decree dated 09.12.2016 passed by the learned Single Judge in Suit No. 987 of 2013 are maintained. The Award stands made rule of the Court only to the extent sustained by the learned Single Judge, including refund of retention money and security deposit together with interest thereon in accordance with the Award and the impugned Decree.

■ View Full Judgment

STATE LIFE EMPLOYEES (SERVICE) REGULATIONS, 1973 REGS. 30, 31(2)(III), 32, 33; CONSTITUTION OF PAKISTAN, 1973 ARTS. 25, 199, 212; LIFE INSURANCE (NATIONALIZATION) ORDER, 1972 ART. 49 — A COMPETENT AUTHORITY CANNOT SILENTLY ESCALATE ITS OWN ENQUIRY OFFICER'S FINDINGS FROM IRREGULARITY TO DISHONESTY, NOR PUNISH UNDER REGULATORY SUB-CLAUSES CORRESPONDING TO NO CHARGE EVER FRAMED

Abdul Jabbar v. Federation of Pakistan and others

PETITION DISPOSED OF; DISMISSAL AND APPELLATE ORDERS SET ASIDE AND SUBSTITUTED BY THE MINOR PENALTY OF CENSURE WITH REINSTATEMENT AND BACK BENEFITS; APPROVED FOR REPORTING

C. P. No. D-933 of 2020 (D.B.), High Court of Sindh, Bench at Sukkur; 2026 SHC SUK 1559 · Bench: Mr. Justice Arbab Ali Hakro (author); Mr. Justice Muhammad Osman Ali Hadi · Decided: Heard 12.08.2026; announced 20.08.2026 · Uploaded: 20.08.2026

FACTS

The petitioner joined the State Life Insurance Corporation in 1998 as a Sales Representative and rose to Area Manager, Sukkur Zone, 'A' Category with effect from 02.08.2011. Following a complaint by six Sales Managers, a Fact-Finding Committee was constituted on 15.06.2017. A charge-sheet dated 06.04.2018 was served, invoking Regulation 30(1)(a), (c), (d) and (e); an Enquiry Report followed on 23.07.2018. On Allegation No. 1, the core embezzlement charge of Rs. 2,157,375, the enquiry record noted that no witness was produced by the Management Representative and the Enquiry Officer found the petitioner may not be directly involved, concluding the allegation was 'not established'. On Allegations Nos. 2 to 4, again with no witness produced, the Enquiry Officer found only that the petitioner had issued premium receipts and prepared and signed the Daily Collection Statement in his own hand, functions belonging to the cashier, and had failed to escalate the resulting irregularities, and held this established expressly and only 'to the extent of irregularities'. In paragraphs 78 and 79 the Enquiry Officer recorded that the petitioner and the cashier were not found directly involved in the fraud, that the evidence was not enough to prove guilt, and recommended a warning letter having regard to a clean service record, adding that action was needed against higher authorities for ignoring reminders dated 18.03.2016, 09.05.2016, 28.06.2016 and 01.09.2016. A Final Show-Cause Notice of 25.10.2018 nevertheless described the same material as establishing 'connivance in embezzlement and sheer negligence'; the Dismissal Order of 18.03.2019 held him guilty of 'dishonesty in connection with Corporation fund' under Regulation 30(2)(ii), (iv) and (v); and the Appeal Order of 19.11.2019 spoke of tampering with daily collection statements and observed that 'if cash was received by you it was your responsibility to deposit the amount'. Naresh Kumar, identified as the person who actually diverted funds, had been terminated separately on 02.05.2017; the co-charge-sheeted cashier Abdul Ghani Shaikh fared markedly better. The petitioner's salary was withheld from August 2017 to April 2018, before any charge-sheet existed. In their Comments the respondents alleged for the first time a separate Rs. 50,00,000 fraud.

LEGAL ISSUE

Whether the constitutional jurisdiction is available to an employee of an autonomous statutory corporation whose service is governed by statutory regulations; and whether a competent authority may depart from the specific and reasoned exonerating findings of its own enquiry officer without recording reasons, punish under regulatory sub-clauses unconnected to any charge framed, impose the gravest penalty for what was found to be at most an irregularity, and treat the delinquent more harshly than others examined in the same enquiry.

HOLDING

The Bench overruled the Article 212 objection, holding that Article 212 excludes the Court's jurisdiction only in respect of persons in the service of Pakistan for whom a Service Tribunal has been constituted, and has no application to employees of an autonomous statutory corporation whose service is regulated by regulations the corporation is empowered to frame; on Muhammad Mubeen-us-Salam (PLD 2006 SC 602) such employees may enforce those rules through Article 199. The departmental remedy had in any event been exhausted. On the merits, the Court held that at each of four successive stages the underlying facts relied upon were identical, namely that the petitioner personally issued receipts and prepared the Daily Collection Statement instead of the cashier, and what changed was only the vocabulary, moving from 'irregularity' to 'negligence' to 'connivance' to 'embezzlement' to 'dishonesty', without a single witness examined, a single fresh document placed on record, or a single reason given for preferring the graver description. Neither the Dismissal Order nor the Appeal Order mentioned paragraphs 78 and 79 of the Enquiry Report; such silence is not the reasoned disagreement Shafqat-ur-Rehman Ranjha (2021 SCMR 153) requires but an absence of reasons dressed up as a conclusion. The Dismissal Order further recorded guilt under Regulation 30(2)(ii), (iv) and (v), of which (iv) concerns bribery and (v) habitual absence, matters never charged, never evidenced and never put to the petitioner. Regulation 31(2)(iii) contemplates only three courses on receipt of an enquiry report, acceptance, rejection, or a fresh enquiry for reasons recorded, and the Dismissal Order did none of these. Even taking only the misconduct actually established, dismissal was disproportionate on the standard in District and Sessions Judge (Authority), Jhang (2026 SCMR 357), failing at least at the stage of necessity since the warning under Regulation 30(1)(i) recommended by the Corporation's own Enquiry Officer was available and adequate. The unexplained disparity of treatment sat uneasily with Article 25. The Rs. 50,00,000 allegation raised for the first time in the Comments was left entirely out of account. The withholding of salary from August 2017 to April 2018 found no support in Regulation 32.

LEGAL SIGNIFICANCE

This is an unusually thorough and quotable judgment on the anatomy of departmental discipline, and it will be valuable to anyone challenging a dismissal in the corporate or statutory-body sector. Three strands stand out. First, its close reading of Regulation 31(2)(iii) establishes that a competent authority faces a closed set of options on receipt of an enquiry report and cannot proceed silently past findings favourable to the employee; the Court's phrase for what happened here, an absence of reasons dressed up as a conclusion, is likely to be widely cited. Second, the Court traces the escalation of characterisation across four documents on an unchanged factual base and treats that drift as itself a ground of interference, an analytical technique that is readily transferable. Third, it applies the recent proportionality standard in District and Sessions Judge (Authority), Jhang (2026 SCMR 357) to a disciplinary penalty and finds it fails at the necessity stage. The holding that an order's legality is judged by the reasons actually recorded in it, so that a respondent cannot rescue it years later by pleading a fresh and untested charge in written comments, is a clean statement of a principle often assumed but rarely articulated. The remedy fashioned, substitution of censure with reinstatement, continuity and adjustment for intervening employment, is itself a useful model.

LEGAL PROPOSITIONS (VERBATIM)

> *— Article 212 excludes the ordinary jurisdiction of this Court only in respect of the terms and conditions of service of persons who are, properly speaking, in the " service of Pakistan " and for whom a Service Tribunal has been constituted.*
>
> *— This Court does not sit as a court of appeal over a departmental enquiry, and it is no part of its function, in proceedings under Article 199, to re-weigh evidence already weighed by a competent domestic forum or to substitute its own view of what punishment might have been more apt*
>
> *— an authority is not free simply to assert a graver conclusion than the one its own enquiry returned.*
>
> *— what changes, stage upon stage, is only the vocabulary in which those same facts are described, moving steadily from " irregularity " to " negligence " to " connivance " to " embezzlement " to " dishonesty, " without a single witness being examined, a single fresh document being placed on record, or a single reason being given for preferring the graver description over the milder one the Corporation ' s own Enquiry Officer had settled upon after actually hearing the matter.*

— it is simply an absence of reasons dressed up as a conclusion.

— An order dismissing an employee of some twenty years ' standing and directing recovery of a substantial sum from him cannot rest, even in part, on regulatory sub-clauses that correspond to nothing in the charge, the evidence or the enquiry findings.

— the legality of an order dismissing an employee must be judged by the reasons actually recorded in that order at the time it was passed; a respondent defending such an order in constitutional proceedings cannot supplement, still less rescue, those reasons by introducing, years later and in written pleadings alone, a fresh and hitherto untested charge that was never put to the delinquent employee and never examined by any enquiry.

LEGAL PRINCIPLES EXPOUNDED

Article 212 ousts the constitutional jurisdiction only for persons in the service of Pakistan for whom a Service Tribunal exists; employees of an autonomous statutory corporation governed by statutory regulations may enforce those regulations under Article 199.

Source: *employees of statutory corporations whose terms and conditions of service are regulated by such statutory rules, as distinct from ordinary contracts of private employment, may enforce those rules through the ordinary courts, including the constitutional jurisdiction of this Court under Article 199, precisely because they fall outside the exclusive domain reserved to Service Tribunals.*

Authority: *Article 212 and Article 199, Constitution of Pakistan, 1973; Article 49, Life Insurance (Nationalization) Order, 1972; State Life Employees (Service) Regulations, 1973 (S.R.O. 57(1)/73); Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602)*

A competent authority may disagree with its enquiry officer, but the disagreement must be founded on the record and supported by reasons; it may not simply assert a graver conclusion than its own enquiry returned.

Source: *an authority is not free simply to assert a graver conclusion than the one its own enquiry returned.*

Authority: *Federation of Pakistan v. Shafqat-ur-Rehman Ranjha and others (2021 SCMR 153); Regulation 31(2)(iii), State Life Employees (Service) Regulations, 1973*

Escalating the characterisation of unchanged facts from irregularity through negligence and connivance to embezzlement and dishonesty, without fresh evidence or reasons, is not reasoned disagreement but an absence of reasons dressed up as a conclusion.

Source: *what changes, stage upon stage, is only the vocabulary in which those same facts are described, moving steadily from " irregularity " to " negligence " to " connivance " to " embezzlement " to " dishonesty, " without a single witness being examined, a single fresh document being placed on record, or a single reason being given for preferring the graver description over the milder one the Corporation ' s own Enquiry Officer had settled upon after actually hearing the matter.*

Authority: *Regulation 31(2)(iii), State Life Employees (Service) Regulations, 1973; Federation of Pakistan v. Shafqat-ur-Rehman Ranjha (2021 SCMR 153)*

A penalty order cannot rest, even in part, on regulatory sub-clauses which correspond to nothing in the charge, the evidence or the enquiry findings.

Source: *Sub-clauses (iv) and (v) are simply without foundation on this record: no charge of bribery or illegal gratification was ever framed against the petitioner, no evidence of any such thing was ever led, and the petitioner was never called upon to answer any such accusation.*

Authority: *Regulations 30(1), 30(2) and 31(2)(iii), State Life Employees (Service) Regulations, 1973*

A disciplinary penalty must satisfy legitimacy of aim, suitability, necessity and a fair balance; where a less restrictive and adequate alternative was available, dismissal fails at the necessity stage.

Source: *a less restrictive and on this record, entirely adequate alternative namely the warning contemplated by Regulation 30(1)(i) and recommended by the Corporation ' s own Enquiry Officer was demonstrably available and had already been assessed as sufficient by the one forum that actually examined the evidence.*

Authority: *District and Sessions Judge (Authority), Jhang and others v. Ghulam Shabbir (2026 SCMR 357); Regulation 30(1)(i), State Life Employees (Service) Regulations, 1973*

Unexplained disparity of treatment between employees examined in the same enquiry on overlapping facts offends the guarantee of equal treatment among similarly placed employees.

Source: *Nothing on this record explains why the petitioner alone, of all those examined in the same enquiry and indeed of the " 5 others officials of Sukkur Zone " the respondents ' own Comments now say were involved, should* *have been visited with dismissal while the others were not.*

Authority: *Article 25, Constitution of Pakistan, 1973; Member (Power), WAPDA v. Sher Bahadur (2026 SCMR 838); National Bank of Pakistan through President, Karachi v. Roz-ud-Din and another (2025 SCMR 160)*

The legality of a dismissal order is judged by the reasons actually recorded in it when passed; those reasons cannot be supplemented or rescued in constitutional proceedings by a fresh, untested charge pleaded years later.

Source: *the legality of an order dismissing an employee must be judged by the reasons actually recorded in that order at the time it was passed; a respondent defending such an order in constitutional proceedings cannot supplement, still less rescue, those reasons by introducing, years later and in written pleadings alone, a fresh and hitherto untested charge that was never put to the delinquent employee and never examined by any enquiry.*

Authority: *Article 199, Constitution of Pakistan, 1973*

Suspension is permissible only for the purpose of conducting an enquiry, and even then entitles the employee to subsistence allowance of fifty per cent of pay rather than complete cessation of salary.

Source: *Regulation 32(1) and (2) permits suspension of an employee only " for the purpose of conducting an enquiry against " him, and no enquiry, nor indeed any Charge Sheet, was in existence at any point during that period.*

Authority: *Regulation 32, State Life Employees (Service) Regulations, 1973*

OPERATIVE ORDER

Petition disposed of. The Dismissal Order dated 18.03.2019 and the Departmental Appeal Order dated 19.11.2019, together with the direction for recovery of Rs. 2,157,375 contained in the former, are set aside. The petitioner is instead treated as having incurred the minor penalty of censure under Regulation 30(1)(i) of the State Life Employees (Service) Regulations, 1973, and stands reinstated with effect from 18.03.2019 with continuity of service and seniority, entitled to arrears of pay, allowances and consequential benefits subject to adjustment and to disclosure within thirty days of any salaried employment taken up elsewhere. The direction for recovery of the balance sum of Rs. 173,876 is set aside and amounts already recovered are to be refunded or adjusted within two months. Salary and perquisites withheld between August 2017 and April 2018 are to be released within two months. Where the petitioner has since attained superannuation or the post no longer exists in its former shape, the Corporation shall treat him as having continued in unbroken service for all purposes including pensionary and terminal benefits. The claim to the cash award of Rs. 9,50,000 is left open to be pursued departmentally. No order as to costs.

■ **View Full Judgment**

SINDH RENTED PREMISES ORDINANCE, 1979 SS. 2(J), 15, 16(1); CONSTITUTION OF PAKISTAN, 1973 ART. 199 — AN HEIR OF A DECEASED TENANT FOUND IN JOINT POSSESSION OF THE DEMISED PREMISES IS A STATUTORY TENANT AND NOT A SUB-LESSEE, AND CONCURRENT EJECTMENT FINDINGS RESTING ON MISREADING OF EVIDENCE MAY BE SET ASIDE IN JUDICIAL REVIEW

Abdur Rahim and others v. Jamaluddin and others

CONSTITUTIONAL PETITION ALLOWED; EJECTMENT ORDERS OF BOTH COURTS BELOW SET ASIDE AND THE RENT CASE DISMISSED; APPROVED FOR REPORTING

C.P. No. S-881 of 2002, High Court of Sindh at Karachi; 2026 SHC KHI 1578 · Bench: Mr. Justice Nisar Ahmed Bhanbhro · Decided: Heard and order dated 20.08.2026 · Uploaded: 20.08.2026

FACTS

The predecessor in interest of the petitioners, late Abubakar, was the tenant, and the predecessor of the respondents, late Naseeruddin, the landlord, of Shop No. 11-C-88/G-1, Survey No. W.C. 3/28, Wadhoomal Quarters, Princess Street, Naanakwara, Karachi, purchased by the respondents at open auction in 1960. Late Abubakar established the business 'Kohinoor Spray Painting Works' at the premises, which was continued by his legal heirs after his death; the relationship of landlord and tenant devolved on the heirs of both sides. In September 1989 the landlords instituted Rent Case No. 1400 of 1989 seeking ejectment on three grounds: default in payment of rent since October 1980, personal bona fide need, and sub-letting to Mushtaq Ahmed (petitioner No. 4) without permission. The 1st Rent Controller Karachi South dismissed the case on default and personal need, holding that the tenants had regularly deposited rent in MRC proceedings and thereafter in the rent case pursuant to an order under section 16(1) SRPO, 1979, but allowed ejectment on the ground of sub-letting; First Rent Appeal No. 346 of 2001 was dismissed on 08.07.2002. The findings on default and personal need went unchallenged and attained finality. Mushtaq Ahmed was the maternal grandson of late Abubakar, being the son of his daughter Mst. Roshan Bano, and deposed that he ran the business jointly with his grandfather under the same name and style. The petition had been pending since 2002; counsel for the respondents and respondent No. 1 having died, and the respondents having failed to appear despite service through publication, the matter was decided with the assistance of the petitioners' counsel alone.

LEGAL ISSUE

Whether an heir of a deceased tenant who was associated with the tenant's business at the demised premises during the tenant's lifetime, and who continues in possession thereafter, is a sub-lessee for the purposes of ejectment, or a statutory tenant within the definition in section 2(j) of the Sindh Rented Premises Ordinance, 1979; and whether concurrent findings of fact founded on misreading and non-reading of evidence may be interfered with under Article 199.

HOLDING

The Court held that no material or evidence was placed on record to show that Mushtaq Ahmed was carrying on a separate business at the premises or was paying rent to his maternal uncles; on the contrary, sufficient material showed that Kohinoor Spray Painting Works was established by late Abubakar and was being looked after by Mushtaq Ahmed as his maternal grandson. Being the son of one of the legal heirs, he fell within the definition of statutory tenant in section 2(j) SRPO, 1979, which includes heirs of the tenant in possession or occupation after the tenant's death, and he became a statutory tenant on the demise of his grandfather. He could not therefore be held a sub-lessee. Since the ejectment application on the grounds of bona fide need and default had been dismissed and remained unchallenged, and no material supported the sole surviving ground of sub-letting, the findings of the courts below to that extent suffered from misreading and non-reading of evidence, making out a fit case for the exercise of the power of judicial review under Article 199. The petition was allowed, both orders set aside and the rent case dismissed, subject to the petitioners continuing to deposit rent as directed or instituting a fresh MRC.

LEGAL SIGNIFICANCE

Sub-letting remains the most heavily litigated ground of ejectment in Sindh, and the judgment supplies a clear rule for the common situation in which a family member has been running the tenant's business at the demised premises. By anchoring the answer in the statutory definition in section 2(j) SRPO, 1979, which expressly includes heirs of the tenant in possession after the tenant's death, the Court holds that the presence of such an heir is not sub-letting at all, and that the landlord must prove a separate business or payment of rent by the alleged sub-lessee to the surviving heirs before the ground can succeed. The judgment is also a reminder of the evidentiary burden: absent that proof, concurrent findings do not insulate an ejectment order, since misreading and non-reading of evidence remain a recognised basis for interference under Article 199 notwithstanding the Court's general reluctance to disturb concurrent findings of fact. The recitation of the grounds available under sections 14 and 15 SRPO is a convenient summary for practitioners.

LEGAL PROPOSITIONS (VERBATIM)

— Since no material or evidence was placed on record to say that Mushtaq Ahmed was doing the separate business or he was paying rent to his maternal uncles , in absence convincing evidence thereof, it cannot be held that Petitioner No 4 was a sub - lettee of the demised premises .

— On the contrary being son of one of the legal heirs he also f ell within the definition of the statutory tenant .

— This Court is very slow in disturbing the concurrent findings of fact rendered by the Courts below .

— The findings of Courts below to that extent suffered from mis - reading and non - reading of evidence , as such a fit case to exercise the powers of judicial review under Article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 is made out .

LEGAL PRINCIPLES EXPOUNDED

An heir of a deceased tenant who continues in possession or occupation of the premises falls within the statutory definition of 'tenant' and becomes a statutory tenant on the tenant's death.

Source: *(ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant .*

Authority: *Section 2(j), Sindh Rented Premises Ordinance, 1979*

An heir associated with the deceased tenant's business at the demised premises cannot be treated as a sub-lessee absent evidence of a separate business or of rent paid by him to the surviving heirs.

Source: *Since no material or evidence was placed on record to say that Mushtaq Ahmed was doing the separate business or he was paying rent to his maternal uncles , in absence convincing evidence thereof, it cannot be held that Petitioner No 4 was a sub - lettee of the demised premises .*

Authority: *Section 2(j), Sindh Rented Premises Ordinance, 1979; Ms. Hajran Begum v. Inayatur Rehman and another (2000 SCMR 99)*

Although the High Court is very slow to disturb concurrent findings of fact, findings vitiated by misreading and non-reading of evidence make out a fit case for judicial review under Article 199.

Source: *The findings of Courts below to that extent suffered from mis - reading and non - reading of evidence , as such a fit case to exercise the powers of judicial review under Article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 is made out .*

Authority: *Article 199, Constitution of Pakistan, 1973*

Where findings on some grounds of ejectment go unchallenged they attain finality, and the ejectment order must then stand or fall on the surviving ground alone.

Source: *Respondents No 1 to 6 did not assail the order of Trial Court, as such findings of Trial Court on issues of Default and Personal Bonafide need attained finality.*

Authority: *Sections 14 and 15, Sindh Rented Premises Ordinance, 1979*

OPERATIVE ORDER

Petition allowed. The judgment dated 08.07.2002 passed by the appellate court in F.R.A. No. 346 of 2001 and the order dated 29.09.2000 passed by the trial court in Rent Case No. 1400 of 1989 are set aside. The rent case filed by respondents No. 1 to 6 stands dismissed; the petitioners shall continue to deposit the rent as directed by the trial court in the rent proceedings, or may institute a fresh MRC if so advised. Copy of the order to be sent to the trial court for information.

View Full Judgment

CODE OF CIVIL PROCEDURE, 1908 SS. 107(D), 115, 151, ORDER XLI RULE 27, ORDER XIII RULE 2 — ADDITIONAL EVIDENCE AT THE APPELLATE STAGE IS A DISCRETIONARY EXCEPTION, NOT A REMEDY FOR A PARTY'S OWN FAILURE TO PRODUCE PUBLIC RECORDS WITHIN ITS POSSESSION AT TRIAL

Province of Sindh and others v. Muhammad Imran and others

CIVIL REVISION DISMISSED WITH NO ORDER AS TO COSTS; APPROVED FOR REPORTING

Civil Revision No. S-150 of 2024 (originally Civil Revision No. 184 of 2015, transferred from Hyderabad), High Court of Sindh, Circuit Court, Mirpurkhas (SHC-320261) · Bench: Mr. Justice Muhammad Humayon Khan · Decided: Heard 18.08.2026; judgment dated 21.08.2026 · Uploaded: 21.08.2026

FACTS

Respondents Nos. 1 to 4 filed F.C. Suit No. 18 of 2009 before the Senior Civil Judge, Khipro, for declaration and injunction, challenging as illegal and void the purchase or acquisition by the Applicants of land they had inherited and owned while minors. After written statements, framing of issues and evidence, the suit was decreed by judgment dated 07.03.2012 and decree dated 08.03.2012. The Applicants appealed to the 1st Additional District Judge, Sanghar, in Civil Appeal No. 23 of 2012 and there applied under Order XLI Rule 27 read with section 151 CPC to produce in additional evidence: the Manager, National Bank of Pakistan, Khipro, to produce bank drafts relating to payment of Rs. 39,000 to Mst. Taj Bano for the acquisition; the concerned Assistant of the Office of the Deputy Commissioner, Sanghar, to produce the order of acquisition; the Assistant Commissioner, Khipro, to produce Letter No. SGAS/203 dated 10.03.1988 showing bank drafts sent for onward delivery to the respondents; and the Mukhtiarkar (Revenue), Khipro, to produce a further letter of the same number and date. By order dated 30.09.2015 the application was dismissed on the ground that the Applicants had every opportunity to produce the record with their pleadings and before trial but failed to do so, and the application was belated and an afterthought. That order was challenged under section 115 CPC. No one appeared for the respondents on nine successive dates.

LEGAL ISSUE

The scope of an appellate court's power to take additional evidence under section 107(d) read with Order XLI Rule 27 CPC, and whether public or official documents in the possession of official parties since 1988, but not produced at trial, may be introduced for the first time in first appeal.

HOLDING

The Court set out the governing framework: the general rule is that there is no evidence at appellate stage and the appeal is decided on the evidence produced at trial, the jurisdiction to take additional evidence being discretionary and to be exercised judiciously and not mechanically; the two exceptions under Order XLI Rule 27 are the trial court's refusal to admit evidence it ought to have admitted, and the appellate court's own requirement of a document or witness to enable it to pronounce judgment or for any other substantial cause. The power is not intended to fill up lacunae, make up a deficiency, or reopen a party's case where it failed to discharge its burden at trial; the essential consideration is not whether the evidence will improve a party's case but whether it is necessary for a satisfactory and complete disposal, having a direct and important bearing on the main issue and not introducing a new case; the power is exercisable even suo motu where admission is required to do complete justice as a 'substantial cause', but the conduct of the parties must be considered; it may ordinarily be exercised where the evidence was unavailable for reasons beyond the party's control, but not where it was within the party's control and not produced at the lawful opportunity of trial; and even where public or official record is sought to be produced, the non-production at trial must be fully explained, since documents are not admitted simply because they are official or public. Applying these, the documents were mainly public documents in the possession of the official parties from the beginning, pertaining to 1988, and were not produced before the Senior Civil Judge for unexplained reasons; the letters had in fact been annexed to the plaint by the respondents. The documents added nothing important to the merits, since the acquisition and payments were admitted and were challenged on other grounds already decided. Sher Muhammad (PLD 2021 Lahore 287) was distinguished as a case where documents filed with the plaint were omitted at the evidence stage by private parties with no access to public record, and Messrs Naseem & Company (2022 MLD 1426) as a case under Order XIII Rule 2 CPC, which applies at trial and turns on 'good cause'. The absence of the contesting respondents did not relieve the Applicants of the obligation to establish their case on merits.

LEGAL SIGNIFICANCE

The judgment is a compact and unusually well-organised digest of the law on additional evidence in appeal, and its numbered list of principles will save practitioners a great deal of work. Two points are of particular practical value. First, the Court squarely rejects the frequently advanced argument that a liberal approach applies to production of public records: even official documents require a full explanation for non-production at trial, and the more so where the party seeking to produce them is the official custodian. Second, the judgment distinguishes Order XLI Rule 27 from Order XIII Rule 2, which governs production during trial and turns on 'good cause', a distinction routinely elided in argument. The observation that the absence of contesting respondents does not remove the applicant's obligation to establish its case on merits, nor the Court's duty to apply its judicial mind, is a useful corrective in ex parte revisions. The decision also illustrates the restraint proper to revisional jurisdiction where the appellate court has lawfully exercised the discretion vested in it.

LEGAL PROPOSITIONS (VERBATIM)

> *— The general rule is that there is no evidence at appellate stage, and the appeal is to be decided on the existent evidence produced by the parties at trial. A party is not entitled to produce additional evidence at the stage of appeal , and so the jurisdiction to take additional evidence is in fact discretionary in nature with the said discretion having to be exercised judiciously and not mechanically .*

— The power to be exercised under Order XLI Rule 27 is not intended to fill - up lacuna e in the evidence , to make up a deficiency in a case or to provide an opportunity to unnecessarily re - open a party's case where it has originally failed to discharge its burden of proof at trial .

— the essential consideration for the Court is not whether any additional evidence sought to be produced will improve a party's case, but whether the Appellate Court requested to take additional evidence finds that the evidence is necessary for a satisfactory and complete disposal of the case.

— The additional evidence should have direct and important bearing upon the main issue in the case and cannot introduce a new case .

— Even where public or official record is sought to be produced, the non - production of the same at trial stage must be fully explained. The same would not be admitted into additional evidence simply because they are official or public documents.

— I am not unmindful that the contesting respondents have remained absent from the proceedings, but to my mind that does not remove the obligation of the Applicants to establish their case on merits and of this Court to decide the case after applying its judicial mind .

LEGAL PRINCIPLES EXPOUNDED

An appeal is ordinarily decided on the evidence produced at trial; the power to take additional evidence under section 107(d) read with Order XLI Rule 27 CPC is discretionary and must be exercised judiciously and not mechanically.

Source: *The general rule is that there is no evidence at appellate stage, and the appeal is to be decided on the existent evidence produced by the parties at trial.*

Authority: *Sections 107(d) and 151 and Order XLI Rule 27, Code of Civil Procedure, 1908*

The power is not intended to fill up lacunae, make up a deficiency, or reopen a party's case where it originally failed to discharge its burden of proof at trial, and is to be exercised cautiously and sparingly.

Source: *The power to be exercised under Order XLI Rule 27 is not intended to fill - up lacuna e in the evidence , to make up a deficiency in a case or to provide an opportunity to unnecessarily re - open a party's case where it has originally failed to discharge its burden of proof at trial .*

Authority: *Shamshad Bibi and others v. Riasat Ali and others (PLD 2023 SC 643)*

The test is not whether the additional evidence will improve a party's case but whether the appellate court finds it necessary for a satisfactory and complete disposal, with a direct and important bearing on the main issue and without introducing a new case.

Source: *the essential consideration for the Court is not whether any additional evidence sought to be produced will improve a party's case, but whether the Appellate Court requested to take additional evidence finds that the evidence is necessary for a satisfactory and complete disposal of the case.*

Authority: *Mad Ajab and others v. Awal Badshah (1984 SCMR 440); Parsotim Thakur and others v. Lal Mohar Thakur and others (AIR 1931 PC 143)*

The power may be exercised, even suo motu, where admission of the evidence is required to do complete justice as a 'substantial cause' under sub-rule (b), but the court must weigh substantial cause together with the conduct of the parties concerned.

Source: *the Court has to see substantial cause along with the conduct of the parties concerned.*

Authority: *Order XLI Rule 27(b), Code of Civil Procedure, 1908; Mst. Fazal Jan v. Roshan Din and 2 others (PLD 1992 SC 811); Ghulam Zohra and 8 others v. Nazar Hussain through Legal Heirs (2007 SCMR 1117)*

Even public or official records are not admitted as additional evidence merely because they are official; the non-production at trial must be fully explained, particularly where the party seeking production is itself the official custodian.

Source: *Even where public or official record is sought to be produced, the non - production of the same at trial stage must be fully explained. The same would not be admitted into additional evidence simply because they are official or public documents.*

Authority: *Order XLI Rule 27, Code of Civil Procedure, 1908*

Order XIII Rule 2 CPC, which governs production of evidence during trial on 'good cause', is distinct from Order XLI Rule 27 and authorities under the former do not assist an application under the latter.

Source: *the said case pertained to Order XIII Rule 2 of the CPC which is with regard to production of additional evidence during trial and the considerations for which are to show*

Authority: *Order XIII Rule 2, Code of Civil Procedure, 1908; Messrs Naseem & Company and others v. Capital Development Authority and others (2022 MLD 1426); Sher Muhammad (deceased) through LRs and others v. Mst. Sameeri Bibi (PLD 2021 Lahore 287)*

The absence of contesting respondents does not relieve an applicant of the obligation to establish its case on merits, nor the Court of its duty to decide after applying its judicial mind.

Source: *I am not unmindful that the contesting respondents have remained absent from the proceedings, but to my mind that does not remove the obligation of the Applicants to establish their case on merits and of this Court to decide the case after applying its judicial mind .*

Authority: *Section 115, Code of Civil Procedure, 1908*

OPERATIVE ORDER

Revision application dismissed along with pending application(s), with no order as to costs.

View Full Judgment