LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2021 to 31-01-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

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1. **Supreme Court of Pakistan**
Mst. Sakina Ramzan v. The State
Criminal Appeal No.184 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._184_2020.pdf

Facts: The custom officers intercepted a vehicle and recovered 45 Kgs (gross) of charas hidden in the body frames of certain items being transported.

Issue: Whether it is necessary for the prosecution to prove the chain of custody or safe custody and safe transmission of narcotic drug to Chemical Examiner?

Analysis: The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

Conclusion: The prosecution has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

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2. **Supreme Court of Pakistan**
Director General Federal Directorate v. Tanveer Muhammad
Civil Petition No.692 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._692_2020.pdf

Facts: The respondent, a chowkidar, was alleged to have physically assaulted the Aya of school, used abusive language and threatened her in various ways. The competent authority after inquiry imposed major penalty of dismissal from the service but the Federal Service Tribunal while partly allowing the appeal of respondent converted it into withholding of increment for a period of five years with the observation that the penalty was harsh and did not commensurate with the charge.

Issue:
i) Whether the acquittal in criminal proceedings shall have any bearing upon the departmental proceedings?
ii) Whether physical assault and violence on a female worker of the school constitutes an act of gross misconduct?
iii) Whether a finding must be supported by reasons?

Analysis:

i) The fact that the Respondent was acquitted by the Court of Judicial Magistrate, is inconsequential in view of the fact that the departmental proceedings which were independently undertaken are separate and distinct proceedings and have a different standard of proof.

ii) Respondent had physically assaulted and tortured a female worker of the school. Such violence was perpetrated within the school premises which violated the sanctity of an educational Institution. In our opinion this constitutes an act of gross misconduct.

iii) It has been repeatedly held that where the Tribunal exercises jurisdiction under Section 5 of the Service Tribunals Act, 1974, legally sustainable reasons must be recorded. Merely and casually making an observation that the penalty imposed does not commensurate with the gravity of the offence is not enough and constitutes arbitrary capricious and unstructured exercise of jurisdiction. The order must show that the Tribunal has applied its mind to the facts and circumstances of the case and exercised its discretion in a structured, lawful and regulated manner keeping in view the dicta of superior Courts in the matter.

Conclusion:

i) Acquittal in criminal proceedings does not have any bearing upon departmental proceedings since both are separate and distinct proceedings and have different standard of proof.

ii) The physical assault or violence on a female co-worker in a school constitutes an act of gross misconduct.

iii) Legally sustainable reasons must be recorded for a finding. Casual observation without reasons constitutes arbitrary capricious and unstructured exercise of jurisdiction.

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3. **Supreme Court of Pakistan**
Sardar Muhammad v. Imam Bakhsh (decd) thr. LRs
Civil Appeal No. 346 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3__46_2020.pdf

Facts:

On the appeal of "**A**", Deputy District Officer (Revenue) cancelled the sale mutation effected in favour of the appellants on the ground that it was procured through misrepresentation and fraud and by holding that "**A**" was an old and sick man from whom lying was not expected and, therefore, his contention that the mutation was obtained through misrepresentation and fraud is to be given due weight. Thereafter "**A**", through registered sale deed, conveyed the same property to respondents. The challenge by the appellant before the Executive District Officer (Revenue) remained failed. Appellant filed a suit against the respondents which was decreed and appeal also failed. However, the High Court in revision set aside the concurrent findings of facts and dismissed the suit.

Issue:

i) Whether the DDO (R) had the power to strike off a sale mutation carried out in a Jalsa-e-Aam in the presence of witnesses on the ground that such sale was procured through misrepresentation and fraud?

ii) If the answer is in the negative, whether the subsequent sale deed in the peculiar circumstances of this case would fall to the ground?

Analysis: i) The law itself provides that the proceedings before the Revenue Officer or before the Revenue Courts are summary in nature and, therefore, complicated questions of law and disputed question of fact are not to be adjudicated in the hierarchy. The determination of complicated questions of law and disputed questions of fact fall within the sole domain of the Civil Court. The plea of the respondents that the mutation entry was procured through fraud, in our opinion, could not have been decided in proceedings which are summary in nature as such controversy requires adjudication by allowing the parties to adduce evidence in support of their respective claims. Section 172 only empowers Revenue authorities to exercise administrative powers; the raison d'etre for the same is that the proceedings conducted by a Revenue Officer or a Revenue Court are summary in nature; they possess a limited scope of enquiry and do not possess the characteristics of a civil suit that necessitates framing of the issues or recording evidence of the parties, as such matters fall within the sole domain of the civil courts. Besides, Section 172(2)(xvi) of the Act, 1967 leaves the adjudication of plea of fraud to the competence of the civil courts.

ii) Once the appellants have successfully proved that the sale mutation in their favour was struck off by DDO (R) illegally without jurisdiction and that the respondents had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation.

Conclusion: i) The DDO (R) had no power to strike off a sale mutation carried out in a Jalsa-e-Aam in the presence of witnesses on the ground that such sale was procured through misrepresentation and fraud.

ii) Once it is successfully proved that the sale mutation was struck off by DDO (R) illegally without jurisdiction and that the respondents had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation.

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4. **Supreme Court of Pakistan**
Khawaja Bashir Ahmed v. M/s Martrade Shipping & Transport
Civil Appeal No.782 of 2014
https://www.supremecourt.gov.pk/downloads_judgements/c.a._782_2014.pdf

Facts: Appellant filed a suit against two respondents. He filed an application for withdrawal of suit against respondent No. 2 while praying permission to initiate proceedings in accordance with law afresh, when the necessity so arises. The court dismissed the suit as withdrawn against respondent No.2 but it disallowed the filing of fresh suit against him. Appellant contended that as per the view of august Supreme Court as reported in 1970 SCMR 141 and 2013 SCMR 464 the two requests/prayers were indivisible. The court could either accept or reject the application in toto. If the suit was to be dismissed then the permission should

have ensued otherwise, the suit should not have been dismissed to the extent of respondent No.2

Issue: Whether dismissal of the suit to the extent of respondent No. 2 as withdrawn without granting permission to file a fresh one was contrary to law as laid down in 1970 SCMR 141 and 2013 SCMR 464 wherein it was held that such an application making two prayers was indivisible and it ought to have been accepted or rejected as a whole?

Analysis: Clause (a) of Rule 2 allows permission to be granted to file a fresh suit if the court is satisfied that the "suit must fail by reason of some formal defect". Clause (b) allows for such permission if "there are other sufficient grounds". We are of course concerned with the latter provision. In our view, for the provision to be at all applicable it is necessary that the facts disclosed in the application seeking permission must, in law, amount to a "ground". It is only then that the provision becomes applicable, requiring the court to satisfy itself as to the sufficiency (or lack) of the stated ground. The observations of this Court in the cited decision are necessarily premised on this. However, if what is stated in the application is not a "ground" at all then obviously no question would arise of the court having to consider whether there is any sufficiency or lack thereof. When the application in the present case is considered all it stated was that the appellant "for the time being doesn't want to proceed further against" the second respondent, and that the appellant "reserves its rights to sue the said defendant whenever the necessity so arises". This is, in law, no ground at all. A plaintiff cannot be allowed to file his suit and then, at his sweet will and pleasure, exit the litigation only to enter the arena again as and when he pleases. If this is permissible under Rule 2(b) then that effectively puts paid to the consequences envisaged by Rule 3. And, it must be remembered, there would be nothing, in principle, preventing a plaintiff from doing this ad nauseam. This cannot be the true meaning and scope of Rule 2(b). It is only when the facts disclose what can, in law, be regarded as a "ground" that it becomes necessary for the court to consider the sufficiency (or lack) thereof. Here, there was no such thing. The application itself, on the face of it, purported to have been moved under Rule 1. Nothing was said before the learned trial Court as would have required it to conclude otherwise, nor was any attempt made then or later to withdraw the same. The order made by the Court was unexceptionable and in accordance with law.

Conclusion: Application for withdrawal of suit with permission to file fresh one if filed under clause (a) or (b) of sub-rule 2 of Rule 1 of O. XXIII C.P.C by mentioning either a formal defect or any other sufficient ground, then such an application is indivisible but if there was no mention of any such ground at all, as that is the situation with the case in hand, then such an application cannot be considered under sub-rule 2 of Rule 1 of O. XXIII of C.P.C but under its sub-rule 1 of Rule 1 ibid and same can be accepted and suit be dismissed as withdrawn simplicitor without giving permission to file fresh one.

5. **Supreme Court of Pakistan**
Zulfiqar @ Zulfa v. The State
Jail Petition No. 657 of 2016
https://www.supremecourt.gov.pk/downloads_judgements/j.p._657_2016.pdf

Facts: Accused was apprehended with a sack full of bhukki/poast.

Issue: What actually the poast and poppy straw are?

Analysis: 'Poast' is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant. In some parts of this country this natural pouch of the poppy plant is also known as Doda. The plant can reach the height of about 1-5 meters (3-16 feet). Poppy straw is derived from the plant Papaver somniferum, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds. The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc. Every Post/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.

Conclusion: Poast is a basket, sack or pouch and it contains the seeds of such plant. Poppy straw is derived from the plant Papaver somniferum. Every Post/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.

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6. **Lahore High Court**
Ambreen Moazzam Ali v. Ahmad Zia Ch. etc
Case No. RFA No.58154/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC55.pdf

Facts: The appellant filed suit for specific performance on the basis of agreement to sell. The total consideration amount was of Rs.7,50,00,000/- out of which, Rs.1,50,00,000/- was paid. The learned trail Court directed the appellant/plaintiff to deposit remaining balance amount of Rs.6,00,00,000/- within a period of two months along with court fee of Rs.15000/-. Despite this direction, neither balance amount was deposited nor court fee was submitted, hence suit of the appellant was dismissed through impugned order/decree.

Issue: Whether the non-compliance of order of the learned trial court disentitled the plaintiff to the discretionary relief of specific performance?

Analysis: The law settled is that when the time fixed in the agreement to sell, the plaintiff/appellant should be ready, and show his bona fide by depositing the total sale consideration in the Court to demonstrate his readiness and willingness for performance of the sale agreement and any contumacious omission in this regard would entail dismissal of the suit for specific performance being an equitable relief. In the present case, admittedly, learned trial Court specifically directed the

appellant to deposit balance consideration amount of Rs.6,00,00,000/- along with proper court fee as per valuation of the suit within a period of two months, but neither balance amount was paid nor court fee was affixed by the appellant. The conduct of the appellant shows that he was not serious in performing his agreed part of the contract or in pursuing his remedy of specific performance. When this conduct of the appellant adjudged on the law settled and the touch stone of equitable principle on the subject, the same disentitles the appellant of equitable relief of specific performance.

Conclusion: The conduct of the appellant showed that he was not serious in performing his agreed part of the contract or in pursuing his remedy of specific performance. When this conduct of the appellant adjudged on the law settled and the touch stone of equitable principle on the subject, the same disentitled the appellant of equitable relief of specific performance.

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7. **Lahore High Court**
Doctor Manzoor Hussain Malik v. The State and another
Writ Petition. No.1655/ Q/ of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC30.pdf

Facts: The petitioner was rendering his services for the purposes of transplantation of human kidneys without authority, performed the illegal transplants of kidneys of two persons and after the operations, both the said patients died due to post kidney transplant rejection. Consequently, case was registered at Police Station FIA Anti-Corruption Circle, Islamabad. The petitioner seeks for quashment of F.I.R.

Issue: i) Whether the F.I.R could not be registered under section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as amended by the Punjab Transplantation of Human Organs and Tissues (Amendment) Act 2012?
(ii).Whether the Federal Investigation Agency (FIA) had no authority to conduct the investigation of the case?

Analysis: i) The provisions of section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as amended by the Punjab Transplantation of Human Organs and Tissues (Amendment) Act 2012 only deals with taking of cognizance of an offence by a court and the same do not place any embargo upon reporting such an alleged offence to the police authorities, registration of an F.I.R. in that regard or conducting of an investigation in respect of such an allegation.

ii) The Ministry of Interior, Government of Pakistan issued a Statutory Notification(S.R.O.) No.353(1)/2017 on 31st of March,2017, making an amendment in the Schedule of Federal Investigation Agency Act, 1974 (VIII of 1975) and placing the Transplantation Human Organ and Tissue Act 2010 in the schedule of the Federal Investigation Agency Act, 1974 (VIII of 1975) . By virtue of section 3 of the Federal Investigation Agency Act, 1974 (VIII of 1975) the Federal Investigation Agency can validly inquire into and investigate the offences

made punishable under the Transplantation Human Organ and Tissue Act 2010, including an attempt or conspiracy to commit, and abetment of any such offence.

Conclusion: i) F.I.R could be registered under section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as the provisions of the Act do not place any embargo upon reporting such an alleged offence to the police authorities, registration of an F.I.R. in that regard or conducting of an investigation in respect of such an allegation.

ii) Federal Investigation Agency can validly inquire into and investigate the offences made punishable under the Transplantation Human Organ and Tissue Act 2010.

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8. **Lahore High Court, Lahore**
New College Publications v. Government of Punjab etc.
Intra Court Appeal No. 1695/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC80.pdf

Facts: The appellant filed writ petition in which interim stay was granted. However, on application for clarification of order filed by some respondents, the stay order was modified to the effect that the respondents, subject to final outcome of writ petition, were allowed to complete the tender process. The appellant being aggrieved has filed this intra court appeal.

Issue: Whether intra court appeal, in view of bar contained in section 3(3) of the Law Reforms Ordinance, 1972 (Ordinance), is maintainable against the impugned interlocutory order?

Analysis: Where order does not decide the matter finally and the proceedings still remain to be conducted and the rights of the parties in disputes are yet to be determined finally, the order cannot be termed as final order but the same will be "interlocutory order" in nature against which appeal under Section 3(3) of the Ordinance will not be competent. The above definition of word "interlocutory order" when applied to the impugned order, would show that only application for clarification of order was disposed of, whereby respondents were allowed to complete tender process but said tender process shall remain subject to final outcome of writ petition. The impugned order itself clarifies that main lis is yet to be decided. This demonstrates that the substantial proceedings and rights of the parties in main writ petition are yet to be decided on merits.

Conclusion: Intra court appeal is not maintainable against interlocutory order.

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9. **Lahore High Court, Lahore**
Muhammad Ismail v. Muhammad Adil
E.F.A.No.01 of 2018/BWP
https://sys.lhc.gov.pk/appjudgments/2021LHC85.pdf

Facts: Appellant seeks to set-aside order passed by the Judge Banking Court, being the Executing Court whereby execution petition was consigned to record room.

Issue: Whether the Banking Court being the Executing Court cannot go beyond the decree as it has to execute the decree as it is?

Analysis: The answer of this query has already been discussed and elaborated by the Hon'ble Supreme Court of Pakistan in "Habib Bank Limited v. Mst. Parveen Qasim Jan and others" (2014 SCMR 322) in the following manner: "There is no cavil with the proposition that a Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree holder if refused to be executed or the decree has been passed in violation of any provision of law."

Conclusion: A Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree holder if refused to be executed or the decree has been passed in violation of any provision of law.

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10. **Lahore High Court**
Muhammad Saee Khan. v. Judge Banking Court
2021 LHC 36
https://sys.lhc.gov.pk/appjudgments/2021LHC36.pdf

Facts: The respondent bank filed recovery suits under Financial Institutions (Recovery of Finances) Ordinance, 2001 against the petitioner and his wife, in which their applications for leave to defend were still to be decided. It was the stance of the petitioner that the matter in issue of the suits had already been finally decided by the Banking Mohtasib, Pakistan, therefore, the same could not be re-agitated by the respondent bank before the Banking Court and plaint merited forthwith rejection. The constitutional petition was filed on the premise that the Banking Court had orally refused to receive and entertain the applications for rejection of plaints/dismissal of the recovery suit.

Issue: Whether in a recovery suit under Financial Institutions (Recovery of Finances) Ordinance 2001, before the decision of application for leave to defend, an application for rejection of plaint is entertainable by the banking court?

Analysis: Relevant judgments on the subject suggest that a plaint in a recovery suit in terms of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance 2001 **(**the Ordinance) is required to disclose cause of action and failure to do the needful may lead to rejection of the plaint, which may also be rejected on the grounds if the plaint fails to conform to the mandatory requirements of the Ordinance or is otherwise found to be barred by law on the basis of averments of

the plaint, irrespective of the fact that whether leave to defend has been obtained by the defendant or not and such power can also be exercised by the Court suo motu. However, if the plaint is sought to be rejected on the grounds other than the averments of the plaint, i.e. on the ground of defence taken by the defendant or other material, the defendant is required to obtain leave to defend before his plea for rejection of plaint, such as, plaint being barred by res-judicata or limitation, matter having been earlier finally decided by some other competent authority (as in the present case by the Banking Mohtasib, Pakistan), on the basis of said facts, is considered. Nevertheless the full bench of Lahore High Court in Abdul Qadoos Case (2018 CLD 88) has held that application for restoration of the application for leave to defend can be filed before the Banking Court despite the accepted position that interlocutory applications cannot be filed during the pendency of recovery suit till the decision of application of leave to defend. Meaning thereby the bar on entertaining interlocutory applications during pendency of application for leave to defend is not absolute, as in exceptional circumstances a need may arise for filing such applications in a Banking suit, which the said Court may entertain and pass necessary orders. Moreover under Section 7 of the Ordinance a banking court is empowered with the powers vested in a Court by Code of Civil Procedure, 1908 and can exercise the same when there is no express provision to deal with the particular situation and there is no express bar in following the said procedure; therefore such court would have inherent powers to pass any appropriate orders in the given circumstances of the case.

Conclusion: Application for rejection of plaint can be filed at any stage of the proceedings as it is an application different from other interlocutory applications that generally cannot be filed by the defendant or entertained prior to decision of the application for leave to defend.

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11. **Lahore High Court**
Muhammad Sohail Sheikh v. The State etc
2020 LHC 3480
Criminal Revision No.199 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3480.pdf

Facts: After registration of a criminal case under Sections 4,5,8,23 of Foreign Exchange Regulation Act, 1947 (the Act of 1947) against the petitioner—a shoe exporter—Deputy Director FIA issued a letter (the impugned letter) for seizure of 29-bank accounts, including that of the petitioner. Petitioner's application for de-freezing of his account was dismissed by the Tribunal constituted under the Act of 1947. The petitioner in the revisional jurisdiction of High Court has challenged the order of tribunal and vires of the impugned letter.

Issue: i) Whether during investigation of a case FIA is competent to pass order for seizure of any property?

ii) What legal requirements FIA is bound to observe on and after of seizure of the property?

iii) Whether the letter by Deputy Director FIA for seizure of bank accounts was validly issued?

Analysis: i) According to Section 5 (5) of the Federal Investigation Agency Act, 1974 (the Act of 1974) members of Federal Investigation Agency have powers to issue an order in writing for placing an embargo upon the removal, transfer or otherwise disposing of a property which is subject matter of an ongoing investigation. However these powers being stringent in nature are to be frugally used only in those instances as are mentioned in said provision, when the member of FIA is of the opinion that process of investigation is likely to be thwarted by removing, transferring or disposing of subject matter property.

ii) The opinion concerning seizure of property formed by the member of Agency is to be expressed in writing along with the reasoning and should be incorporated in the case diary. Similarly, an FIA official is under obligation to mention the grounds which persuaded him to draw an opinion in terms of Section 5 (5). Moreover member of FIA can directly pass a seizure order only if he apprehends that the property will be removed or disposed of. In absence of such a fear, seizure order should be obtained from the "appropriate authority". According to Section 19 (3) of the Act of 1947, regarding the offences mentioned therein, the seizure order is to be obtained from a district magistrate or sub-divisional magistrate or a magistrate of the first class and that too through a representation in writing along with a statement on oath by a person authorized in this behalf by the Federal Government or the State Bank. Lastly per latter part of Section 5 (5) of the Act of 1974, the seizure order is subject to confirmation by the court having jurisdiction to try the offence.

iii) Since in this case FIR was registered one day prior to the issuance of the impugned letter. Inevitably, the Investigating Officer had ample opportunity to approach the appropriate authority under Section 19 (3) of the Act of 1947 for getting the seizure order but he opted against it. Likewise, nothing as such is available on record which may insinuate that the Deputy Director concerned was authorized by the Federal Government or the State Bank to move a representation for seizure of property in consonance with Section 19 (3). In the given circumstances, the impugned seizure letter by the Deputy Director FIA is a transgression of authority, thus is nullity in the eye of law.

Conclusion: i) During investigation of a case FIA has the power to order seizure of a property.

ii) The opinion which led to seizure of property should be expressed in writing along with the reasoning containing grounds which persuaded the member of FIA to draw such opinion and the opinion should be incorporated in the case diary. If there is no fear of removal/disposal of property then order of seizure should be obtained from the appropriate authority. Lastly the seizure order should be confirmed by the court having jurisdiction to try the offence.

iii) The impugned letter was a transgression of authority, thus nullity in the eye of law.

12. **Lahore High Court**
Yasir Imran Butt v. Chief Officer
Case No. W.P.No.10596/2017
https://sys.lhc.gov.pk/appjudgments/2021LHC92.pdf

Facts: Petitioner was appointed as daily wager (a Baildar) in October, 1999 and since then, he is in the employment of the respondent, however, services of the petitioner has not been regularized. The petitioner being aggrieved filed representation which was declined through the impugned order.

Issue: Whether a daily wager of a project, if it continues for more than 9 months, who has worked for 90 days could be considered for regularization?

Analysis: Petitioner was hired or performing duties which are not of casual nature but of permanent nature and petitioner continued his duties against said posts for almost 22 years. Under Para 1(b) of the Schedule attached to The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (Standing Orders Ordinance), if a project on which employee appointed on daily wages, continue beyond 9 months, the said employee attains the status of a permanent workman after satisfactory completion of work for 90 days against post of permanent nature. The petitioner, who is admittedly doing manual and clerical work against a permanent post with Local Government for almost 22 years as daily wager, has indeed attained the status of a permanent employee under the Standing Orders Ordinance.

Conclusion: A daily wager of a project, if it continues for more than 9 months, on completion of work for 90 days becomes a permanent workman and is entitled to regularization.

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13. **Lahore High Court**
Government of Punjab v. Muhammad Kamran Bashir
2020 LHC 3515
I.C.A. No. 168 of 2017
sys.lhc.gov.pk/appjudgments/2020LHC3515.pdf

Facts: Appellant No.3 invited applications for appointment against various vacancies in the Primary and Secondary Healthcare Centers. Respondent No.1 applied for the post of Health Technician and was interviewed. However, the recruitment process was stalled due to certain injunctive orders by the High Court. Meanwhile, the Government through notification (the notification) prescribed a new mechanism for hiring of staff managed by the Primary and Secondary Healthcare Department. Under the new regime all recruitments were to be made through written tests conducted by the National Testing Service (NTS). Thereafter appellant No.3 re-advertised the posts inviting fresh applications. Respondent No.1 prayed for appointment as Health Technician contending that he had acquired a vested right to it after his aforementioned interview which could not be taken away by the notification. Hids prayers remained unanswered so he filed a writ which was

allowed by the learned Single Judge through impugned order. Hence, Intra-Court Appeal was filled. Nevertheless during hearing of the ICA the division bench observed that the impugned order was in conflict with the judgment of another Division Bench so it was appropriate that the matter should be placed before a Full Bench of high court; resultantly full bench was constituted for hearing of the matter.

Issue: Whether appearance for interview for a government job creates a vested right which could be enforced through writ of mandamus?

Analysis: Considering the meaning of term 'right' and on the touchstone of the principles discussed in the case law on the subject it is deduced that an interview does not create vested right in favour of a candidate because it is never the finale of the requirement process. The candidates may be required to fulfill certain other recruitment like, for example, medical examination, furnishing of bond and verification of testimonials, before their appointments are notified. In the instant case, Respondent No.1 was interviewed by the designated committee but further proceedings were stalled. The Appellants neither displayed any merit list nor issued appointment letter to him after it. There is no evidence that he was even selected in that interview. Hence, he cannot claim any vested right for appointment to the post he applied for.

Conclusion: Mere appearance in interview does not create an enforceable right in favour of candidate for which he could seek an order in the nature of mandamus.

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14. **Lahore High Court**
ABWA Knowledge Pvt Ltd and another v Federation of Pakistan and another
Writ Petition No.54112 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3491.pdf

Facts: The petitioner, a private medical college, challenged the vires of Pakistan Medical Commission Admission Regulation 2020-2021, regarding mandatory requirement of undergoing MDCAT examination for admission in a Medical College and its applicability on the private medical college being contrary to proviso of section 18 of the Pakistan Medical Commission Act, 2020, which, according to the petitioner, provides that the same will be applicable to session 2021 and from onward and thus session 2020-2021 is exempted from this mandatory requirement with respect to private medical colleges as the same is applicable to public medical colleges only. The petitioner also questioned the regulations, which bound private medical colleges to submit its fee structure to PMC being in contravention to section 19(7) of the Act.

Issue: i). Whether private medical colleges are exempted from requirement of mandatory MDCAT examination for admission in the session 2020-2021 according to proviso of section 18 of Pakistan Medical Commission Act, 2020?

ii). Whether PMC Admission Regulations 24 and 27 of the Amended Regulations are in conflict with Section 19 (7) of Pakistan Medical Commission Act, 2020

Analysis: (i). The preamble of the Act provides for establishment of a uniform minimum standard of basic and higher medical education. The function of the PMC under the Act is of a Regulator, which is being regulated by (i) Council (ii) Authority and (iii) Board. So, the word 'uniform' clearly shows the intent and purpose of the regulator i.e. PMC which can regulate the admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT.

Section 18(1) of the Act makes it quite obvious that mandatory requirement of MDCAT is imposed on those students who intend to seek admission to medical or dental under-graduate program anywhere in Pakistan while Section 18(2) of the Act put a rigid restriction of passing MDCAT before taking admission in any medical or dental college in Pakistan which is also a precondition to grant a license to qualified doctors by the PMC. Meaning thereby, for taking admission in a public or private medical college, students from all over the country have to undertake and get through the necessary requirement of MDCAT test. Section 18(2) of the Act further creates a mandatory restriction for a student who does not fulfill the requirement of Section 18(1) of the Act will not be awarded degree, which is clearly suggestive of the fact that requirement of MDCAT test is mandatory requirement for admission into medical colleges as well as for the awarding of degree.

ii) Section 19(7) of the Act deals with the fee (breakdown of fee of entire program of study for the students who are seeking enrollment/admission in those medical colleges). This Section also bars the medical colleges from enhancing the fee during the entire program. It is also imperative for all the medical colleges prior to initiating annual admission process to publicly declare the fixed tuition and all ancillary fee structure for the entire program of study.

Conclusion: i) The passing of the MDCAT test is a mandatory requirement for all students of public or private college seeking admission to Medical or Dental under graduate program.

ii) Regulations No.24 to 27 are in continuation and explanation of Section 19(7)(8) of the Act as these Regulations bind the medical colleges to give justification of fee fixed by them to PMC. These regulations are not in conflict with section 19(7) of the Act.

15. **Peshawar High Court**
Muhammad Hussain v. The State etc.
Cr.Misc.BA No. 3743-P/2020
https://www.peshawarhighcourt.gov.pk/PHCCMS//judgments/BA3743-2020-J.pdf

Facts: The petitioner, who was accused in FIR registered for offenses under section 302/324/34 P.P.C sought post arrest bail on medical grounds.

Issue: Whether bail can be granted to an accused involved in heinous offenses on medical grounds who, according to opinion of Standing Medical Board cannot be treated within the premises of jail?

Analysis: Correct criteria for grant of bail to an accused in a non-bailable case on medical ground would be that sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life.

Conclusion: Where the court is satisfied about the sickness of the accused and such disease cannot be properly treated in custody, then gravity of the disease would outshine the gravity of the offense and bail could be granted to such an accused.

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16. **Sindh High Court**
Ayub Khan v. The Learned Member Sindh Labor Appellate Tribunal and 03 others
Constitutional Petition No. D –6031 of 2017
2021 SHC 36
https://eastlaw.pk/cases/Ayub-KhanVSThe-learned-Member.Mzk3MzU2

Facts: The petitioner filed grievance petition before the Sindh Labour Court (SLT) and contended that after his retirement from Karachi Dock Labour Board (Board) his son was entitled for employment on the basis of 'son quota' as agreed between the Board and the Collective Bargaining Agent (CBA). The SLT held him entitled for the relief claimed. On appeal Sindh Labour Appellate Tribunal (SLAT) set aside the judgment of SLT and held that he was a permanent worker in the Board and during the service had used to get remuneration in lieu of non-employment of his son; hence not entitled for the relief claimed by him. The petitioner through constitutional petition has impugned the order of SLAT.

Issue: Whether the petitioner at the time of filing his grievance application before the learned Sindh Labour Appellate Tribunal, was not a worker as defined under Section 2(xxix) of the Industrial Relations Act, and therefore he was rightly non-suited by the learned SLAT?

Analysis: Industrial dispute can be raised by both the CBA or the employer/government and not by any retired worker before the Labour Court. The Petitioner stood retired from service in the year 2005 in the normal course and was not removed from service in connection with or in consequence of any industrial dispute, nor had his removal led to such dispute. As per the memorandum of settlement, it was made clear that in case of retirement if the dockworker does not want his son to be

recruited he be also remunerated in lieu of the son quota and the petitioner was also so remunerated. So far as the implementation of a settlement is concerned, the learned Labour Court is competent to enquire into and adjudicate any matter relating to the implementation or violation of a settlement.

Conclusion: Dispute between the parties was not an industrial dispute as defined under the Industrial Relations Act, 2008. Since at the time of filing the grievance application, the petitioner was not a worker, therefore grievance application filed by him before learned SLC was not maintainable in law.

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17. **Sindh High Court**
Anis Haroon & Others v. Federation of Pakistan and the Secretary, Ministry of Foreign Affairs
Constitutional Petition No. D-6948 of 2019 2021 SHC 52
https://eastlaw.pk/cases/Anis-Haroon-VSFederation-of-Pakistan.Mzk3Mzcz

Facts: Respondent No.3 was appointed as an officer in the Foreign Service cadre in the year 1969. He attained the age of superannuation in the year 2008 and after retirement from service he was reemployed / appointed as Ambassador/Permanent Representative of Pakistan to the United Nations, New York against Section 14(I) of the Civil Servants Act, 1973 ("the Act, 1973"). Petitioners questioned his appointment on the touch stone of Article 199(1)(b)(ii) of the Constitution, 1973 and sought direction of the Hon'ble High Court to ask him to vacate the office.

Issues: i) Whether the post of Permanent Representative of Pakistan to the United Nations is to be filled amongst the career foreign service officers or eminent personalities from business, media, law, and other areas on a contract basis?

ii) Whether the Prime Minister of Pakistan is the competent authority under Rule 15(1)(g)(h) of the Rules of Business, 1973 or the Federal Cabinet under Article 90 of the Constitution of Pakistan to make such an appointment?

Analysis: i) Issues raised in the instant Constitutional petition are relatable to matters of Foreign Policy, Diplomatic Missions and security of the country. Such issues are neither justiciable nor they fall within the judicial domain for interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as held in case cited 2014 SCMR 111. Permanent Representative of Pakistan to the United Nations is the diplomatic position representing Pakistan on all platforms of the United Nations (UN) in New York City. Apart from the Pakistan Mission to the UN in New York, there is another Pakistan Mission based at the UNO office in Geneva, Switzerland; and, the mission is usually headed by a career foreign service officer, but has historically been led by eminent personalities from business, media, law and other areas. Services of the respondent No.3 were hired on contract, based on his experience and expertise in foreign services, by utilizing the available quota of non-career Head of Missions. Admittedly, respondent no.3

is not a Civil Servant as defined under Section 2(1)(b)(ii) of Civil Servants Act 1973, but a simple contract employee in terms of his contract letter.

ii) Assertion of the petitioners that instead of the Prime Minister, the Federal Cabinet is competent to make an appointment for the subject post is wholly misconceived for the reason that under Rule 15(1) (g)(h) of the Rules of Business, 1973, and Article 90 of the Constitution of Pakistan, the Prime Minister is also the competent authority. The cases reported as P L D 2016 Supreme Court 808 (Mustafa Impex case) and P L D 2020 Peshawar 52 (Jurists Foundation V/S Federal Government) are distinguishable on the premise that the case of Mustafa Impex was related to Rule 16 of the Rules of Business 1973 and the Hon'ble Supreme Court declared Rule 16(2) as ultra vires but made no reference to other relevant Rules of Business or Rules related to the instant case. In addition to the above, Rules of Business 1973 are framed under Article 90 and 99 of the Constitution of Pakistan. In Rule 15(I)(g)(h) and Schedule V-A of Rules of Business, it is the discretion of the competent authority / Prime Minister based on the summary placed after deliberation as per Rule 15(2) of the Rules of Business 1973. Furthermore, in the case of Mustafa Impex, neither did the Hon'ble Supreme Court strike down Rule 15 of the Rules of Business 1973 nor have the petitioners challenged Rule 15 of the Rules of Business being ultra vires to the Constitution of Pakistan, 1973. Moreover, the issue in the case of Mustafa Impex was concerning the non-issuance of notification by the Federal Government. The case of Jurists Foundation is also distinguishable on the ground that it was a constitutional appointment, which required amendment in the Army Act, 1952, hence, required legislation which falls in the business of the Cabinet under Rule 16(a) of Rule of Business, 1973.

Conclusion: i) Respondent No.3 is not a Civil Servant as defined under Section 2(1)(b)(ii) of Civil Servants Act 1973, but a simple contract employee in terms of his contract letter. Appointment of respondent No.3 cannot be termed as reemployment against a promotional vacancy, as it has not caused any prejudice or damage to promotion prospects of the career of FSP officers.

ii) In the instant case, it is not the Federal Government but the Prime Minister, who is the competent authority. While holding that matter in question is a policy decision the Petition was dismissed.

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18. **Supreme Court of India**
Contempt Petition (Civil) No. 92 of 2008
Rama Narang v. Ramesh Narang and others

https://main.sci.gov.in/supremecourt/2008/13067/13067_2008_35_1501_25460_Judgement_19-Jan-2021.pdf

Facts:

- The present contempt petition arises out of a family dispute between a father on one hand and his two sons from his first wife on the other hand. Due to business disputes, parties approached the Court and a consent order

was passed by the Supreme Court that all businesses will be run by both the parties with mutual consent and accounts will be operated with the signatures of petitioner at one hand and one of his one from other side.

- Respondents issued cheques without obtaining the signatures of petitioner on the pretext that he was creating hindrances in the smooth running of the business by wrongly using his veto power and a contempt petition was filed by the present petitioner and respondents were convicted by the Supreme Court on 15th March 2007 and were sentenced to undergo two months of rigorous imprisonment but execution of that sentence was suspended and parties were directed to meticulously comply with the undertakings given by them to this Court. It was held by the court that in case similar violation of the undertakings given to this Court is brought to the notice of the Court, in that event, the respondents shall be sent to jail forthwith to serve out the sentence imposed in that case.
- Later, contending that on account of non-cooperation by the Petitioner in signing the cheques, the functioning of the Company had come to a standstill, Respondents/Sons filed Company Petition before the Company Law Board, New Delhi (hereinafter referred to as 'CLB'). The CLB noticed, that due to differences among the Directors, many operational issues like payment of salaries/wages, payment to supplier etc. were pending, leading to agitation by employees and irregularities in supply. The CLB found it appropriate, that till the petition was disposed of, as an interim measure, in the interests of the Company and more than 3000 employees/workers, there should be a mechanism by which the day-to-day operations of the Company were carried on without any hitch and passed an interim order of appointing a facilitator with the responsibility to bring about a consensus among the directors on matters which are urgent and essential to ensure that the business of the Company is carried on smoothly and in case a consensus is not possible, taking into consideration the views of the three Directors, he will take a final decision which will be binding on the Directors and the Company.
- Petitioner filed instant contempt petition by alleging that the said interim order passed by CLB was violative of the order of this Court dated 15th March 2007 as same was passed without jurisdiction by the CBL and objection with regard to the its lack of jurisdiction was already taken by the petitioner.

Issue: Whether CBL had any jurisdiction to pass any interim order when challenge to his jurisdiction was made by the petitioner and whether passing of interim order by the CBL amounts to violation of Supreme Court's above-said order dated 15th March, 2007?

Analysis: Supreme Court held that:

- The contempt proceedings are quasi-criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to the protection of all

safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision.

- Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority
- Where an objection is taken to the jurisdiction to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance. However, that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. It has been held, that a mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It has been held, that it can yet pass appropriate orders. Though, this Court has observed, that the question of jurisdiction should be decided at the earliest possible time, the interim orders so passed are orders within jurisdiction, when passed and effective till the court decides that it has no jurisdiction, to entertain the suit.
- It has been held, that those interim orders would undoubtedly come to an end with the decision that the Court had no jurisdiction. This Court has held, that if the Court holds that it has no jurisdiction, it is open to it to modify the orders. However, it has been held, that while in force, the interim orders passed by such Court have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff, provided violation is committed before the decision of the Court on the question of jurisdiction.

Conclusion: Supreme Court, in view of above discussion, held that pending the decision on the question of jurisdiction, the Court has jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case and the petitioner has failed to make out a case of willful, deliberate and intentional disobedience of any of the directions given by this Court or acting in breach of an undertaking given to this Court.

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19. **Supreme Court of the United States**
June Medical Services v. Russo, 591 U.S__ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf

Facts: June Medical Services, a clinic in Shreveport, Louisiana, challenged the Louisiana Act 620 which required doctors performing abortions to have admitting privileges at a local hospital within 30 miles of the facility where the abortion was to be performed. The federal district court issued a preliminary injunction. On appeal, the 5th Circuit lifted the injunction. While June Medical Services' lawsuit was ongoing, the U.S. Supreme Court held in Whole Woman's Health v. Hellerstedt that a Texas law similar to Act 620 was unconstitutional. On remand, the district court held Act 620 was unconstitutional. On appeal, the 5th Circuit

reversed the district court's ruling and hence the matter came up to the US Supreme Court.

Issue: Whether the 5th Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with the U.S. Supreme Court's binding precedent in *Whole Woman's Health v. Hellerstedt* (*WWH* 2016)?

Analysis: This law would have limited abortions to one single doctor in the state as other doctors had not yet gained admission privileges or were outside the given range. The Texas law was declared unconstitutional in WWH in 2016 on the basis that limiting clinic availability was an undue burden on women seeking legal abortions, a constitutional right as determined by the landmark ruling Roe v. Wade (1973). The Louisiana law, however, had survived its challenge on appeal to the United States Court of Appeals for the Fifth Circuit, which ruled the law had fundamental differences from the Texas law based on the WWH ruling. The Court ruled that a Louisiana state law placing hospital-admission requirements on abortion clinics doctors was unconstitutional.

Conclusion: The august Supreme Court ruled in a 5–4 decision that the Louisiana law was unconstitutional, reversing the Fifth Circuit's decision. Chief Justice John Roberts opined, "*The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana's law cannot stand under our precedents*".

LIST OF ARTICLES

1. **HARVARD LAW REVIEW**
   https://harvardlawreview.org/2021/01/metarules-for-ordinary-meaning/
   MetaRules for Ordinary Meaning Responding to Kevin P. Tobia, Testing Ordinary Meaning Response by Anita S. Krishnakumar

2. **YALE LAW REVIEW**
   https://www.yalelawjournal.org/article/expounding-the-constitution
   Expounding the Constitution By Farah Peterson

3. **COURTING THE LAW**
   https://courtingthelaw.com/2021/01/09/commentary/us-taliban-peace-agreement-state-engagement-with-non-state-actors-under-international-law/
   US-Taliban Peace Agreement: State Engagement with Non-State Actors under International Law by Syed Ali Imran Shah

4. **LEGAL SERVICE INDIA E-JOURNAL**
   http://www.legalserviceindia.com/legal/article-4564-district-judge-does-not-have-power-of-superintendence-over-judicial-officers-subordinate-to-him-in-the-district-court.html
   District Judge does not have power of superintendence over Judicial Officers subordinate to him in the District Court by Inder Jain

5. **THE CAMBRIDGE LAW JOURNAL**
   https://doi.org/10.1017/S0008197320000598
   The Principle of Legality by Jason N.E. Varuhas