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BULLETIN

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FORTNIGHTLYCASE LAW BULLETIN

(01-06-2021 to15-06-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammd Jamil v.Muhammad Arif
Civil Petition No.852 of 2020
Mr. Justice MushirAlam, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._852_2020.pdf

Facts: Plaintiff/vendee entered into an agreement to sell in respect of immovable property wherein consideration was to be paid in foreign currency. Earnest money was paid and balance consideration was agreed to be paid at the time of execution of sale deed. Plaintiff pleading about refusal of defendant to receive balance consideration filed suit for specific performance before cut off date. Plaintiff was directed to deposit balance consideration in the court which the plaintiff did not comply and filed the second suit for same cause of action in another court wherein no direction was issued for deposit of balance consideration. However, on appeal the appellate court made that direction which was also not complied with; however, on the direction of revisional court ultimately the plaintiff deposited balance consideration in Pakistani currency. Suit was decreed subject to payment of balance consideration in foreign currency but plaintiff did not pay the same. Appeal and revision of defendant were dismissed but the plaintiff did not pay the balance consideration nevertheless giving impression that he was all the time ready to make balance payment.

Issue: What is readiness and willingness to perform the contract by vendee i.e. payment of consideration?

Analysis: Foremost requirement to seek specific performance, for a vendee is to demonstrate his readiness and willingness to perform the agreement. A vendee cannot seek enforcement of reciprocal obligation unless he demonstrates that he not only has the financial capacity but he was and is always willing and ready to meet the same. The vendor need not to perform his part of contract unless the vendee is ready and willing to perform his part of the contract…In the first place, willingness to perform one's contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. In the second place, even if he has the capacity to pay the sale consideration, the question still remains whether he has intention to purchase the property…It is mandatory for such party that on first appearance before the court or on the date of institution of the suit, it shall apply to the court for permission to deposit the balance amount. Any omission in this regard would entail the dismissal of the suit. It is now well settled that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration in the court. By making such deposit, the plaintiff demonstrates it capacity, readiness and willingness to perform its part of contract. Mere plea of readiness and willingness is not sufficient, it has to be proved. The amount must be of necessity to be proved to be available.

Conclusion: Willingness to perform one's contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. Even if he has the capacity to pay the sale consideration, the question still remains whether he has intention to purchase the property. A party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration in the court. By making such deposit, the plaintiff demonstrates it capacity, readiness and willingness to perform its part of contract.

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2. **Supreme Court of Pakistan**
Muhammad Arshad Anjum v. Mst. Khurshid Begum & others
Civil Petition No.1530 of 2019
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1530_2019.pdf

Facts: "A" was owner of property who sold it to "B". Petitioners purchased the suit property from "B" and thereafter he came to know that the wife of "A" got a decree from the family court in respect of property on the basis of her dower claim. He filed an application under section 12(2) of the C.P.C which was dismissed.

Issue: Whether exclusion of the provisions of the Code of Civil Procedure, 1908 barring sections 10 and 11 thereof, stand as impediment to petitioner's approach to the Family Court for re-examination of the judgment within the contemplation of section 12 (2) of the Code?

Analysis: The exclusion of normal rules of procedure and proof, applicable in civil plenary jurisdiction for adjudication of disputes in proceedings before a Family Court, is essentially designed to circumvent delays in disposal of sustenance claims by the vulnerable; this does not derogate its status as a Court nor takes away its inherent jurisdiction to protect its orders and decrees from the taints of fraud and misrepresentation as such powers must vest in every tribunal to ensure that stream of justice runs pure and clean; such intendment is important yet for another reason, as at times, adjudications by a Family Court may involve decisions with far reaching implications/consequences for a spouse or a sibling and, thus, there must exist a mechanism to recall or rectify outcome of any sinister or oblique manipulation, therefore, we find no clog on the authority of a Family Court to reexamine its earlier decision with a view to secure the ends of justice and prevent abuse of its jurisdiction and for the said purpose, in the absence of any express prohibition in the Act, it can borrow the procedure from available avenues, chartered by law.

Conclusion: Family Court can re-examine the judgment within the contemplation of section 12 (2) of the Code of Civil Procedure.

3. **Supreme Court of Pakistan**
Muhammad Sharif etc.v.The MCB etc.
Civil Petition No.2014-K of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2014_l_2019.pdf

Facts: Petitioners filed objection petition for setting aside the sale made in execution of the decree claiming that auction proceedings were void.

Issue: Whether limitation runs against a void order?

Analysis: The law is by now settled that limitation against a void order would run from the date of knowledge which has to be explicitly pleaded.

Conclusion: Limitation runs against a void order from the date of knowledge of order.

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4. **Supreme Court of Pakistan**
Muhammad Rafique v.Syed Warand Ali Shah
CivilAppeal No.1295 of 2019
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1295_2019.pdf

Facts: Plaintiff filed suit through special attorney for declaration, cancellation of mutation, possession and permanent injunction pleading that he purchased suit property from his mother and alleged transfer in favour of defendants was void. His attorney appeared in evidence as his witness.

Issue: Whether a party should give evidence himself when facts were in his knowledge and there was also no justification to appoint an Attorney?

Analysis: It is plaintiff's duty to prove the case through valid and reliable evidence. The plaintiff himself opted not to appear before the court and to make his statement on oath as required by law for appearance of a witness to take oath before the court for making a correct statement. He appointed his attorney to appear before the court for which an inference is drawn that when without any justifiable reasons the plaintiff opts not to appear as his own witness and the case pleaded requires his personal statement to substantiate the facts in his own knowledge i.e for making a statement that his mother never appeared before the revenue officials for making a statement of suit land and that she never received the consideration when admittedly she never disputed the sale in favour of predecessor of defendants No. 1 and 2 in her lifetime who survived long after the sale.. Further his own claim is on the basis of registered sale deed from his mother in his favour that transaction when the plaintiff presses for grant of a declaration in his favour, he was required to make a statement himself by appearing in the witness box

otherwise when without any justification the plaintiff opted not to appear in the court in such like situation the inference can be drawn against the said plaintiff

Conclusion: A party should give evidence himself when facts were in his knowledge and there was also no justification to appoint an attorney.

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5. **Lahore High Court**
Vice Chairman Punjab Bar Council & others v. Govt. of the Punjab & others
W.P No.19469 of 2021
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC1427.pdf

Facts: The Code of Civil Procedure (Punjab Amendment) Ordinance, 2021 was promulgated and published in the Punjab Gazette on 10.02.2021. The petitioners contend that the Ordinance is ultra vires the Constitution of Islamic Republic of Pakistan, 1973 as it offends the provisions of the Constitution and thus the promulgation is caught by the vice of unconstitutionality.

Issue: i) What the Ordinance making power of the Governor may be judged by the test applicable to determine the validity of executive acts?
ii) Whether Prime Minister can issue a direction to provincial government to make law; and the Ordinance suffers from the vice of dictation?
iii) What is the nature of rule-making power of High Court in CPC?

Analysis: i) Although the Ordinance making power is legislative but it must not be forgotten that the power vests in the political executive. Therefore it should be judged by the tests applicable to determine the validity of executive acts. The challenge to the Amendment Ordinance is therefore bifurcated into various grounds, the first of which entails that since the Ordinance is an executive act and so its legality or otherwise must be considered on the touchstone of the principles of administrative law relating to executive acts such as illegality, irrationality and procedural impropriety.

ii) The executive authority of the federation extends to the giving of such direction to a province as may appear to the Federal Government to be necessary, namely, the executive authority of a province is being exercised to impede or prejudice the exercise of the executive authority of the federation. Clauses 3 and 4 of Article 149 enumerate circumstances under which directions may be issued to the provinces. In none of these are comprised the circumstances under which a direction to make a law may be given by the Federal Government. To reiterate, the direction may only relate to the exercise of the executive authority of the federation and in no other case. The direction of the Prime Minister (to make law to a province) offends the mandate of Article 149 and is unconstitutional….Not only that the direction contravened the express provisions of the Constitution, it

also threatened the republican form of government and the Federal-Provincial balance of power. Ordinance suffers from the vice of dictation.

iii) Part X of CPC relates to power of rule-making which are contained in the First Schedule. This division of CPC delegates power on a High Court to make rules regulating its own procedure and the procedure of the civil courts and also has power to annul, alter or add to all or any of the rules in the First Schedule. This is a unique power the significance of which can neither be belittled nor disregarded…. The High Courts have been conferred the constitutional power regarding rules of procedure which may not only regulate the practice and procedure of a High Court but also any court subordinate to it. In exercise of this power, LHC has made rules entitled "High Court Rules & Orders" which contain an elaborate procedure to be followed by the courts subordinate to it in matters relating to adjudication of cases before civil courts. Thus, not only has the High Court been delegated the power of making and amending rules in the First Schedule by the Code itself but also by the Constitution by virtue of Article 202…. It also by implication follows that the exercise of rule making power is constitutional which resides in a High Court and, therefore, if such power has already been exercised, it emerges as an unwritten rule to be followed in all such matters that it is of utmost importance that consultation be held between a High Court and the government of province. It is not only essential for the administration of justice but also to preserve the independence of judiciary that in a unique situation where judicial legislation is permissible, Punjab should act conformably with LHC's rule making process… The provisions of the Amendment Ordinance are largely unworkable but also that they breed inconsistency with LHC amendments… These amendments disregard the previously enacted LHC amendments which too not only had statutory but constitutional basis and were the result of thoughtful and inclusive consultative process. They are liable to be struck down also on the ground that there was no prior consultation with the Lahore High Court in order to streamline and reconcile the amendments made through the Amendment Ordinance with LHC amendments which had their source in the Constitution.

Conclusion: i) Ordinance making power of the Governor may be adjudged by the test applicable to determine the validity of executive acts.

ii) Prime Minister cannot issue a direction to provincial government to make law; and the Ordinance suffers from the vice of dictation.

iii) The exercise of rule making power is constitutional which rest with the High Court.

6. **Lahore High Court**
Faysal Bank Limited v. National Electric Company Pakistan & others
FAO No.191715 of 2018
Mr. Justice Muhammad SajidMehmoodSethi, Mr. Justice Abid Hussain Chatta
https://sys.lhc.gov.pk/appjudgments/2021LHC1717.pdf

Facts: Case was fixed for arguments on leave to appear and defend when it was dismissed for non-prosecution.

Issue: Whether a suit can be dismissed for non-prosecution on a date which is not fixed for hearing of the suit?

Analysis: Court dismissed appellant's suit for non-prosecution, when the case was fixed for submission of power of attorney and arguments on leave application. Under the law, when case is fixed for arguments on leave application, neither the Court can dismiss the leave application for non-prosecution nor decide the suit or dismiss the suit unless leave application is decided… Since the date was not fixed for hearing of the suit, therefore, order of dismissal of suit for non-prosecution was legally not sustainable. Date on which suit was dismissed, was not a date of hearing within the contemplation of law, therefore, except on a date of hearing, action to dismiss a suit in default could not be taken against plaintiff.

Conclusion: A suit cannot be dismissed for non-prosecution on a date which is not fixed for hearing of the suit.

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7. **Lahore High Court**
Province of Punjab and others v.Atta Rasool and another
Civil Revision No.195/2013
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1596.pdf

Facts: Respondent filed a suit for declaration and permanent injunction against the Province of Punjab and others with the averments that the land is owned by the Provincial Government, which was allotted to him under Grow More Food Scheme and is in his possession. Trial court dismissed the suit while appellate court decreed it.

Issue: Whether Civil Court can entertain and adjudicate upon the suit wherein its jurisdiction is barred?

Analysis: The matter pertains to allotment of government land, which falls under the exclusive domain of revenue hierarchy and jurisdiction of civil court is barred. However, in certain cases, the Hon'ble Supreme Court of Pakistan has carved out the situations where the civil court has jurisdiction to look into the matter even if the jurisdiction of civil court is otherwise ousted under any enactment. Such

situations, inter alia, include a case when the order and action has been taken in a mala fide and malicious manner; the order has been passed and the authority has been exercised in excess of jurisdiction or without jurisdiction; and the aggrieved person has been left without any remedy or where the statutory provisions have not been complied with.

Conclusion: See above.

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8. **Lahore High Court**
Mian Rehan Arshad v. Saba Gul & others
W.P. No.26960 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1317.pdf

Facts: A family court, relying upon the provisions of sec 39 read with order XX rule 5 of the Code of Civil Procedure, 1908 (CPC), directly transferred a family decree for execution to the Senior Civil Judge of another district.

Issue: i) Whether under the Family Court Act, 1964, family courts are competent to make inter district transfer of family decrees?

ii) Whether the term 'proceeding' mentioned in section 25-A of the Act, include execution proceedings?

iii) Whether general principles of CPC can be invoked by a family court?

Analysis: i) The provision of Section 25-A of the Act manifestly states that High Court, on application of any party or suo motu has jurisdiction to transfer (i) any suit or proceeding from one Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district; and (ii) any appeal or proceeding from the District Court of one district to the District Court of another district. Whereas, a District Judge is empowered to transfer any suit or proceeding under this Act from one Family Court to another Family Court in a district or to itself and dispose it of as a Family Court. Similar powers are also available to the Hon'ble Supreme Court to transfer any suit, appeal or other proceedings pending before a Court in one Province to a Court in another Province, competent to try or dispose of the same. In the presence of such explicit provisions of law, a Family Court, acting as an executing Court, is not authorized to make an order to directly transfer an execution petition to any other Court of competent jurisdiction not only in the same district but also to other district. In presence of comprehensive procedure for transfer of decree available in the Act, provisions of Section 39 and Order XXI Rule 5 of CPC, could not have been invoked.

ii) Though there is no definition of the term "proceeding" given in the Act but it has elaborately been defined by Edwin Eustace Braynt in his book "*The*

Law of Pleading under the Codes of Civil Procedure" and includes the execution petitions in it. Similarly according to per Hon'ble Supreme Court of Pakistan (**2001 SCMR 1461**) proceeding include all possible steps in an action from its commencement to the execution of the judgment. So it is evident that execution proceedings / execution petition squarely come within the expression "proceeding" appearing in Section 25-A of the Act.

iii) General principles of C.P.C can be invoked by a Family Court for due determination of justice only when no procedure is provided in the Act and there is no conflict between the provisions of C.P.C and the Act.

Conclusion: i) Family Courts are not empowered to make inter district transfer of family decrees.

ii) The term 'proceeding' appearing in section 25-A of the Act include execution proceedings.

iii) General principles of C.P.C can only be invoked by family courts when no procedure is provided in the Act and there is no conflict between the provision of CPC and the Act.

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9. **Lahore High Court**
Haji Bashir Ahmad Ch. v. Bashir Ahmad Deceased through L.Rs
C.R.No.30839/2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1380.pdf

Facts: Applicant filed an application u/s 12(2) which was accepted by the Additional District & Sessions Judge. Petitioner filed a time barred revision petition against this order on ground of medical treatment and prayed for condonation of delay or suo motu exercise revisional jurisdiction.

Issue: i) Whether a court may condone the delay where limitation period has been prescribed by statute itself and section 5 of the Limitation Act has not been made applicable?
ii) Whether delay can be condoned on the ground of medical treatment without any supporting document?
iii) Whether the High Court can suo motu exercise jurisdiction, conferred under Section 115 CPC, in a time barred case to circumvent the issue of limitation?

Analysis: i) If the statute governing the proceedings does not prescribe the period of limitation, the proceedings are governed by the Limitation Act as a whole but where proceedings have been prescribed in the statute itself, such as in Section 115 of the CPC, the benefit of Section 5 of the Limitation Act is not available unless it has been made applicable as per Section 29(2) of the Limitation Act. But notwithstanding the same, discretion to condone delay is wide enough in a Court

depending upon a variety of factors, particularly, sufficient cause shown by a party to the satisfaction of the Court. This is particularly so since the revisional jurisdiction is always discretionary and equitable in nature.

ii) No medical certificate was appended with application for condonation of delay and in absence of medical certificate plea of being indisposed cannot be entertained…. Medical ground is not overwhelming ground to condone delay unless each and every day of delay is sufficiently explained to the satisfaction of Court.

iii) The jurisdiction could be exercised by the High Court or the District Court in a case where a Revision Petition has been filed after the prescribed period of limitation depending on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Suo motu jurisdiction can be exercised, if the conditions for its exercise are satisfied. Revisional jurisdiction is preeminently and in essence, corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a Revision Petition, exercises its suo motu jurisdiction to correct the errors of jurisdiction committed by a subordinate Court.

Conclusion: i) Discretion to condone delay is wide enough in a Court depending upon a variety of factors, particularly, sufficient cause shown by a party to the satisfaction of the Court. This is particularly so since the revisional jurisdiction is always discretionary and equitable in nature.

ii) Delay cannot be condoned on the ground of medical treatment without any supporting document.

iii) In a time barred case suo motu jurisdiction can be exercised, if the conditions for its exercise are satisfied to circumvent the issue of limitation.

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10. **Lahore High Court**
Zia Ullah etc. v. Liaqat Ali Zia etc.
Civil Revision No. 2122 of 2010
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1374.pdf

Facts: Petitioner claimed that respondent was not owner of specific property and transfer in favour of respondent and his possession over specific property in joint khata was illegal.

Issue: Whether a co-owner has a right to transfer possession of specific property which is in his possession in joint khata and vendee has right to be in possession of said specific un-partitioned property?

Analysis: The entries of a joint owner in possession of specific khasra numbers in the column of cultivation have legal sanctity and preference over other co-shares.As such, co-owner in exclusive possession of specific field number can transfer entire field provided area of said field is not more than his entitlement in the joint khata. Since, it was admitted that Respondent No. 1 is a co-sharer in the joint khata,

therefore, he rightly occupied the subject property that was previously occupied by his predecessor.

Conclusion: Co-owner in exclusive possession of specific field number can transfer entire field provided area of said field is not more than his entitlement in the joint khata. Vendee has a right to occupy the specific property that was previously occupied by his predecessor.

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11. **Lahore High Court**
Mst. Ghulam Sakina v. The Deputy Commissioner Sargodha etc.
Writ Petition No.20421/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC1069.pdf

Facts: Through the constitutional petition, the petitioner had challenged the legality of order passed by Deputy Commissioner, Sargodha, whereby her husband was directed to be arrested and detained for a period of thirty days with immediate effect in the interest of peace and tranquility.

Issue: Whether a petitioner can invoke the constitutional jurisdiction of High Court to challenge an order which is patently illegal even without having recourse to alternate remedy?

Analysis: Freedom and liberty of every citizen is a fundamental right guaranteed under Articles 4 & 9 of the Constitution of Islamic Republic of Pakistan, 1973 and its infringement tantamount to violation of fundamental rights enshrined under Article 2-A, 3, 4, 9, 14 & 18 of the Constitution. When a person is detained without any just cause, he may invoke the jurisdiction of High Court directly under Article 199 of the Constitution, if an order is illegal, without having course to alternate remedy.

Conclusion: A petitioner can invoke the constitutional jurisdiction of High Court under Article 199 of the Constitution even without first availing alternate remedy when impugned order of detention is patently illegal.

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12. **Sindh High Court**
Nasir Kamal v. Federation of Pakistan,
Constitutional Petition No. D – 1497 of 2020
Mr. Justice Nadeem Akhtar
http://43.245.130.98:8056/caselaw/view-file/MTUxNjkwY2Ztcy1kYzgz

Facts: Petitioner was appointed by Pakistan National Shipping Corporation (PNSC) as a typist and he retired therefrom as a Manager after serving for forty-one years upon attainting the age of superannuation. However, four days before his age of superannuation he was served a show cause notice and thereafter, an inquiry was initiated against him, but before such disciplinary proceedings could be finalized,

he retired from the service. Meanwhile, PNSC filed suit against him before the learned Civil Court for recovery of Rs. 5,869,553.00, which is still pending. PNSC also lodged FIR against the petitioner, wherein he was acquitted by the learned Special Judge (Central) at Karachi. After his said acquittal, the petitioner approached the competent authority of PNSC for the release of his outstanding post-retirement benefits, but the same were not paid to him on the ground that disciplinary proceedings were still pending against him. In the above background, he was constrained to file the present petition.

Issue:

i) Whether constitutional petition against PNSC is maintainable?

ii) Whether the post-retirement benefits of the petitioner could be withheld by PNSC on account of mere pendency of disciplinary / criminal / civil proceedings against him?

iii) Whether the departmental enquiry / disciplinary proceedings, initiated against the petitioner while he was in service, could continue after his retirement?

Analysis:

i) PNSC is a national flag carrier and is fully owned and controlled by the Government of Pakistan and due to this reason it certainly falls within the definition of person or authority performing functions in connection with the affairs of the Federation. As the "Function Test" prescribed by the Hon'ble Supreme Court in Abdul Wahab and others V/S HBL and others, 2013 SCMR 1383 is fully met against the PNS; hence this petition is maintainable. Even otherwise, the question of payment of pension, being purely a matter pertaining to fundamental rights of the petitioner, can be looked into in the Constitutional jurisdiction of this Court irrespective of the fact whether the service rules of PNSC are statutory or not.

ii) Like salary, pension is a regular source of livelihood, and thus is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution.

iii) It is well-settled that any type of disciplinary proceedings, including an inquiry, against an employee or public servant cannot continue after his retirement from service, and if the disciplinary proceedings are not finalized before his retirement, such proceedings stand abated upon his retirement. On attaining the age of superannuation disciplinary proceedings, which have not been completed, automatically abate and the civil servant is entitled to receive all pensionary benefits.

Conclusion:

i) The constitutional petition against PNSC is maintainable.

ii) Post-retirement benefits of the petitioner could not be withheld by PNSC on account of mere pendency of disciplinary/criminal/civil proceedings against him.

iii) On attaining the age of superannuation disciplinary proceedings against a civil servant stand automatically abated and he is entitled to receive all pensionary benefits.

13. **Lahore High Court**
Muzaffar Ahmad v. The State
Writ Petition No. 50883 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1388.pdf

Facts: Through this petition under Article 199, the Petitioner has assailed the discharge order of the Learned Magistrate qua offence 489 F PPC.

Issue: i) Whether the Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C?

ii) Whether security cheques/guarantee cheques are beyond the scope of section 489-F PPC?

Analysis: i) The question as to whether the Magistrate can discharge an accused when he is produced before him for remand under section 167 Cr.P.C. remains contentious. Some authorities hold that he can pass such an order if there is not sufficient incriminating evidence against him while the other view is that sections 63 and 169 Cr.P.C. must be read in tandem. A Magistrate may discharge an accused person during investigation but he can do so only on the report of the police and not on his own. The power of the Magistrate to discharge an accused must be examined in the constitutional context of liberty, dignity, due process and fair trial. The aforesaid power is in the nature of a check on malicious prosecution. If there is no incriminating material against an accused, he must not be detained. Subject to Rule 6 of Volume-III Chapter 11 Part-B of the Rules and Orders of the Lahore High Court, the view that the Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C. must be preferred.

ii) The question as to whether cheques given as security if dishonoured would attract section 489-F PPC has generated a lot of debate. The proposition that all security cheques are beyond the scope of section 489-F PPC is too broad to be accepted. Every transaction must be minutely examined in the light of the jurisprudence discussed to determine whether section 489-F PPC is attracted.

Conclusion: i) The Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C.

ii) Security cheques are not strictly beyond the scope of section 489-F PPC but every transaction must be minutely examined to see if the ingredients i.e. Repayment of a loan or fulfilment of an obligation is fulfilled or not.

14. **Lahore High Court**
Shahbaz Ahmad v.The State etc.
Criminal Revision No.19771/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1560.pdf

Facts: The revision petition is directed against the order of learned Additional Sessions Judge whereby the petitioner was not admitted to bail but was sent to the Punjab Institute of Mental Health under section 466 Cr.P.C.

Issue: Requisites of Section 465 and 466 Cr.P.C (insanity defence)

Analysis: The insanity defence, also known as the mental disorder defence, is an affirmative defence in a criminal case whereby the accused claims exemption from criminal liability for his act on episodic or persistent psychiatric disease. The insanity defence is recognized by section 84 of the Pakistan Penal Code which was enacted as far back as 1860. Chapter XXXIV (sections 464 to 475) of the Criminal Procedure Code, 1898, provides protection to the accused suffering from mental disorder at the time of trial. Under sub-section (2) of section 465 Cr.P.C. the trial of the fact of the unsoundness of mind and incapacity of the accused prisoner is part of his trial before the court. Further proceedings in the case must be postponed if the court comes to the conclusion after following the said procedure that he is mentally unfit. The provisions of section 465 Cr.P.C. are mandatory.

Conclusion: See above.

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15. **Lahore High Court**
Khalil Akhtar v. Magistrate 1st Class etc.
Writ Petition No. 28118 of 2021
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC1651.pdf

Facts: The petitioner/accused challenged the order of Magistrate wherein direction was issued for re-examination of injured through constitution of second medical board as the first medical board opined that possibility of fabrication cannot be ruled out.

Issue: Whether Magistrate can pass order for constitution of second medical board for further re-examination of injured?

Analysis: The Magistrate has not ordered for constitution of the Provincial Medical Board rather he ordered M.S DHQ hospital, Rawalpindi to reconstitute District Standing Medical Board for examination of the injured. This order is not sustainable in the eye of law due to the reasons: (i) that the offence was allegedly committed within the territorial limits of Police Station District Mianwali whereas the Magistrate

had ordered the M.S DHQ hospital, Rawalpindi for constitution of Medical Board, hence by doing so the Magistrate has issued a direction to the forum which falls outside his territorial jurisdiction, and (ii) there was no point to reconstitute the second Medical Board as earlier the injured had already been re-examined by the Medical Board.

Even otherwise, declaring the injury by Medical Board as "*possibility of fabrication cannot be ruled out"* was also of not much significance. As there is no denial with the proposition that the first medical examination was protected by statutory presumption of being genuine under Article 129 (e) of The Qanun-e-Shahadat Order 1984 QSO) as well as under Article 150 of The Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: Issuing direction for constitution of the Medical Board for second time is alien to the Criminal Justice System prevailing in the country.

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16. **Lahore High Court**
Zulfiqar Ali v. ASJ etc.
W.P No.1200 of 2015
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1300.pdf

Facts: The order of the Additional Sessions Judge was assailed wherein CCPO was directed to register FIR by himself or through SHO and also to proceed against the SHO for non-compliance of the orders of the ex officio justice of peace under the Police Order, 2002.

Issue: Whether non-compliance of direction issued by ex-officio Justice of Peace made a police officer liable for offence under Section 155-C Police Order, 2002 and whether such offence is cognizable or not?

Analysis: Earlier, it was held that an ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function rather his duty is of administrative and ministerial nature; therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A (6), Cr.P.C. However, a direction issued by him under section 22-A (6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 every police officer is under a duty to obey and promptly execute all lawful orders. As per section 22-A Cr.P.C, direction of Ex-Officio Justice of the Peace is termed as direction issued by a competent authority; order of a competent authority to the Police to act in accordance with law or to follow direction of law cannot be deflected in any way; therefore, any violation or disobedience on the part of police would render them liable to penal action. Such penal action is couched as offences under Article 155 (1)(C) & D of Police Order, 2002 and Section 166 of PPC.

Offence under Article 155 Police Order, 2002 is punishable with three years; therefore, as per second schedule of Cr.P.C under the head "Offences against other laws" it is reflected that an offence punishable with three years shall be cognizable. Similarly, Section 166 PPC being a scheduled offence can validly be investigated by Anti-corruption establishment. Therefore, FIR under Article 155 of Police Order, 2002 is not barred; even powers to prosecute under any other law is not affected as guaranteed through Article 183 of Police Order, 2002; therefore, delinquent police officers can be prosecuted under other laws for their derelictions or misdemeanors.

Conclusion: Ex-Officio Justice of the Peace is authorized to deal with violations or disobedience to their orders at their own level by issuing appropriate direction to the higher police officers. On receipt of information and after inquiry, if he finds that an offence has been committed or any wrong persists or is repeated, he can order for registration of FIR under Article 155 (1) (C) of Police Order which is a cognizable offence now.

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17. **Lahore High Court**
Muhammad Tariq v. Fazal Abbas & others
Criminal Appeal No. 1054 of 2011
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1400.pdf

Facts: During the bail proceedings, appellant/complainant tendered an affidavit and stated before the Magistrate that he had no objection if accused be admitted to post-arrest bail. On the same date, during remand proceedings of remaining respondents, appellant made a statement before the learned Magistrate that he had effected compromise with the respondents and he had no objection if they be enlarged on bail or acquitted from this case. After submission of report under section 173, trial court distributed copies thereafter an application under section 249-A Cr.P.C. was filed by the respondents, which without issuing notice to the appellant, was accepted by the trial court while relying upon the statements of the complainant at bail and remand stage.

Issue: i) Whether the accused can be acquitted solely relying upon the statement/affidavit tendered at bail stage or on the basis of statement recorded at remand stage, in cases falling under sub-section (2) of section 345 Cr.P.C?
ii) Whether, a person can be acquitted in non-compoundable offence on the ground of compromise?

Analysis: i) When statements of complainant were not made by complainant before the court where prosecution was pending, the trial court was not justified to give any credence to the statements of complainant given at bail and remand stage, for offence u/s 337-A(i) PPC, enlisted under section 345(2) Cr.P.C. and that too, without issuing any notice to the appellant during trial because trial court had no

occasion and chance to evaluate the credibility, validity, genuineness and voluntariness of alleged compromise entered into between the parties at bail and remand stage.

(ii) It is established law that compromise can only be effected qua the offences which are made compoundable by Schedule II of Cr.P.C. As section 452 PPC is not made compoundable, even a valid compromise effected between the parties to the extent of allied compoundable offence, cannot be made basis to acquit the accused from such non-compoundable offence, although such compromise can be considered for the purpose of quantum of sentence.

Conclusion: i) The accused cannot be acquitted solely relying upon the statement/affidavit tendered at bail stage or on the basis of statement recorded at remand stage, in cases falling under sub-section (2) of section 345 Cr.P.C.

ii) A person cannot be acquitted in non-compoundable offence on the ground of compromise, although such compromise can be considered for the purpose of quantum of sentence.

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18. **Lahore High Court**
Muhammad Atif Saeed v. Addl. District Judge etc
Writ Petition No. 4719 of 2021/BWP
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1587.pdf

Facts: The petitions call in question orders passed by Justice of Peace whereby, despite the presence of applications disclosing the commission of a cognizable offence, Justice of Peace proceeded to dismiss the applications filed by the petitioners on the premise that the accused is in the custody of National Accountability Bureau (NAB), and since a reference is pending against him, only NAB can initiate any other proceedings.

Issue: i) Whether during pendency of a reference before National Accountability Bureau (NAB), FIR under section 489-F PPC could be lodged and investigated separately?

ii) Whether section 154 Cr.P.C. envisages any hearing for an accused before registration of a criminal case?

Analysis: i) Both are under different enactments of law having different procedure and forum for initiating proceedings thereunder although both the sets of offences have been committed by the accused in one go that is to say that the accused-petitioner acted in such a manner which constituted offences punishable under two separate and distinct laws. Both are different and distinct pieces of legislation, therefore, acts and omissions of the petitioner committed by him cannot be said to be same offences. It was opined by the court that since the applications before the learned Justice of Peace did reveal the commission of a cognizable offence, it was

incumbent on the learned Justice of Peace to have ordered for the registration of criminal cases.

ii) Section 154 Cr.P.C pertains only to the information so provided and do not pertain to actual commission of a cognizable offence. The information so supplied, as long as it is in respect of a cognizable offence, irrespective of its veracity, has to be accepted as gospel by the Station House Officer, in terms of his statutory obligation under section 154 Cr.P.C so at the time of the First Information Report accused persons named in the complaint have no right of hearing.

Conclusion: i) The offence under section 489-F PPC is distinct and separate from the offence of cheating the public at large (section 9(a)(ix) of NAO,1999 which is under trial. Two different sets of evidence are required to prove these distinct offences. And both offences are provided under different statues with different attendant procedural nuances. Moreover, it was incumbent on the Justice of Peace to have ordered for the registration of criminal cases.

ii) At the time of the First Information Report accused persons named in the complaint have no right of hearing.

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19. **Lahore High Court**
ShehzadanMayi v. Area Magistrate
Writ Petition No. 30913 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1262.pdf

Facts: Petitioner instituted a constitutional petition challenging the order of the learned Magistrate whereby he agreed with the discharge report and cancelled the case.

Issue: i) Whether order of discharge resulting in cancellation of report is an administrative and executive order against which a revision is not maintainable?

ii) Fate of concurrence accorded to cancellation report where first change of investigation had already been ordered.

Analysis: i) Order of discharge resulting in cancellation of a crime report is an administrative and executive order against which a revision is not maintainable but a constitutional petition lies.

ii) When the Magistrate was kept in the dark about the status of investigation and since he had deliberately not been informed about the first change of investigation his order cannot be sustained on account of being based on incorrect facts… After an illegal cancellation order of an FIR the only course available is to set aside the order of cancellation of the FIR and apprise the Magistrate through agency of the Police about the development earlier hidden from the Area Magistrate so that he may direct a reinvestigation. It is the police that has to

approach the learned Area Magistrate with the request for re-investigation. The complainant of a crime report is at least entitled to be informed about the developments occurring with respect to the crime report that he has lodged

Conclusion: i) An order of discharge resulting in cancellation of report is an administrative and executive order against which a revision is not maintainable and only remedy is constitutional petition.

ii) When the Magistrate was kept in the dark about the status of investigation and since he had deliberately not been informed about the first change of investigation, his order cannot be sustained on account of being based on incorrect facts.

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20. **Supreme Court of Pakistan**
Divisional Superintendent, Postal Services v. Muhammad Arif Butt
Civil Appeal No.1385 of 2019
Mr. Justice Gulzar Ahmed CJP, Mr. Justice Ijaz Ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1385_2019.pdf

Facts: Respondent a postman was held guilty of misappropriation of Rs. 36,400/- in regular inquiry and dismissed from service. Service Tribunal considering his 27 years' service took lenient view and imposed minor penalty while reinstating him in service.

Issue: Whether a lenient view can be taken when misappropriation of public money/dishonesty stands proved?

Analysis: A government servant who is found to have misappropriated public money, notwithstanding its amount, breaches the trust and confidence reposed in him who is charged with the responsibility of handling public money. Misappropriation of the same whether temporary or permanent and irrespective of amount constitutes dishonesty and misconduct. Such an employee has no place in government service because he breaks the trust and proves himself to be unworthy of confidence that State reposes in him.

Conclusion: A lenient view cannot be taken when misappropriation of public money/dishonesty stands proved.

21. **Lahore High Court**
Mulazim Hussain v. Govt. of the Punjab & others
W.P. No.3717 of 2019 / BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1712.pdf

Facts: Show Cause Notice (SCN) was issued to petitioner under Rule 1.8(a) of the Punjab Civil Services Pension Rules, confronting various allegations mentioned therein after three years of retirement.

Issue: Whether after a lapse of more than one year from the date of petitioner's retirement, SCN / de novo inquiry could be initiated against him?

Analysis: Proceedings under PEEDA may be initiated against a retired employee of government provided the same are: (i) initiated against him during his service or within one year of his retirement; and (ii) finalized not later than two years of his retirement…It is clearly mentioned in the proviso to Rule 1.8(b) of the Punjab Civil Services Pension Rules that no such departmental proceedings shall be instituted after more than a year from the date of retirement of the government pensioner…SCN was issued after a lapse of almost 03-years & 02-months from retirement, clearly much beyond the period of one year, thus violation of Section 1(4)(iii) of PEEDA Act, is manifest.

Conclusion: SCN / de novo inquiry could not be initiated after lapse of more than one year from date of retirement.

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22. **Lahore High Court**
Masood Khan etc. v. Federation of Pakistan etc.
Writ Petition No.125479/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1512.pdf

Facts: Retired petitioners have sought proforma promotion by contending that during 15 years of service of the petitioners as Supervisors, meeting of Departmental Promotion Committee was never convened on administrative grounds without no fault on their part.

Issue: Whether retired employees are entitled to proforma promotion?

Analysis: There is no denial that the petitioners remained in service for fifteen years as Supervisors, which is fairly a long period during which admittedly no DPC meeting was held for no fault on the part of the petitioners. Similarly, seniority of the petitioners during their service is also admitted. The eligibility of the petitioners during the currency of their service with respondent department has neither been refuted nor denied…where the right of a civil servant to be considered for promotion gets frustrated during the service, the Constitutional

Courts have recognized the right of such civil servants to be considered for grant of pro forma promotion even after their superannuation. Denial is contrary to the doctrine of legitimate expectancy and on the basis of same, pro forma promotion can be claimed even after the retirement.

Conclusion: Pro forma promotion can be claimed by the employees even after their retirement from service.

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23. **Lahore High Court**
Muhammad Nawaz v. Director General Rescue 1122
W.P. No.5614/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1555.pdf

Facts: Petitioner was found overage by five days on closing date of the applications, given in advertisement regarding appointment against the post of Driver (BPS-4) in Rescue 1122, Government of the Punjab. He contended that at the time of filing application for the post, he was within age and prayed that his eligibility be considered from the date of submission of application.

Issue: Whether the date of submission of application or closing date as mentioned in the advertisement shall be based for calculating age limit?

Analysis: A cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment…If a candidate does not fulfill the eligibility criteria mentioned therein as on the said cut-off date, he is not entitled to be considered for appointment.

Conclusion: Closing date or cut off date as mentioned in the advertisement shall be a base for calculating age limit.

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24. **Lahore High Court**
Asif Mushtaq v. Government of the Punjab, etc.
Writ Petition No.2477/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1574.pdf

Facts: Petitioner was employed on ad hoc basis for a period of one year. However, the services of the petitioner were terminated on the basis of allegations. Petitioner approached Punjab Service Tribunal by filing an appeal and prayed that stigma be removed and he be reinstated in service. Appeal was partly allowed and stigma was removed. Now petitioner has sought regularization in service.

Issue: Whether the order/judgment of the PST could be sought to be set aside through writ jurisdiction?

Analysis: Words forming part of the termination order stigmatizing the petitioner were deleted; his termination was never set aside and remained in field till date. The judgment of the learned PST attained finality as it is admitted fact that the same was not challenged before the honorable Apex Court under Article 212(3) of the Constitution. The petitioner, instead of taking the proceedings in the learned PST, initiated by r himself to their logical conclusion through the judicial hierarchy, turned towards this Court. The petitioner through the instant petition intends to nibble away the order of the PST in an indirect manner whereas order of the PST could only be assailed under Article 212(3). This is evident from the fact that the PST has maintained the termination; the regularization cannot be directed without reinstatement, which would otherwise imply this Court sitting as an appellate forum of the PST which the Constitution debars.

Conclusion: The order/judgment of the PST cannot be set aside through writ jurisdiction.

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25. **Lahore High Court**
Muhammad Ijaz v. Government of Punjab
Writ Petition No. 4396 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1492.pdf

Facts: The petitioners challenge action of two administrative departments of the Province of Punjab whereby the petitioners have been denied the facility and benefit of Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

Issue: (i) Whether administrative instructions/notifications being subservient to laws and rules can dilute the facility or benefit afforded by Rule 17-A by declaring that those persons incapacitated or invalidated from government service in medical category 'B' cannot be given the benefit of Rule 17-A?

(ii) Whether administrative instructions or notifications can operate retrospectively?

Analysis: i) The most stark and conspicuous highlight of this Rule is that it does not in any manner create any divisions or classes of incapacitation or invalidation. Scope of the Rule has been considerably and consciously widened so as to reflect a much more beneficial intent, which is in line with the original rationale for introducing such a beneficial Rule. There can be no justification for the existence of categorization of incapacity and invalidation and its consequential effect on the extension of the benefit contemplated by Rule 17- A. Moreover, the entire purpose of the Rule is defeated by creation of categories at an administrative level.

ii) Administrative instructions or rules cannot operate retrospectively so as to take away vested rights.

Conclusion: i) Administrative instructions are neither laws nor rules and these can only be subservient to laws and rules and, therefore, cannot be allowed to dilute the facility or benefit afforded by Rule 17-A.

ii) Administrative instructions or notifications which are not even delegated legislation in the strict sense cannot possibly be allowed to operate retrospectively so as to impair already accrued rights and benefits.

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26. **Lahore High Court**
Habib Bank Limited v. Saqib Mahmood and another
I.C.A. No. 287 of 2008
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1538.pdf

Facts: Intra Court Appeal has been filed against the judgment passed in Writ Petition whereby writ petition was allowed and respondent was ordered to be reinstated in service.

Issue: i) Whether the Service Tribunal has the jurisdiction or authority to pass a time-line for the conduct and completion of inquiry proceedings?

ii) Whether a constitutional petition is maintainable where the relationship between the employee and employer is not governed by any statutory rules of service?

Analysis: While the Federal Service Tribunal has the power to set-aside, confirm, vary or modify the order appealed against, it does not have any jurisdiction to supervise, manage or control administrative inquiry proceedings by issuance of a continuous Mandamus since it does not possess any extra ordinary jurisdiction such as the one conferred by Article 199 and Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973. What it can do is to vary or modify the order imposing penalty but it cannot go behind the order and control or supervise inquiry proceedings at an administrative level.
Rules of service can only be relied and invoked in constitutional jurisdiction if these are statutory and not otherwise. It is trite that unless there is a statutory intervention available to an employee of a government corporation, attached department, autonomous body writ cannot be filed. An employee can only do so if he is able to show some dereliction of Statute. The employees whose terms of service are governed by non-statutory dispensation remain in an incessant master and servant relationship with the employer.

Conclusion: i) There is no jurisdiction vested in the Federal Service Tribunal that authorizes it to give a timeline within which an inquiry has to be conducted and completed. Directions for the performance of official duties within a particular

time were generally construed as directory and not mandatory. Hence the direction of the Federal Service Tribunal can only be considered to be directory and not mandatory.

ii) The respondent whose terms and conditions were governed by non statutory rules and who had been dismissed from service under such rules could not invoke the remedy afforded by Article199 of the Constitution of the Islamic Republic of Pakistan, 1973 since his relationship with the appellant was governed by the rule of master and servant.

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27. **Lahore High Court**
Rafi Ahmad v. Province of Punjab
Writ Petition No. 4351 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1409.pdf

Facts: The petitioner, a contractual employee employed by the Punjab Information Technology Board, invoked the Constitutional jurisdiction seeking reinstatement.

Issue: Whether a contractual employee can invoke Constitutional jurisdiction seeking reinstatement or the same may be sent as representation to a competent forum?

Analysis: A contractual employee is governed by the principle of master and servant, therefore, has no right for seeking reinstatement and even in the event of arbitrary dismissal or unwarranted termination such employee can only sue for damages. The petitioner cannot, under any circumstances be treated at par with his colleagues who are regular employees. A contractual employee serves at the absolute and unfettered pleasure of his master.At the same time, it must be pointed out that it is indeed permissible for Constitutional Courts to convert and treat one type of proceedings into another and to remit a lis to a forum or authority of competent jurisdiction for decision on merits but while issuing directions for deciding representations, this Court must have due regard to the rights of such other persons in particular who may be the direct affectees of such directions.

Conclusion: A person who has been a contractual employee but whose period of contractual service has come to an end, has no right whatsoever to invoke Constitutional jurisdiction of a High Court neither can his representation be countenanced.

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28. **Supreme Court of the United States**
Allen v. Cooper140 S. Ct. 994 (2020)
https://www.supremecourt.gov/opinions/19pdf/18-877_dc8f.pdf

Facts: Frederick Allen, a videographer, sued North Carolina for copyright infringement. Allen also asked the court to declare a state law unconstitutional, claiming the law was passed in bad faith. The U.S. District Court for the Eastern District of North

Carolina rejected the state's motion to dismiss, and the U.S. Court of Appeals for the 4th Circuit reversed and remanded the district court's ruling.

Issue: Does Congress have authority to abrogate the States' immunity from copyright infringement suits in the Copyright Remedy Clarification Act of 1990 (CRCA)?

Analysis: Justice Kagan remarked, "*Education Expense Board v. College Savings Bank (1999) "precluded Congress from using its Article I powers—including its authority over copyrights—to deprive States of sovereign immunity.Property Clause could not provide the basis for an abrogation of sovereign immunity. And it held that Section 5 of the Fourteenth Amendment could not support an abrogation on a legislative record like the one here. For both those reasons, we affirm the judgment below*". The Court held that under United States Supreme Court precedent the Intellectual Property Clause could not provide the basis for an abrogation of sovereign immunity under the Patent and Plant Variety Protection Clarification Act, the Copyright Remedy Clarification Act of 1990 (CRCA) as it failed the "congruence and proportionality" test. The CRCA aimed to provide a uniform remedy for statutory infringement, rather than redress or prevent unconstitutional conduct, and so, the law was invalid. The power to secure an intellectual property owner's "exclusive right" under the Intellectual Properly Clause stopped when it ran into sovereign immunity.

Conclusion: No. The court affirmed the 4th Circuit's decision in a 9-0 ruling, holding Congress did not have the authority to abrogate or take away state sovereign immunity from copyright infringement suits under the Copyright Remedy Clarification Act.

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29. **Lahore High Court**
Commissioner of Inland Revenue v. M/s Naila Kareem
PTR No.389 of 2009
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1732.pdf

Facts: The respondent/assessee filed Wealth-Tax returns for a few years. For finalization of assessment, notices under Section 16(2) of the Wealth Tax Act 1963 were regularly issued to the assessee, but no compliance was made. Consequently, assessing officer u/s 16(5) of the Act finalized the assessments ex-parte at much higher rate. However, appeals of the assessee against the order of assessment were accepted. Said order was challenged by the department before High Court.

Issue: Whether issuance of notice under section 16(4) of the Wealth Tax Act, 1963 to the assessee, indicating the intention regarding proposed valuation of the impugned assessment, is mandatory before making assessment and determining liability of wealth-tax under section 16(5) of the Act?

Analysis: Section 16 (4) of the Act does not straight away authorize the Wealth Tax Officer to make an opinion/assessment on the basis of information gathered, rather he is required to issue notice to the assessee seeking explanation with documentary

evidence, after confronting the information collected. After said notice and failure on the part of assessee to offer satisfactory response, assessment determining liability of wealth-tax or amount refundable to him could be made. From a bare perusal of aforesaid provision of law, it can simply be inferred that for an explanation to be offered by an assessee, he must have been issued a notice, within the contemplation of Section 16(4) of the Act, without which the assessee would not be able to offer explanation/defence. Although the word "may" has been used in subsection (4), but it has to be read in conjunction with subsection (5) ibid, which suggests that issuance of notice under section 16(4) was mandatory in nature, therefore, its strict compliance was imperative and was to be strictly construed. It is a principle of long standing that whenever adverse action is being contemplated against a person, a notice and/or opportunity of hearing is to be given to such person. It is settled law that if private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact pre-emptory or mandatory as a general rule.

Conclusion: Issuance of notice under section 16(4) of the Wealth Tax Act, 1963 is mandatory before making assessment under section 16 (5) of the Act.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Evidence+Law

   E-EVIDENCE - MANAGING THE CHALLENGES by Neeraj Aarora

   These various forms of Electronic Evidence/ Digital Evidence are increasingly being used in the judicial proceedings. At the stage of trial, Judges are often asked to rule on the admissibility of electronic evidence and it substantially impacts the outcome of civil law suit or conviction/acquittal of the accused. The Court continue to grapple with this new electronic frontier as the unique nature of e-evidence, as well as the ease with which it can be fabricated or falsified, creates hurdle to admissibility not faced with the other evidences. The various categories of electronic evidence such as CD, DVD, hard disk/ memory card data, website data, social network communication, e-mail, instant chat messages, SMS/MMS and computer generated documents poses unique problem and challenges for proper authentication and subject to a different set of views.

2. **BANGLADESH JOURNAL OF LAW**
http://www.biliabd.org/article%20law/Vol7%20special%20issue/Dr.%20Ridwanul%20Hoque.pdf

CRIMINAL LAW AND THE CONSTITUTION: THE RELATIONSHIP REVISITED by Ridwanul Hoque

The adherence to basic constitutional norms and principles can nowhere be more important than in the area of criminal process, because criminalizing and punishing invariably bear upon a person's right to life and liberty. For ages, it has remained a daunting challenge for human societies to minimize the "evils" of, or to ensure the protection of human rights in, the criminal justice process.1 As back as in 1972, the Constitution of the People's Republic of Bangladesh incorporated certain most fundamental, universally practiced principles of criminal justice, which are of mandatory nature. Three decades after the Constitution's coming into force, however, the impact of these constitutional norms on the country's criminal law generally, and in the litigation process in particular, has been frustratingly minimal. Apart from the Constitution, a number of international human rights instruments have cast obligations upon Bangladesh to ensure a fair, effective, accessible, and just criminal justice system.

3. **CONSTITUTIONAL COURT REVIEW**
https://journals.co.za/doi/pdf/10.2989/CCR.2019.0001

PUSHING THE BOUNDARIES: JUDICIAL REVIEW OF LEGISLATIVE PROCEDURES IN SOUTH AFRICA by Stephen Gardbaum

The article begins with a brief discussion of the background norm of non-intervention in legislative procedures from which the Court has progressively and so notably departed. It then charts the three steps by which this departure has come about, showing how each of them marks a new stage in the degree of judicial supervision. The heart of the article explores whether the Court was justified in taking these steps or was guilty of overreaching. It argues that, although a certain general tension between the separation of powers and rule of law underlies the background norm of judicial non-intervention, in the specific contexts in which these cases were decided, these two values increasingly came together. Indeed, far from violating separation of powers, the Court promoted it when overly concentrated legislative-executive power threatened impunity.