MONTHLY CASE LAW UPDATE

Vol. 1, No.9

June-July, 2013

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CONSTITUTION

1) Maulana Abdul Haque vs. Govt. of Balochistan etc.

   (PLD 2013 S.C. 641)

   Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ.

The Apex Court elucidated the meaning and scope of the phrase "Sovereignty of State" by stating that the concept of sovereignty meant supreme authority in a political community. A sovereign State was often described as one that was free and independent. In its internal affairs it had undivided jurisdiction over all persons and property within its territory. It claimed the right to regulate its economic life without regard for its neighbours and to increase its armaments without limit. No other nation might rightfully interfere in its domestic affairs. In its external relations, it claimed the right to enforce its own conception of rights and to declare war. In political theory, the ultimate authority of the State in the decision-making process and in the maintenance of order was called sovereignty. Its supreme and independent power was exercised in the domestic and foreign policy. It is precisely the State's powers that ensured the State's authority and thus its sovereignty. A State's domestic sovereignty was closely linked with its independence from foreign powers.

2) Nadeem Ahmed Advocate vs. Federation of Pakistan

(2013 SCMR 1062)

Khilji Arif Hussain, Tariq Parvez, Ejaz Afzal Khan, Gulzar Ahmed and Sh. Azmat Saeed, JJ

It has been held that failure of most senior Judge of Islamabad High Court to attend the meeting of the Judicial Commission would not vitiate the proceedings of the Commission. Article 175-A(14) of the Constitution clearly provided that no action or decision taken by the Commission or Committee would be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any Member from any meeting thereof.

Moreover that the President of Pakistan could not determine the seniority of Judges of the High Courts. According to the established practice and yardstick for determining seniority amongst the Judges of a High Court, elevated on the same day, was seniority in age except in the case of Judges from service whose inter se seniority remained intact even on their elevation irrespective of their age.

Where nomination sent to the President for appointment in terms of Art.175-A of the Constitution was against the Constitution and the law, a deadlock would inevitably be the consequence as the President could neither return the nomination to the source it had originated from or processed through nor could he appoint the person, thus nominated. Only way out of such a deadlock would be recourse to an advisory or adjudicatory jurisdiction of the Supreme Court. If the Supreme Court upheld the opinion of the President, the Commission should initiate proceedings denovo in accordance with the opinion of the Court, but if the opinion of the President was not upheld by the Court, he should appoint the person so nominated.

Practice/convention that the senior most Judge of the High Court, in the absence of any concrete and valid reason had to be appointed as the Chief Justice of the High Court was esteemed, honoured and also had the approval of the Supreme Court.

3) Ch. Nisar Ali Khan vs. Federation of Pakistan

(PLD 2013 S.C. 568)

Tassaduq Hussain Jillani, Anwar Zaheer Jamali, Asif Saeed Khan Khosa, Amir Hani Muslim and Muhammad Athar Saeed, JJ.

It has been observed in the case that suggestion or recommendation made by the Supreme Court in its judgment though entitled to due respect, deference and consideration, did not travel beyond a suggestion or a recommendation and it did not by itself assume the status of law.

4) Malik Nawab Sher vs. Ch. Muneer Ahmad etc.

(2013 SCMR 1035)

Nasir-ul-Mulk, Amir Hani Muslim and Muhammad Athar Saeed, JJ.

It was observed in this case, inter alia, jurisdiction of High Court in writ of quo warranto was primarily inquisitorial and not adversarial and thus the court could undertake such inquiry as it might deem necessary in the facts and circumstances of the case, including examination of the entire record and such exercise could even be done suo motu.

CIVIL PROCEDURE CODE

5) Muhammad Nawaz vs. Muhammad Baran Khan

(2013 SCMR 1300)

Anwar Zaheer Jamali, Ijaz AhmadChaudhry and Muhammad Ather Saeed, JJ.

In this case, the august Supreme Court of Pakistan upheld the order of learned High Court where the suit of the plaintiff was dismissed as not proved. The pleadings were silent about the date, time and place of agreement to sell and also no mention of marginal witnesses were made in the pleadings. The august Court observed:

> A perusal of the plaint reveals that the appellant/plaintiff while asserting his claim regarding execution of alleged oral agreement in between the appellant and respondent neither mentioned the date of striking off the bargain nor the witnesses in whose presence the said oral agreement to sell was arrived at between the parties.

CRIMINAL PROCEDURE CODE

6) Amir Masih vs. The State

(2013 SCMR 1059)

Anwar Zaheer Jamali, Ijaz Ahmed Chaudhry and Muhammad Ather Saeed, JJ.

Where earlier (first) bail application was dismissed as withdrawn, the second bail application could only be filed on any fresh ground and not on the same grounds which were available at the time of disposal of earlier bail application.

7) Rizwan Ali vs. The State

(PLJ 2013 SC 762)

Asif Saeed Khan Khosa & Ahmad Chaudhary, JJ.

Three successive bail petitions filed by the petitioner were withdrawn by him and the last petition was dismissed by the Hon'ble High Court on the basis of the principle laid down in the afore mentioned case of Amir Masih. The august Supreme Court allowed the petition while setting aside the order of the Hon'ble High Court and ordered for its decision a-fresh by the High Court. The august Court while allowing the petition observed as under:

> "In the peculiar circumstances of the case we have found the consensus between the parties to be justified because the merits of the petitioner's case for bail had never been attended to by the Lahore High Court, Multan Bench, Multan in the orders passed by (sic) in all the three successive applications filed by the petitioner for the said relief and every time such application was allowed to be withdrawn the withdrawal so sought and allowed was nothing but withdrawal simpliciter. This petition is, therefore, converted into an appeal and the same is allowed, the impugned order passed by the Lahore High Court, Multan Bench, Multan on 19-06-2013 is set aside, Criminal Miscellaneous No.2084-B of 2013 shall be deemed to be pending before the said Court and the same shall be decided afresh after attending to the merits of the petitioner's case for bail".

ELECTION LAWS

8) Abdul Ghafoor Lehri vs. Returning Officer etc.

(2013 SCMR 1271)

Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ.

In this case the Apex Court discussed, inter alia, the scope of Articles 63 and 62 of the Constitution and opined that in Art.63 of the Constitution there were certain disqualifications which were of temporary nature and a person disqualified under Art. 63 of the Constitution could become qualified after lapse of certain period, whereas, the requirements of Art.62 of the Constitution were of permanent nature and a person had to fulfil certain qualifications / conditions to become eligible to be elected or chosen as a member of Majlis-e-Shoora (Parliament), otherwise, he was not eligible to be a member. Further observing that Article 62 of the Constitution did not provide any period after which a person, who was declared disqualified under the said Article, could be eligible to contest the elections of the Parliament. -Such a person could not (at any time in the future) become qualified by efflux of time.

FAMILY LAWS

9) Mst. Ayesha Shaheen vs. Khalid Mehmood etc.

(2013 SCMR 1049)

Nasir-ul-Mulk, Sarmad Jalal Osmany and Amir Hani Muslim, JJ.

Where decree for delivery of gold or its market value was granted the value should be determined with reference to the date of payment, as only then the decree could become fully satisfied.

10) Wagma vs. Pervez Khan

(2013 YLR 1903)

Rooh-ul-Amin Khan and Syed Afsar Shah, JJ.

Dower amount was paid by husband to the petitioner through her father, however, same was deposited in the Bank account of her father. Thus, the Court held:

> "Controversy was between the daughter and father and husband could not be held responsible---Family Court had no jurisdiction and the matter was within the domain of civil court."

FINANCIAL INSTITUTIONS (RECOVERY OF FINANCE) ORDINANCE

11) Muhammad Nawaz vs. Zarai Taraqiati Bank Limited

(2013 CLD 1390)

Abdus Sattar Asghar and Malik Shahzad Ahmad Khan, JJ.

The Financial Institutions (Recovery of Finance) Ordinance itself does not furnish any procedure with regard to scrutiny of plaint, therefore, in the light of the provisions of section 7(2) of the Ordinance, procedure laid down under Order VII, rule 11 CPC is applicable to the plaints lodged before the Banking Court.

SERVICE LAWS

12) Ahmed Khan Dehpal vs. Govt. of Balochistan.

(PLJ 2013 SC 511)

Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ.

The petitioner (civil servant) got a decree from civil court in his favour for correction of his death of birth and approached his department for compliance but on refusal he filed an appeal before the Service Tribunal which was also dismissed. The petitioner then filed the petition for leave to appeal against the order of Service Tribunal but the august Supreme Court relying upon the cases of Khalil Ahmad Siddiqui vs. Pakistan through Secretary Interior, Interior Division, Government of Pakistan, (2003 PLC (C.S.) 696), and (2004 PLC (C.S.) 1044) refused to grant leave and observed as under:

> "The idea to have the date of birth altered appears to be an off shoot of on afterthought. It, as a matter of fact, has become a common practice with the civil servants to file a civil suit for correction of date of birth when they come to the verge of their retirement just to prolong their tenure for enjoying the perks and privileges for a few more years at the cost of others.
>
> How come this that the petitioner who joined the service in 1982 could not know about this actual date of birth despite the passage of more than two decades. Especially when at various stages during his studies as well as service he filed many examination forms, other proformas as well as service book.

13) Muhammad Ashraf Tiwana vs. Pakistan

(2013 SCMR 1159)

Jawwad S. Khawaja and Khilji Arif Hussain, JJ.

Section 24-A of the General Clauses Act 1897 obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment." It also stipulates that the person making any order under the power conferred by any enactment, shall so far as necessary or appropriate, "give reasons for making the order". Therefore, an unreasoned order of termination (without cause)…would be violative of …section 24A of the General Clauses Act.

14) Liaqat Ali Chugtai vs. Federation of Pakistan etc.

(PLD 2013 Lahore 413)

Before Syed Mansoor Ali Shah, J.

Scope of Article 10 A of the Constitution has been pronounced in the above referred case. It has been observed, inter alia, where prejudicial allegations were to be made against a person, he must normally be given particulars of them before the hearing so that he could prepare his answers.

While dilating upon Art. 14 regarding inviolability of dignity of man, it was observed that dignity of man was that valued and serene condition in a person's social and individual life which was violated when he was, publicly or privately, subjected by another to offensive and degrading treatment, or when he was exposed to ill-will ridicule disesteem or contempt. Human dignity was in itself enshrined as the corner stone of society from the very beginning of civilization and was the foundation, the cause

and end of all social institutions, therefore, all social institutions, governments, States, laws, human rights and respect for persons originated from the concept of dignity of man or his personhood. Any attempt to undermine the dignity of a human being would also undermine the very foundation and support upon which an orderly society was structured. Value of human dignity, therefore, valued both the personal sense of self-worth as well as the public's estimation of the worth or value of an individual.

TAX LAWS

15) Engineer Iqbal Zafar Jhagra vs. Federation of Pakistan etc.

(2013 SCMR 1337)

Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Iqbal Hameedur Rahman, JJ.

In this case the question of raising the Sales Tax through a Declaration to be made under section 3 of the Provisional Collection of Taxes Act 1931 (XVI of 1931) was declared as *ultra vires* Article 77 of the Constitution of Pakistan 1973 in the following terms:

> It is well settled proposition that levy of tax for the purpose of Federation is not permissible except by or under the authority of Act of Majlis-e-Shoora (Parliament). Reference in this behalf may be made to the case of Cyanamid Pakistan Ltd. v. Collector of Customs (PLD 2005 SC 495), wherein it has also been held that such legislative powers cannot be delegated to the Executive Authorities. Also see Government of Pakistan v. Muhammad Ashraf (PLD 1993 SC 176) and All Pakistan Textile Mills Associations v. Province of Sindh (2004 YLR 192).

Delegated legislation and its extent has also been discussed in the light of an earlier judgment of the august Supreme Court of Pakistan titled and cited as *Zaibtun Textiles Mills v Central Board of Revenue,* **PLD 1983 SC 358.**

TRANSFER OF PROPERTY ACT

16) Muhammad Ramzan vs. The State

(PLJ 2013 SC 522)

Ejaz Afzal Khan and Muhammad Ather Saeed, JJ.

Once nature of a property as waqf is established, no back door intrusion into same by a former owner can be allowed to resume, retrieve or reclaim it under any law worth the name.

TRADE MARKS ORDINANCE

17) VIFOR (Intl.) INC. vs. Me'mon Pharmaceutical

(2013 CLD 1531)

Aziz-ur-Rehman, J.

No trade mark or any part thereof in respect of goods or services would be registered, if same would cause deception and/or create confusion. Proprietor of a registered trade mark has an exclusive right therein and its violation was not permissible under law

It was further held that:

"claim for damages could not be granted in absence of positive proof about actual losses suffered by plaintiff. Damages require evidence vis-à-vis details of losses actually suffered".