# FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
**(Appellate Jurisdiction)**

**PRESENT:**
Justice AMIN-UD-DIN KHAN, CHIEF JUSTICE
Justice AMER FAROOQ
Justice ALI BAQAR NAJAFI

**C.P.L.As No.2130 AND 2136 OF 2023**
*(Against the judgment dated 27.03.2023, passed by the Islamabad High Court, Islamabad in I.C.As No.325 & 326 of 2022)*

Islamabad Capital Territory, Private Educational Institution Regulatory Authority (ICT-PEIRA), through its Secretary, Islamabad — Petitioners *(in both cases)*

***Versus***

Imtiaz Ali Qureshi and others — in C.P.L.A.2130/2023

Waqas Mahmood and others — in C.P.L.A.2136/2023

…Respondent(s)

For Petitioners: Malik Ghulam Mustafa Kandwal, ASC (*in CPLA No.2130/2023*)

Mr. Zulfiqar Khalid Maluka, ASC (*in CPLA No.2136/2023*)

For Respondents: Ch. Aamir Rehman, Addl. A.G.P.
Dr. Agha Ghulam Haider, Director (Lit.), FE& PT
*(in both petitions)*

Mr. Rehan-ud-Din Khan, ASC
*(In CPLA No.2136/2023*)

Mr. Imtiaz Ali Qureshi, in person
*(In CPLA No.2130/2023*)

Assisted by: Javeria Anwaar Hashmi (Law Clerk)

Date of Hearing: 18.09.2026

## JUDGMENT OF THE COURT

**JUSTICE AAMER FAROOQ:** This judgment shall decide the captioned petitions as common questions of law are involved.

2. The legal issue in hand is whether the appointments made under the Islamabad Capital Territory Private Educational Institutions Ordinance, 2009 (**2009 Ordinance**), still hold the field despite the repeal of Ordinance(s) and the subsequent enactment of the Islamabad Capital Territory Private Educational Institutions (Registration and Regulation) Act, 2013 (**the Act of 2013**), which does not save the past actions undertaken under the said Ordinance(s). For the reasons to be recorded hereinafter, we hold and declare that such appointments do not continue.

3. The controversy has its genesis in an advertisement dated 13.07.2009 published in the newspapers, whereby the erstwhile Ministry of Education, succeeded by the Ministry of Federal Education and Professional Training (**Ministry of FE&PT**) as a consequence of the Constitution (Eighteenth Amendment) Act, 2010, invited applications for appointment to various posts in the Islamabad Capital Territory-Private Educational Institutions Regulatory Authority (**ICT-PEIRA**) on permanent basis. Mr. Imtiaz Ali Qureshi (**Mr. Qureshi**), respondent No.1 in CPLA No.2130/2023, and Mr. Waqas Mahmood (**Mr. Mahmood**), respondent No.1 in CPLA No.2136/2023), apparently participated in the selection process. A four-member Selection Board, constituted to scrutinize the candidatures, recommended Mr. Qureshi as Member (Academics) and Mr. Mahmood as Member (Registration). Subsequently, the appointments of Mr. Qureshi and Mr. Mahmood were challenged through petitions under Article 199 of the Constitution on the ground

that under the Islamabad Capital Territory Private Educational Institutions Chairman and Member (Academic) and Member (Registration) (Appointment and Qualifications) Rules, 2015 (**the 2015 Rules**), such appointments were required to be for a period of three years, whereas they had been appointed on permanent basis. The position taken in the referred petitions by the ICT-PEIRA was that Mr. Qureshi and Mr. Mahmood had been appointed on permanent basis in terms of section 7 of the Islamabad Capital Territory Private Educational Institutions (Regulation and Promotion) Ordinance, 2006 (**ICT-PEIRA Ordinance 2006**), which provided that the Chairman and Members shall be appointed on such terms and conditions as it may be determined.

4. The High Court, seized of the matter, vide order dated 13.01.2020, directed that the matter of Mr. Qureshi and Mr. Mahmood be placed before the Federal Cabinet. Accordingly, a summary was moved to the Federal Cabinet for regularization of their appointments, but no decision was taken on the same. Meanwhile, opinion of the Law and Justice Division was sought, which opined that the 2015 Rules would apply prospectively and that the appointment of Member (Academics) and Member (Registration) could not be converted into a tenured appointment by virtue of said Rules.

5. On 16.11.2021, the Ministry of FE&PT submitted another summary to the Federal Cabinet where it took the position that appointments of Mr. Qureshi and Mr. Mahmood were illegal as they had been made in the absence of rules, and recommended that their

services be terminated with immediate effect. The referred summary made no mention of either the Law and Justice Division's opinion or the Establishment Division's views contained in its O.M. dated 18.11.2015. On 23.11.2021, the Federal Cabinet approved the proposal. Consequently, the Ministry of FE&PT, vide notification(s) dated 03.12.2021, terminated the services of Mr. Qureshi and Mr. Mahmood as Member (Academics) and Member (Registration), ICT-PEIRA, respectively, with effect from 23.11.2021. Mr. Qureshi and Mr. Mahmood assailed their termination by way of petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**), which were allowed by the Judge-in-Chambers vide judgment dated 22.07.2022. Intra-Court Appeals (ICAs) filed by the petitioner against the said judgment were dismissed vide the impugned judgment, hence the instant petitions.

6. At the very outset, we asked the learned Additional Attorney General to clarify the stance of the Federal Government regarding the appointments of Mr. Qureshi and Mr. Mahmood, to which he candidly responded that they were illegal. It was contended that the Law and Justice Division firmly maintained that the appointments were illegal inasmuch as they were made at the time when the 2009 Ordinance was in the field which was subsequently repealed as it lapsed and, after a considerable gap, ICT-PEIRA was reconstituted through an Act of Parliament without any saving clause with respect to the prior appointments. It was further argued that since there is a considerable gap and the Act of 2013 does not save the appointments, hence the

same would lapse with the Ordinance(s) and this proposition has been lucidly dealt with by the Supreme Court in *Pakistan Medical and Dental Council through President and 3 others vs Muhammad Fahad (2018 SCMR 1956).*

7. Malik Ghulam Mustafa Kandwal, ASC and Mr. Zulfiqar Khalid Maluka, ASC, appearing on behalf of the petitioner, while conceding the legal proposition relied upon by the learned Additional Attorney General, *inter alia,* contended that even otherwise, the appointments were made without there being any rules covering such appointments and the same were made in dubious circumstances. In this regard, it was submitted that the summary for the appointments was initiated by Mr. Qureshi himself, who was related to the then Chairman, and that both the private respondents secured their positions through exercising control and manipulation. It was argued that the learned Single Judge as well as Division Bench of the High Court focused primarily on the absence of rules while dealing with the issue of lapse of the Ordinance(s) in a cursory manner. They further added that Article 264 (b) & (c) of the Constitution does not cover or envisage the controversy in hand.

8. Mr. Qureshi, appearing in person, vehemently opposed the contentions of learned Additional Attorney General as well as those of learned counsel for the petitioner. He submitted that the Law and Justice Division had opined that the appointments are valid and, at this juncture, now they cannot take a somersault by putting forward a contrary position. It was argued that the entire selection process

had been transparent, without there being any sinister motive, and that both the respondents merely happened to be holding temporary charge of the advertised positions at the relevant time. Mr. Qureshi then took the Court through various documents to substantiate his submissions.

9. Learned counsel appearing for Mr. Mahmood adopted the contentions of Mr. Qureshi and argued that the allegations of the circumstances being dubious were groundless, as the entire selection process was supervised by a committee duly constituted under the law. It was submitted that the Chairman of ICT-PEIRA just happened to be the Secretary of the Committee which fact is neither here nor there and it does not make the appointments illegal. With respect to the legal objection raised by the learned Additional Attorney General, both the respondents argued that the subsequent repeal of the Ordinance(s) would not defeat their vested rights.

10. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

11. Before embarking on discussion of law, it is apt to trace the timeline regarding the creation of the ICT-PEIRA. The Authority was initially established on 21.09.2006 by virtue of ICT-PEIRA Ordinance, 2006. The referred Ordinance lapsed due to the efflux of time under Article 89 of the Constitution. Thereafter, on 05.02.2007, ICT-PEIRA Ordinance, 2007 was promulgated, which continued the statutory framework for ICT-PEIRA earlier created. On 05.06.2007, the 2007

Ordinance was re-promulgated, however, it is pertinent to state that from February, 2007 till June, 2007, there was a vacuum in the statutory framework as the 2006 Ordinance lapsed and 2007 Ordinance was promulgated in June 2007, which re-established the ICT-PEIRA and the legal framework governing ICT-PEIRA continued. On 03.11.2007, emergency was proclaimed in Pakistan and at that time, the 2007 Ordinance was in force. By virtue of Article 4 of the Provisional Constitutional Order (PCO), it was purported to grant permanence to the Ordinance(s) that were in force as on 03.11.2007. The Supreme Court of Pakistan, on 31.07.2009, handed down a landmark judgment[1], whereby the emergency and PCO were declared null and void. The Supreme Court directed that the Ordinance(s) which were in force on 03.11.2007 would remain effective for 120 days from 31.07.2009 unless enacted by the Parliament with retrospective effect. In light of the judgment of the Supreme Court, the 2007 Ordinance continued temporarily but was not enacted by the Parliament. Consequently, on 27.11.2009, the 2007 Ordinance lapsed because it had not been enacted by the Parliament within 120 days period, hence the statutory framework governing ICT-PEIRA ceased. On 27.11.2009, another Ordinance was promulgated titled Islamabad Capital Territory-Private Educational Institutions Ordinance, 2009, placing the Authority under a temporary statutory cover once again. On 26.03.2010, the referred Ordinance also lapsed by efflux of time under Article 89 of the Constitution. From 26.03.2010 till 19.03.2013, no statute remained in the field to govern

[1] Sindh High Court Bar Association vs. Federation of Pakistan (PLD 2009 SC 879)

ICT-PEIRA and there was a statutory gap of almost three years in the legislative framework governing ICT-PEIRA. On 19.03.2013, the Parliament enacted the Act of 2013, which provided permanent statutory framework for ICT-PEIRA. The present Authority is being regulated and managed under the referred legal framework. It is pertinent to observe that the Act of 2013 contains no express saving clause to validate or protect the appointments, employment arrangements, rules, rights, or liabilities created under the earlier, temporary Ordinance(s) which had already lapsed upon expiry period prescribed under the Constitution.

12. Though it has been argued on behalf of the petitioner and the Federal Government that appointments were made in a non-transparent manner inasmuch as at the relevant time, both the respondents i.e. Mr. Qureshi and Mr. Mahmood were holding temporary charge and had managed to manipulate the appointments in their favour, but it is a disputed question of fact which requires evidence and cannot be decided solely on the basis of documents appended with the petitions. It is also necessary to observe that the thrust of the reasoning of the Division Bench of the High Court was based on the fact that the appointments were made in the absence of rules which were framed in 2015, whereas the Ordinance(s) in question at the relevant time prescribed for rules to be framed for the appointments in question. However, we are of the view that this is not really the crux of the legal controversy, rather as mentioned hereinabove, the same is whether the appointments survived in the presence of the Act of 2013 when there was no saving clause.

13. The learned Division Bench of the High Court, in the impugned judgment, has mentioned in a cursory manner that the appointments survived by virtue of Article 264(b) & (c) of the Constitution. For ease of convenience and brevity, the relevant Article of the Constitution is reproduced hereinbelow: -

> *"264. Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution, -*
> *(a).....*
> *(b) affect the previous operation of the law or anything duly done or suffered under the law;*
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;*
> *(d).....*
> *(e)....."*

Bare reading of the above Article shows that any right, privilege, obligation or liability acquired, accrued or incurred under the law or anything done or suffered under the law would not be affected by virtue of subsequent repeal of that statute. It is also apt to examine Article 89 of the Constitution to see the effect of lapsed Ordinance(s). Article 89 of the Constitution provides power to the President to promulgate Ordinances and is as follow: -

> *"89. (1) The President may, except when the [Senate or] National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.*
>
> *(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of [Majlis-e-Shoora (Parliament)] and*

*shall be subject to like restrictions as the power of [Majlis-e-Shoora (Parliament)] to make law, but every such Ordinance-*

*(a) shall be laid-*

*(i) before the National Assembly if it [contains provisions dealing with all or any of the mattes specified in clause (2) of Article 73], and shall stand repealed at the expiration of [one hundred and twenty days] from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:*

*Provided that the National Assembly may by a resolution extend the Ordinance for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:*

*Provided further that extension for further period may be made only once.*

*(ii) before both Houses if it [does not contain provisions dealing with any of the matters referred to in sub-paragraph (i)], and shall stand repealed at the expiration of [one hundred and twenty days] from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution:*

*Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:*

*Provided further that extension for a further period may be made only once; and*

*(b) may be withdrawn at any time by the President.*

*(3) without prejudice to the provisions of clause (2), —*

*(a) an Ordinance laid before the National Assembly under sub-paragraph (i) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the National Assembly; and*

*(b) an Ordinance laid before both Houses under sub-paragraph(ii) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the House where it was first laid."*

Under the referred Article, an Ordinance possesses an initial lifespan of 120 days from the date of its promulgation provided before expiration of that period, a resolution disapproving it is passed by the Assembly. Under the second proviso to Article 89(2)(a), the Ordinance once promulgated can be extended for further period only once. Article 89(2)(a)(ii) of the Constitution stipulates that upon expiry of 120 days, the Ordinance shall stand repealed or if before the expiration of that period a resolution disapproving it is passed by either House upon the passing of that resolution. Under proviso to Article 89(2)(a)(ii), if either House by a resolution extend the Ordinance for further period of 120 days, it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon passing of that resolution. Provided further that extension for a further period may be made only once. Under Article 89(2)(b), the President has the power to withdraw the Ordinance at any time.

14. Section 6 of the General Clauses Act, 1897 (**Act of 1897**), similarly provides that any right, privilege, liability acquired, or interest under a repealed enactment is saved and is not destroyed by virtue of such repeal. On the touchstone of the above provisions of the Constitution and law, this Court is faced with the task to examine whether the appointments of Mr. Qureshi and Mr. Mahmood are valid and still hold the field. The judgment that most fittingly deals with the legal proposition we have in hand is *2018 SCMR 1956 supra (per Mian Saqib Nisar, CJ, as he then was)*. It was observed in the said judgment that any amendment, insertion, or substitution made by an amending Ordinance to a statute/Act of Parliament would only be for a limited period of 120 or at the most 240 days, unless provided permanency by Parliament by making it an Act of Parliament. It was also observed that any amendment/insertion/introduction made by an Ordinance would not survive after its lapse/repeal. The referred judgement in unequivocal terms states that if, notwithstanding the fact that an Ordinance promulgated under Article 89 of the Constitution expires through efflux of time, the amendments made by it to a permanent statute, i.e. an Act of Parliament, are allowed to possess a permanent character, then this will virtually amount to giving plenary power of making permanent legislation to the Executive; it would be tantamount to providing the Executive a machinery to bypass the constitutional mandate of the Legislature and this cannot be permitted (*per Mian Saqib Nisar, CJ)*, being absolutely against the spirit of the Constitution which embodies the important principles of

democracy and trichotomy of powers. *Mian Saqib Nisar, CJ*, further went on to observe that the Ordinance making power under Article 89 (or Article 128) of the Constitution does not constitute the President (or the Governor) into a parallel source of law making or an independent legislative authority. The power to promulgate Ordinance(s) is subject to legislative control. The failure to comply with the requirement of laying an Ordinance before the legislature is a serious constitutional infraction and abuse of the constitutional process. It was also noted that re-promulgation of Ordinance(s), especially when the earlier ones were either not approved or disapproved by Parliament, is a fraud on the Constitution and a subversion of democratic legislative processes. We concur with the view taken by the Supreme Court of Pakistan, as the said judgment is not binding upon us under Article 189 of the Constitution but the principles laid down therein are cited with approval as, in our opinion, they depict the correct position of the law. In this regard, it is appropriate to dilate upon the position of the precedential value of the judgments of the Supreme Court and this Court after the Constitutional (Twenty Seventh) Amendment Act, 2025. Article 189 (1) of the Constitution, as it stands now, stipulates clearly that the judgments of this Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan including the Supreme Court. In this context the binding effect of the judgments of this Court is not only confined to the *ratio decidendi* but also *obiter dicta*. (*The underlining is by us to add emphasis*). Any observation made by this Court in any

judgment or order, which has the effect of deciding a question of law or is based upon or enunciates a principle of law shall be binding on all courts including Supreme Court. In holding so we draw wisdom from some of the judgments of the Supreme Court which when was the highest court of the country observed to the effect that its obiter dicta carry binding effect on all courts including High Courts. *See Dr. Igrar Ahmad Khan vs Dr. Muhammad Ashraf and others (2021 SCMR 1509); Shahid Pervaiz vs Ejaz Ahmad and others (2017 SCMR 206); Justice Khurshid Anwar Bhinder and others vs Federation of Pakistan and another (PLD 2010 Supreme Court 483); Irshad Ahmad Shaikh vs The State (2000 SCMR 814).*

15. Undoubtedly, the legislative instruments under which Mr. Qureshi and Mr. Mahmood claim to have acquired their permanent status were temporary statutes. A temporary statute is defined in *Black's Law Dictionary* (Sunset Law) as a statute or provision in a law that requires periodic review of the rationale for the continued existence of the particular law or the specific administrative agency or other governmental existence function. The legislature must take positive steps to allow the law, agency or functions to continue in existence by a certain date or such will cease to exist. Likewise, according to *Craies on Statute Law* (7th Edition), temporary statutes are those, on the duration of which some limit is prescribed by Parliament, whereas perpetual Acts are those upon whose continuance no limitation of time is expressly named or necessarily to be understood. Similarly, *Crawford's Interpretation of Laws*

explains that a permanent or perpetual Act is one whose operation is not limited to a particular term of time, but which continues in force until it is duly altered or repealed; a temporary Act, on the other hand, is one whose life or duration is fixed for a specified period of time at the moment of its enactment and continues in force, unless sooner repealed.

16. The very purpose of Article 264(b)& (c) of the Constitution and section 6 of the Act of 1897 is to preserve rights acquired and acts done under a law which no longer holds the field, and it is only for certainty in the system. However, as observed by *Mian Saqib Nisar, CJ* (as he then was), in 2018 SCMR 1956 *supra*, if this was held to be the position of law regarding temporary Ordinance(s), it would allow the Executive to easily bypass the Legislature by promulgating an Ordinance or creating a temporary mechanism, and subsequently claim permanent legal cover under the guise of Article 264 *ibid* or section 6 of the Act of 1897, as the case may be. Within the framework of governance provided by our Constitution, the foundational principle is the trichotomy of powers; the doctrine comprehensively elucidated in landmark judgment of the Supreme Court of Pakistan[2]. The functions of each organ of the State are delineated, and legislation remains the sole prerogative of Parliament. The powers to promulgate Ordinance(s) given to the President and Governors under Articles 89 and 128 of the Constitution are restricted to emergencies when the Parliament or the respective Provincial Assembly is not in session. To

[2] The State vs Zia-ur-Rshman and others (P L D 1973 Supreme Court 49)

promulgate an Ordinance when these prerequisites are not met out amounts to an encroachment upon the functions of other organ(s) of the State. The repeated re-promulgation of the Ordinance(s) defeats the broader legislative purpose and directly encroaches upon the exclusive prerogative of the legislature to enact laws through the regular processes prescribed by the Constitution. In our constitutional scheme, Parliament is the exclusive law-making institution, and the power to promulgate the Ordinance is an exception reserved solely for emergencies.

17. In the present case, notwithstanding the absence of regulatory rules at the time when appointments of Mr. Qureshi and Mr. Mahmood were made, such appointments could not have been made on permanent basis when the underlying law under which they were made was temporary in nature. Had Parliament intended to make these appointments permanent, it would have expressly saved them under the Act of 2013. Article 264 (b) & (c) of the Constitution cannot be used as a lifeline by Mr. Qureshi and Mr. Mahmood to assert permanent status or to continue in office perpetually, as any such continuation would stand in direct negation of the will of Parliament. The above findings, by no means, diminish the settled protections afforded under Article 264 (b) & (c) of the Constitution in cases where a vested right has been acquired or an act has been done under a repealed law. Such rights would undoubtedly be saved, particularly when explicitly acquired under a permanent statute that is

subsequently repealed; for a person's vested right, once lawfully acquired, cannot be taken away that easily.

18. In the instant case, however, the purported rights were acquired under a temporary statute which has since lapsed. To grant these rights perpetual existence would tantamount to giving the Executive absolute authority to legislate as and when it pleases. A temporary instrument cannot create an indefeasible, permanent right or liability unless that permanence is subsequently validated and adopted through an Act of Parliament with retrospective effect.

19. In view of above discussion, the judgments handed down by the learned Judge-in-Chambers as well as by the learned Division Bench of the High Court are not sustainable, hence merit setting aside.

20. For the above reasons, the instant petitions are converted into appeals, which are accepted; consequently, the impugned judgments of the High Court are set aside and the writ petitions filed by Mr. Qureshi and Mr. Mahmood stand dismissed. No order as to costs.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

**Islamabad**
18.09.2026
Misal Shah/*
**Approved for Reporting**