FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

PRESENT:
Justice Amin-ud-Din Khan, Chief Justice
Justice Ali Baqar Najafi
Justice Syed Arshad Hussain Shah

Crl. Org. Petition No.1, 3, 4 & 22 of 2024
in C.R.P. No.292 of 2021
[Contempt petitions for implementation of the order of Supreme Court of Pakistan dated 17.12.2021 passed in Civil Review Petition No.292 of 2021]

AND

Crl.M.A.No.489 of 2024
In Crl.Org.Petition No.03 of 2024
(Application for impleadment of Allah Ditto)

AND
C.M.Appeal No.129 of 2022 IN
CMA NIL of 2022 in CRP No.292/2021

Fazal-e-Naeem & others	In Crl.O.P.No.1 of 2024
Muhammad Riaz & others	In Crl.O.P.No.3 of 2024
Saleem Nawaz	In Crl.O.P.No.4 of 2024
Kamran Shaukat	In Crl.O.P.No.22 of 2024
Hidayat Ullah	In CM Appeal No.129 of 2022
	(**Petitioners**)

Versus

Fawad Asadullah	In Crl.O.P.No.1 & 3 of 2024
Govt. of Punjab etc.	In Crl.O.P.No.4 of 2024
D.G. Intelligence Bureau etc.	In Crl.OP No.22 of 2024_
Federation of Pakistan through Secy. M/o Information etc.	In CM Appeal No.129 of 2022

For the Petitioner (s) : Syed Ali Imran Jaffari, ASC
(In Crl.O.P.No.1 of 2024)
Syed Ali Zafar, ASC
(In Crl.O.P.No.3 of 2024)
Nemo (In Crl.O.P.No.4 of 2024)
Mr. Muhammad Ramzan Khan, ASC
(In Crl.O.P.No.22 of 2024)
Syed Rifaqat Hussain Shah, AOR
(In Crl.M.A.No.489 of 2025)
Mr. Shah Khawar, ASC
(in C.M.Appeal No.129 of 2022)

For the Respondent(s) : Ch. Aamir Rehman, Addl. AGP
Mr. Amjad Iqbal, Deputy Director IB

Dates of Hearing : 30th & 31st of July, 2026

JUDGMENT

ALI BAQAR NAJAFI, J. Through these contempt petitions, the petitioners have prayed that respondents may be proceeded against for violating the judgment of the Supreme Court dated 17.12.2021 passed in C.R.P.No.292 of 2021 and for implementation of the said judgment.

2. **After hearing the learned counsel for the petitioners and the respondents,** we have straightaway observed that the question raised before us is as to whether the order dated 17.12.2021 dismissing the 108 review petitions, 35 Civil Misc. Applications and 03 Civil Misc. Appeals directed against the judgment dated 17.12.2021 titled "*Muhammad Afzal Vs. Secretary Establishment Division*" reported as **(2021 SCMR 1569)** was implemented with its letter and spirit, so as to hold whether or not the contempt was committed. In this view it is important to mention that through a short order dated 17.12.2021, with a ratio of 4-1, the review applications etc. were dismissed in the following manner:-

> *"1.....*
> *2. However, in exercise of the Court's jurisdiction under Article 184(3) of the Constitution read with Article 187, we have taken into consideration the services rendered by the reinstated employees of the "employers" [as defined in Section 2(d) of the Act] and hereby order that:*
>
> > *i. Employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) did not require any aptitude or scholastic or skill test, for appointment thereon, shall be restored from the date of the judgment under review to the posts they were holding on the same terms and conditions of service applicable on the date of their termination pursuant to the judgment under review.*
> >
> > *ii. Such other employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) required the passing of any aptitude or scholastic or skill test, for appointment thereon such from the date of the judgment under review be restored to their*

> *said posts on the same terms and conditions of service applicable on the date of their initial termination.*
>
> *iii. Any improvement in the terms and conditions of service of all the restored employees shall be granted strictly in accordance with the laws and rules applicable to their service or employment and in the absence thereof by regulations laid down for this purpose by their respective employers.*
>
> *iv. The relief granted in sub-paragraphs (i) and (ii) above shall not be granted to employees whose initial termination of service (from 01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a Court of law."*

However, it is more important to mention that in the detailed judgment of even date in para (ii) it was directed that to remain in the service, the reinstated employees shall have to undergo the relevant test, applicable to their posts to be conducted by the Federal Public Service Commission within 03 months. Following is the extract of the concluding para of the detailed judgment sought to be implemented through this contempt proceedings:-

> *"i. Following the principle set out in Muhammad Akram Vs. Registrar, Islamabad High Court (PLD 2016 SC 961) at para 79 [we note that this judgment was subsequently overruled in Gul Taiz Khan Marwat Vs. Registrar, Peshawar High Court (PLD 2021 SC 391), however, that declaration was only to the extent that the administrative orders of a Chief Justice of a High Court are not amenable to writ jurisdiction], we hold that the beneficiary employees who were holding posts for which no aptitude, scholastic or skill test was required at the time of initial termination (01.11.1996 to 12.10.1999) shall be restored to the same posts they were holding when they were terminated by the judgment under review;*
>
> *ii. All other beneficiary employees who were holding posts on their initial termination (01.11.1996 to 12.10.1999) which required the passing of an aptitude, scholastic or skill test shall be restored to the posts, on the same terms and conditions, they were occupying on the date of their initial termination. However, to remain appointed on these posts and to uphold the cherished principles of merit, non-discrimination, transparency and fairness expected in the process of appointment to public institutions these beneficiary employees shall have to undergo the relevant test, applicable to their posts, conducted by the Federal Public Service Commission within 3 months from the date of receipt of this judgment;*
>
> *iii. The improvement in the terms and conditions of service of all the beneficiary employees shall be granted strictly in accordance with the applicable laws, rules and regulations; and*

iv. The relief granted in sub-paragraphs (i) and (ii) shall not be granted to those beneficiary employees whose initial termination of service (01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a court of law.

42. Copies of this judgment shall be sent to the concerned employers, the Ministry of Law and Justice and the Establishment Division for appropriate action. Consequently, all review petitions are dismissed and all applications/appeals are disposed of in the above terms.

Sd/-J
Sd/-J
Sd/-J
Sd/-J"

(underlining is for emphasis)

2. It is clear that in the detailed judgment while dismissing the review petitions etc. against the said reported judgment the requirement of issuance of a notice under Order XXVII-A CPC to the Attorney General for Pakistan was found to have been complied with; the applicability of Article 240 & 242 of the Constitution was adequately dealt with since, apart from the IB employees, none of the beneficiary employees were the civil servants; the defective employments had suffered from illegality and therefore, were declared void and as such it was not within the competency of the Parliament to enact laws, without fulfilling the settled requirements enshrined in the Constiution for joining the public service employment; protecting the unlawful appointments since made without curing their respective defects; the beneficiary employees were not found to have constituted a distinct class; the caretaker government had power to dismiss, remove or terminate the beneficiary employees since made beyond the tenure of government; the fundamental rights of the regular employees in terms of seniority, if any, was not in violation of the fundamental rights of new employees and that the judgment was not to apply

prospectively. However, it was concluded that those who had rendered service for more than 10 years since their reinstatement, under the said Act or the Ordinance, and were nearing to their retirement, would hardly had any future job prospects after dedicating their considerable period of their lives to their employers, therefore, they were to be treated with leniency, particularly when their induction and reinstatement into service was not based on their fault but for the non-fulfilment of codal formalities.

4. In total the judgment dealt with 10 following employers:-

i. Intelligence Bureau (IB);
ii. Commissioner Afghan Refugees, KPK (CAR);
iii. National Highway Authority (NHA);
iv. Pakistan Telecommunication Company Ltd. (PTCL)
v. Overseas Pakistani Foundation (OPF)
vi. State Life Insurance Corporation (SLIC)
vii. Civil Aviation Authority (CAA)
viii. Water and Power Development Authority (WAPDA)
ix. Sui Southern Gas Company Ltd. (SSGC); and
x. Trading Corporation of Pakistan (TCP)

Their employees, which run in thousands, appointed by the above stated employers between 01.11.1993 to 30.11.1996 were removed, dismissed or terminated between 01.11.1996 to 31.12.1998 who were reinstated, *firstly,* through the Ordinance, 2009 whereafter 03 other Ordinances were promulgated, with minor modifications, but, finally, on 06.12.2010 the Sacked Employees (Reinstatement) Act, 2010 (**The Act, 2010**) was promulgated whereby the sacked employees (appointed during the

between 01.11.1993 to 30.11.1996 which period was increased to 12.10.1999) were reinstated. Since **the Act, 2010** was found to have been promulgated without any rationale to favour such-category of persons by granting them extra ordinary relief, litigation-started either by the regular employees to protect their seniority due to the said reinstatement, and by the employees who were not reinstated by their employers (10 in total). However, in the reported judgment (supra), **the Act of 2010** was declared as ultra vires of the Constitution with the effect that all benefits accrued to the beneficiary employees were seized with immediate effect. However, the cases of those employees who stood retired or had passed-away did not require any interference as their cases were considered as a past and closed transaction. But the beneficiaries of the said **Act of 2010** who were still in service would go back to their previous positions where they were at the time of promulgation of said **Act of 2010** but the monetary benefits, if received by them, under the said **Act of 2010** for the period they served were not to be recovered, though the lumpsum payment received by any one of them upon reinstatement was to be reversed.

Those who suddenly became jobless had included the reinstated employees who served for more than a decade hence they filed the review petition.

6. The judgment, the non-compliance of which is reported before us, has certain legal effects. The beneficiary employees who were holding post for which no aptitude, scholastic or skill test was

required at the time of initial termination (01.11.1996 to 12.10.1999) were restored to the same post which were held by them at the time of their termination through the referred judgment. The other beneficiary employees who were holding the post 01.11.1996 to 12.10.1999 which requires the passing of aptitude, scholastic or skill test were restored to the post on the same terms and conditions from which they were initially terminated. However, it was clarified that in order to remain on these posts the beneficiary employees shall have to undergo the relevant test applicable to their post to be conducted by the Federal Public Service Commission (**FPSC**) within 03 months. However, the employees who were dismissed, terminated between the said period of 01.11.1996 to 12.10.1999 on the ground of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds, not set-aside finally by a court of law, would not be reinstated.

7. Today, it is an admitted fact between the parties that neither the Federal Public Service Commission (**FPSC**) nor the relevant Departments had put reinstated employees to any such test. They gave their own reasons for their inaction. The department states that the employees never volunteered for the applicable test. The Federal Public Service Commission (**FPSC**) states that unless the Department had sent requisitions for such recruitments, it cannot own its own conduct any such examination, particularly, when 10 employers category have been excluded from the operation of the Federal Public Service Commission (**FPSC**). The employees, on the other hand, argues that it is the Department who has to advertise

and invite such employees to conduct the requisite test, if any, on a particular date and time and in the absence of the same, they cannot on their own prepare the questionnaire and fill it up with the answers and submit to their employers. They are also of the view that they cannot voluntarily walk into the examination halls of the **FPSC** to appear in any such examination. Besides, it is not denied by any of the petitioners before us that they had served the department for less than 10 years period. Some of the petitioners have retired, therefore, their case before passing of the judgment, would obviously be considered as past and closed transaction. However, those, who due to the afflux of time, had attained the age of superannuation while serving in the department too would be entitled to the benefits of retired regular employees.

8. Needless to mention that to take the aptitude, scholastic or skill test was the responsibility of the employer and if it was not conducted it would not be considered a fault of the employees who were neither ordered by their employer to take any such test nor they refused to appear in it until today. Admittedly, they were granted employment by one government, terminated by another government, reinstated into service by a government and then the **Act of 2010** reinstating such employees, was declared by the Supreme Court as unlawful and in all these situations, they had committed no fault. Such employees therefore were rightly extended a lenient approach when, after their reinstatement, they were allowed to continue on their jobs but subject to the aptitude, scholastic or skill test which was to be conducted by the employer, and in our considered view, if such offer was not made, the

employees could not be put at any disadvantageous position so as to deny the benefit of the said order now sought to be implemented. We therefore hold that the conditions so imposed by the court on the beneficiary employees were waived/diluted by the respondent-department due to the afflux of time and lethargy on their part and not for any fault of the petitioners employees. Such conduct cannot be awarded with any sentence of appreciation by this court. In this context the inaction on the pact of the employers is marked with caution, persuading us to show our concern to a sorry state of affair. However, at this stage we would exercise a restraint rather than acting pro-actively keeping in view the overall circumstances.

9. It is imperative to underline that in a constitution democracy the rule of law is not just a principle but the foundation upon which the legitimacy of and the good governance in any system of government rests. The Supreme Court of Pakistan and, after the 27th amendment, this being the apex court of the country is entrusted with performing the responsibility of interpreting the law, ensuring justice and upholding the Constitution of Islamic Republic of Pakistan. The orders of the Supreme Court, as the then apex court, are not merely recommendations or advisories but they are legal mandate that must be followed. Such decisions are culmination of vigorous legal scrutiny and deliberation intended to reflect upon the values and laws of the land. To disregard or to delay in implementation of its verdict by the Government amounts to challenging the very framework of the legal system. The compliance of the judicial decision is not a matter of curtesy but a

constitutional requirement and non-compliance of which not only disturbs the delicate equilibrium between prestige of the court and the enforcement of the rights but also sets a dangerous precedent that could lead to an executive overreach. Besides, the implementation of these orders is crucial for maintaining public confidence in the judicial system. If their decisions can be easily ignored or stepped aside by the individuals or entities, public trust in the efficacy of the judiciary and the entire Government is seriously undermined. Consequently, the erosion of trust in the judicial system may lead to undermine the democratic system.

10. For the foregoing reasons, the listed cases are disposed of with a direction to the respondents to comply with the detailed reasons in the order of review with its letter and spirit and consider the petitioners as unconditional regularly appointed beneficiary employees.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad
NOT APPROVED FOR REPORTING
A.Qadoos*

Announced in the open court on _____

JUDGE