

IN THE HIGH COURT OF SINDH AT KARACHI

CP D 3727 of 2024 : Javed Ali vs. Pakistan & Others
For the Petitioner/s : Mr. Sarfraz A. Akhund, Advocate
For the Respondent/s : Mr. Akbar Khan,
Assistant Attorney General of Pakistan
Date/s of hearing : 21.04.2025
Date of announcement : 13.05.2025

JUDGMENT

Agha Faisal, J. This petition was filed in 2021 at Sukkur seeking relief against a public listed oil marketing company; not even arrayed as a respondent herein. Five respondents were impleaded, however, not a single one was represented to be in the territorial remit of the honorable Sukkur Bench. The prayer was for the petitioner to be employed by the company on the basis of deceased quota. *Muhammad Abdur Rehman J* was pleased to dismiss the petition on the touchstone of maintainability, placing reliance on binding edicts of the Supreme Court and Larger / Division benches of this Court. *Adnan ul Karim Memon J* disagreed and referred the petition to the honorable Chief Justice *for appropriate orders*.

Pertinent facts

1. The petitioner asserted that his father was an employee of Pakistan State Oil Company Limited ("PSO") and died on 27.01.2011. The petition was filed ten years later and even though relief was sought against PSO, it was not arrayed as a respondent herein; instead the Federation (at Islamabad) and four officers of PSO (at Karachi) were impleaded. The sole relief sought was appointment on deceased quota.
2. The respondents' comments on record emphasize their challenge to maintainability *inter alia* as PSO was devoid of statutory rules of service and there was no policy with respect to deceased quota in any event at the time that the petitioner's father expired.
3. In addition the aforesaid impediments to maintainability, it is also noted that the necessary party, PSO, is not a respondent herein. The petition was entertained at Sukkur, however, not a single respondent is cited to be within

the territorial remit thereof¹. The petitioner's father died in 2011 and annexures B and B-2 of the petition suggest that the petitioner attained the age of majority in 2018 or thereabouts, however, the petition was not preferred until 2021, therefore, there is also the undeniable preponderance of *laches*.

4. The petition was heard and upon dissent amongst the learned members of the Divisional Bench, instead of appointment of a referee judge, a larger three member bench was initially constituted to hear the matter.

5. The record shows that the lead opinion was authored by *Muhammad Abdur Rehman J. Adnan ul Karim Memon J* was pleased to dissent therewith, however, instead of formulating points for determination and seeking appointment of a referee judge, the matter was directed to be "*placed before the honorable Chief Justice for appropriate order as his Lordship may deem fit and proper*". The office submission note dated 13.06.2024 demonstrates an administrative order, dated 14.06.2024, was rendered directing that this petition be fixed before a Larger Bench (three member) at Karachi. Consequently a three member Larger Bench was in fact formed. Vide administrative order dated 24.03.2025, the matter referred to a referee judge.

Terms of reference

6. The scope of a referee judge in Constitutional petitions, as opposed to criminal appeals, has been settled by the Superior Courts; as seen in *Muhammad Sayyar*², *Maher Alvi*³, *Muzammil Niazi*⁴, and *Aijaz Hussain Jakhrani*⁵. The law requires the referee judge to umpire points of determination, of law and / or fact, on which members of the Division bench have differed⁶. In instances, as is the case herein, where the Division bench does not formulate the point/s of difference for the opinion of the referee judge, the latter is obliged to do so on his own accord.

7. Since the learned Division bench, or any member thereof, has not formulated the point/s for determination, therefore, the following points are hereby framed to address the legal and factual aspects in seriatim:

¹ No order of the honorable Chief Justice per the Benches Order was discernible from the file.

² PLD 1974 Supreme Court 257.

³ PLD 1980 Karachi 609.

⁴ PLD 2003 Karachi 526

⁵ PLD 2023 Sindh 1.

⁶ Reference is also made to comprehensive treatise by *Adnan Iqbal Chaudhry J* in *Major Basharat vs. Sindh (CP D 1233 of 2017)*; judgment dated 04.12.2023. His lordship also encapsulated the *pari materia* effect of section 98 CPC read with clause 26 of the Letters Patent of the Lahore High Court and Rule 5 of Chapter IV-N, Volume V of the High Court Rules, the latter as applicable to the Sindh High Court.

- i. Whether a petition seeking appointment per an *undeniably* non-existent deceased quota is maintainable against an un-arrayed public listed oil marketing company, devoid of statutory rules of service.
- ii. Whether the present petition is maintainable.

Jurisdiction

8. The primary question to be addressed by any court is that of its jurisdiction, hence, maintainability. The ratio illumined by the Supreme Court in *Florida Builders*⁷ requires a judge to determine the question of jurisdiction at the very onset and in view of settled law; irrespective of whether the issue has been red-flagged by the office, counsel, litigant or otherwise. While the edict was rendered in the context of rejection of complaints, however, the ratio is considered to apply *mutatis mutandis* herein.

9. Jurisdiction is not an abstract concept and it is imperative for it to be determined / exercised in accordance with the law. Article 175(2)⁸ of the Constitution mandates that no court shall have any jurisdiction save as that conferred by law. The Supreme Court edict in *Hamza Rasheed Khan*⁹ illumined that the power to confer jurisdiction is a legislative function and in the absence of exercise thereof no court has any inherent or plenary jurisdiction. The rendering of orders / judgments in apparent indifference to jurisdiction has been deprecated recently by the Supreme Court in *Pervez Musharaf*¹⁰. It was illumined that such apathy undermines the credibility of the entire judicial system and renders any inconsistent edicts without jurisdiction and unconstitutional.

Deceased quota

10. It is settled law that recruitment in the public sector ought to be undertaken through an advertised competitive process, essential to maintain transparency in the process of induction and to ensure merit. Recourse to

⁷ Per *Saqib Nisar J* in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

⁸ No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

⁹ Per *Qazi Faez Isa CJ* in *Hamza Rasheed Khan vs. Election Appellate Tribunal & Others* reported as *PLD 2024 Supreme Court 1028*.

¹⁰ Per *Syed Mansoor Ali Shah J* in *Taufiq Asif vs. General (retired) Pervez Musharaf & Others* (Civil Petition 3797 of 2020) and connected matters; yet unreported judgment dated 10th January 2024.

parallel processes of recruitment has consistently been deprecated by the superior courts. The mere employment of a parent in a public sector institution could not be demonstrated to confer a vested right, on the touchstone of *Shahnawaz*¹¹, upon progeny to perpetuate such employment from generation to generation.

11. The Supreme Court took cognizance of the issue in *GPO Islamabad*¹² and framed the penultimate question for determination; being whether such policy conforms to Articles 25 and 27 of the Constitution insofar as it creates separate categories of persons who are to be given preference in employment and concluded that the policy is discriminatory and unconstitutional. It was unequivocally held that the Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.

12. Reliance was also placed on *Tahir Mushtaq*¹³, albeit in the analogous instance of *son quota*, to reiterate that the Constitution prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. Preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit based system of employment. The taxpayers' hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship.

13. *Naeem Akhtar Afghan J*, speaking for the Supreme Court, concluded that policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and

¹¹Per *Munib Akhtar J* in *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558. Appeals against the edict were dismissed by the Supreme Court vide order dated 05.08.2024 in *CIR vs. Shahnawaz (Private) Limited* (CA 617 of 2011) and connected appeals.

¹² Per *Naeem Akhtar Afghan J* in *General Post Office Islamabad vs. Muhammad Jalal* reported as PLD 2024 Supreme Court 1276.

¹³ Per *Qazi Faez Isa J* in *Government of Khyber Pakhtunkhwa vs. Tahir Mushtaq* reported as 2025 PLC CS 34.

merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution.

14. The Administration Committee of the Sindh High Court took note of the guidance provided by the august court, as aforesaid, and held, in its meeting dated 16th November 2024, that in revision / supersession of anything to the contrary, no one shall be entitled to claim for appointment of deceased / son quota in so far as the Sindh's judicial establishment is concerned.

Past and closed

15. Learned counsel had suggested that since the petition was filed in 2021 and the Supreme Court edicts were delivered in 2024, therefore, the petitioner's claim be considered as crystalized and given effect as a *past and closed transaction*. Respectfully, such a claim could not be corroborated by the law.

16. In *GPO Islamabad*, the Supreme Court saved "*appointments already made*" per the policies etc. declared unconstitutional. The past and closed transactions were, thus, saved. There is a myriad of authority¹⁴ demarcating the remit of rights, vested rights and past & closed transactions, however, it would be hard pressed to best the illumining description and distinction elucidated by *Munib Akhtar J* in *Shahnawaz*¹⁵. The concept of *past and closed transactions* was further refined by *Syed Mansoor Ali Shah J* in *Mekotex*¹⁶.

17. The verbiage in *GPO Islamabad* afforded protection to appointments already made and under no stretch of imagination could that be demonstrated to afford sanction to just an attempt at seeking employment. In *mutatis*

¹⁴ *Nagina Silk Mills vs. ITO* reported as PLD 1963 SC 322; *East Pakistan vs. Sharafatullah* reported as 1970 PLD SC 514; *CIT vs. EFU Insurance* reported as 1982 PLD SC 247; *G H Shah vs. Chief Land Commissioner* reported as 1983 CLC 1585; *Al Samrez Enterprises vs. Pakistan* reported as 1986 SCMR 1917; *WAPDA vs. Capt. Nazir* reported as 1986 SCMR 96; *Chief Land Commissioner vs. G H Shah* reported as 1988 SCMR 715; *Molasses Trading & Export vs. Pakistan* reported as 1993 SCMR 1905; *Muhammad Hussain vs. Muhammad* reported as 2000 SCMR 367; *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558; *Zila Council Jhelum vs. PTC* reported as PLD 2016 SC 398; *Al Tech Engineers vs. Pakistan* reported as 2017 SCMR 673; *Super Engineering vs. CIR* reported as 2019 SCMR 1111; *H M Extraction vs. FBR* reported as 2019 SCMR 1081.

¹⁵ Per *Munib Akhtar J* in *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558. Appeals against the edict were dismissed by the Supreme Court vide order dated 05.08.2024 in *CIR vs. Shahnawaz (Private) Limited* (CA 617 of 2011) and connected appeals.

¹⁶ Per *Syed Mansoor Ali Shah J* in *Commissioner Inland Revenue vs. Mekotex (Private) Limited* reported as PLD 2025 Supreme Court 1168.

mutandis application of the binding authority cited supra, mere escalation of claim / filing of a petition could not be demonstrated to be “an appointment already made”; on the touchstone of settled law governing past and closed transactions.

Writ against public listed oil marketing company devoid of statutory rules of service

18. It is an admitted fact that PSO is a public listed oil marketing company. Even though PSO is not even impleaded as a respondent the petitioner seeks employment therein on a then non-existent deceased quota. The basic premise on which the petitioner rests his plea is that even though PSO was devoid of any statutory rules, however, this Court ought to assume / exercise jurisdiction since the Government owned some of the shareholding therein.

19. It is a general principle of law that in the absence of statutory rules of service a writ petition, in service matters, ought not to be entertained¹⁷. In so far as the issue of functions of the state is concerned, the same was explained by the Supreme Court in the *PIAC case*¹⁸ and reiterated in the *Pakistan Olympics Association case*¹⁹. While eschewing a voluminous repetition²⁰ of the law illumined, it would suffice to observe that no case has been set forth to suggest that the respondent company was performing functions connected with the affairs of the state involving exercise of sovereign power²¹.

20. A Division Bench of this Court was seized of a similar *lis* in *Muhammad Arif*²² and the petitions were declared as not maintainable; as mandated by the binding precedent of the Supreme Court in *Saeed Ahmed Khoso*²³, *Zeeshan Usmani*²⁴, *Khushal Khan Khattak*²⁵ and *PEPCO*²⁶ respectively. There was another pronouncement of this Court in the instance of PSO itself wherein the petition was found to be not maintainable under *pari materia* circumstances, in

¹⁷ 2021 SCMR 609; 2019 SCMR 278; PLD 2010 Supreme Court 676.

¹⁸ PLD 2010 Supreme Court 676.

¹⁹ 2019 SCMR 221.

²⁰ Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

²¹ PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806.

²² Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan (CP D 875 of 2020)* and connected matters; judgment dated 26.08.2022 (“*Muhammad Arif*”).

²³ *Sui Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

²⁴ *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

²⁵ *Khushal Khan Khattak University vs. Jabran Ali Khan* reported as 2021 SCMR 977.

²⁶ *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

the case of *Muhammad Umair*²⁷. The said judgment has obtained the seal of approval from the Supreme Court in *Muhammad Arshad*²⁸.

21. The order penned by *Muhammad Abdur Rehman J* placed reliance on a three member bench judgment of this Court in *Muhammad Arif*²⁹, and specific reference was made to the incisive observations of *Adnan Iqbal Chaudhry J* to nonsuit the petitioner:

“22. That being said, even if a writ can issue to the SSGC, it can issue under Article 199(1)(a)(i) only to do a thing ‘required by law to do’. It is in this context of what the ‘law’ requires to be done, that the test of statutory rules came about in cases where the employee was on contract and not a civil servant. For service matters it has since been settled by a five-member Bench of the Supreme Court in *Defence Officers Housing Authority v. Lt. Col. Jawaid Ahmed* that even if the employer is a statutory body, “Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of ‘Master and Servant’.”³⁰ The underlying jurisprudence is discussed in the cases of *Anwar Hussain v. Agricultural Development Bank of Pakistan* (PLD 1984 SC 194), *Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi* (PLD 1984 SC 170), and *Karachi Development Authority v. Wali Ahmed Khan* (1991 SCMR 2435) as follows. The relationship between the employer and employee of a statutory corporation is ordinarily the result of a contract freely entered by the parties which evokes the principle of master and servant. However, if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of terms of the contract, that is an exception to the principle of master and servant, because the pleasure of the master is then taken over by the statutory provision/law and a violation thereof can be redressed by invoking constitutional jurisdiction. Conversely, where the terms and conditions of employment are not governed by statutory rules but only by regulations, instructions or directions

²⁷ *Muhammad Umair & Others vs. Federation of Pakistan & Others* reported as SBLR 2024 Sindh 2250.

²⁸ Per *Muhammad Ali Mazhar J* in *Muhammad Arshad & Others vs. Federation of Pakistan & Others* (Civil Petition 1323-K of 2022) and connected matters; judgment dated 19.04.2023.

²⁹ *Muhammad Arif vs. Federation of Pakistan* reported as 2025 PLC CS 93.

³⁰³⁰ Para 50(ii) of the judgment.

intended for internal use, the violation thereof cannot be normally enforced through a writ petition...

28. Adverting to the case-law relied upon by learned counsel for the Petitioners, it is correct that in *State Oil Company Ltd. v. Bakht Siddiqui* (2018 SCMR 1181) and *Pir Imran Sajid v. Managing Director, Telephone Industries of Pakistan* (2015 SCMR 1257), the right to life and livelihood in Article 9 of the Constitution was cited to deprecate denial of regularization to employees who had given the prime of their life to the employer. However, in both those cases the High Court had exercised writ jurisdiction to implement a policy of the Federal Government for regularizing contract employees. In *Bakht Siddiqui*, that is apparent from the judgment of the High Court reported at 2017 PLC (C.S.) 1192. In *Pir Imran Sajid* that fact is noted in paras 3 and 10 of the judgment. It was therefore in the context of enforcing a Government policy on regularization that a reference was made to Article 9 of the Constitution. In the petitions before us there is no statute or Government policy that the Petitioners can rely on for regularization.”

22. Needless to state that ratio thereof remained binding on subsequent benches per the *Multiline*³¹ principles, however, notwithstanding the foregoing reliance was placed in the dissenting opinion upon the judgments specifically referred to by *Adnan Iqbal Chaudhry J* but to draw a contrary conclusion.

23. The dissenting opinion rested essentially upon the learned author’s opinion of *Bakht Siddique*³². In addition to *Adnan Iqbal Chaudhry J* having exhaustively dealt with the import thereof, as reproduced supra, the lead opinion in *Muhammad Arif*³³ also interpreted it in the following terms:

“26. Petitioners’ learned counsel had pivoted their case on a leave refusal order in *Bakht Siddique*³⁴ to compel this Court to assume / exercise jurisdiction. Mr. Ghazi Khan Khalil submitted that notwithstanding the non-binding effect of a leave refusal order³⁵, the pronouncement was entirely distinguishable in the present facts and circumstances. It was pointed out that the order itself stated that there was no dispute as to facts seized thereof before, however, clearly the same was not the case herein. It was also articulated that the relief

³¹ *Multiline Associates vs. Ardesbir Cowasjee* reported as PLD 1995 Supreme Court 423.

³² *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

³³ *Muhammad Arif vs. Federation of Pakistan* reported as 2025 PLC CS 93.

³⁴ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

³⁵ Per *Munib Akhtar J* in *CIR vs. Secretary Revenue Division* reported as 2021 PTD 11.

sought therein was implementation of a Federal Government directive in a non-discriminatory manner; again not the case herein. Attention was drawn to the contents of the memorandum of petition³⁶ filed before the High Court to demonstrate that the case before the High Court was that of discrimination, in so far as entitlement per an office memorandum of 2008³⁷ was concerned. The two page order allowing the petitions³⁸ specifically mentions that the petitioners sought implementation of this 2008 OM, within time, and rested its finding on the premise that equal treatment ought to have been given to all similarly placed persons. Mr. Khalil articulated that SSGC and similarly placed enterprises stood expressly excluded from the purview of the policy³⁹, which in itself did not stand to scrutiny before the Courts, and the same stood superseded by an office memorandum of 2017⁴⁰. It was articulated that even though the petitioners have pleaded no entitlement per the respective OMs⁴¹, however, even if they did their petitions would be barred by *laches*. Mr. Khalil eloquently summated the petitioners' case as being predicated on neither office memorandum but as a standalone claim, therefore, clearly inadmissible per the ratio of *Saeed Khoso*⁴².

28...Be that as it may, a Division Bench of this Court considered the import of *Bakht Siddique* in *Muhammad Umair*⁴³, interestingly in a case pertaining to Pakistan State Oil as was the case in *Bakht Siddique* itself, and distinguished it as follows:

"The petitioners' counsel had sought to rely on a leave refusal order in *Bakht Siddique*⁴⁴ to compel this Court to assume / exercise jurisdiction. On the other hand the respondents' counsel had cited a judgment of a five member bench of the august Court in *Farid Ahmed*⁴⁵, wherein the mutually exclusive distinction between the very respondent company's employees and those of third parties was conclusively upheld. Similar matters came up before this bench

³⁶ CP D 3199 of 2013 – paragraphs 8 and 9 thereof.

³⁷ Office Memorandum issued by Government of Pakistan dated 29.08.2008 ("2008 OM").

³⁸ Dated 11.01.2013.

³⁹ Reference is made *inter alia* to amending office memoranda dated 04.03.2019 issued by the Government of Pakistan Cabinet Secretariat Establishment Division.

⁴⁰ Office Memorandum issued by Government of Pakistan dated 11.05.2017 ("2017 OM").

⁴¹ As manifest from perusal of the memorandum of petition of the lead petition; relied upon by all counsel as being representative of the remaining memoranda.

⁴² *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

⁴³ *Muhammad Umair & Others vs. Federation of Pakistan & Others* (CP D 5333 of 2018) and connected matters; judgment dated 22.09.2022.

⁴⁴ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

⁴⁵ Per *Aslam Riaz Hussain J* in *Farid Ahmed vs. Pakistan Burmah Shell Limited & Others* reported as 1987 SCMR 1463.

last month in *Muhammad Arif*⁴⁶, wherein in view of the binding precedent of recent edicts of the august Court in *Saeed Khoso*⁴⁷, *PEPCO*⁴⁸ and *Zeeshan Usmani*⁴⁹, it was maintained that a writ seeking regularization of service could not be maintained *inter alia* in respect of a company devoid of statutory rules.”

It is also imperative to denote that *Muhammad Umair* had also disapproved of invocation of writ jurisdiction merely on the premise that the Government owned some of the shareholding in the public limited company.”

29. The judgment in *Muhammad Umair* was assailed before the Supreme Court in *Muhammad Arshad*⁵⁰ and *Muhammad Ali Mazhar J*, speaking for the Court, held that “... we have heard the learned counsel for the petitioners and also gone through the impugned orders/judgment but find no perversity or illegality, factual or legal in the impugned judgment”. As a consequence the civil petitions for leave to appeal were dismissed with a poignant finding that “the petitioners may, if so advised, approach an appropriate forum in accordance with law.”

24. The judgment of a three member Larger Bench in *Muhammad Arif*⁵¹ was specifically relied upon by *Muhammad Abdur Rehman J*, therefore, no lawful rationale for disconcert therewith could be discerned from the dissenting opinion.

Undeniable absence of policy

25. The comments available on file specifically plead that at the time of death of the petitioner’s father there was no policy whatsoever in respect of a deceased quota at PSO. A written synopsis filed on behalf of the respondents dated 23.05.2024⁵² makes specific reference to the Supreme Court’s edict in *Muhammad Ismail* in an effort to demonstrate that the petition is not maintainable⁵³.

⁴⁶ Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan* (CP D 875 of 2020) and connected petitions; yet unreported order dated 26.08.2022.

⁴⁷ *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

⁴⁸ *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

⁴⁹ Per *Sayyed Mazaher Ali Akbar Naqvi J* in *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

⁵⁰ Per *Muhammad Ali Mazhar J* in *Muhammad Arshad & Others vs. Federation of Pakistan & Others* (Civil Petition 1323-K of 2022) and connected matters; judgment dated 19.04.2023.

⁵¹ *Muhammad Arif vs. Federation of Pakistan* reported as 2025 PLC CS 93.

⁵² Being the date on which the petition was heard and reserved.

⁵³ *Government of Pakistan v Muhammad Ismail* reported as 2021 SCMR 1246.

26. The pertinent binding observations of the august Court, in somewhat identical circumstances, read as follows:

“It is an admitted fact that respondent’s father died in the year 1995 while he was in regular service of Accountant General KPK being Senior Auditor. At that time, there was no scheme/policy in field for induction of family member of deceased civil servant in service. It was on 13.06.2006 when the Government of Pakistan issued ‘Assistance Package for Families of Government Employees who die in service’, to be made effective from 01.07.2005, wherein employment for posts in BS-01 to BS-15 on two years contract without advertisement for the families of deceased servant was surfaced. Thereafter, this package was amended thrice i.e. on 20.10.2014, 04.12.2015 and lastly on 09.09.2016 whereby the two years’ contract period was enhanced to 5 years and the same was also made extendable till the age of superannuation or regularization. We have perused the Assistance Package and the subsequent amendments but could not find any provision therein which gives it retrospective effect especially when the grievance of respondent was agitated with a lapse of almost 17 years. It is an established principle of interpretation of statutes / notifications / executive / administrative orders that they would operate prospectively unless they expressly provide for retrospective operation. This Court in the case of *Hashwani Hotels Ltd. Vs Federation of Pakistan* (PLD 1997 SC 315) has acknowledged this fact by observing that “it is a well settled principle of interpretation of a notification and/or an executive order that the same can operate prospectively and not retrospectively. This principle is equally applicable to a statute in the absence of any express or implied intendment contrary to it.” In this view of the matter, when it is clear that afore-referred *Assistance Package for legal heirs of deceased government employee was not available at the time when deceased employee died and the same was issued later on with prospective effect, the respondent was not deprived of any right accrued to him at the relevant time by not appointing him. The learned High Court has erroneously presumed that a statute or rule, which gives right to the citizens, always operates retrospectively. If this is accepted, it would tantamount to opening a floodgate for all other similarly placed persons*”

27. Therefore, in so far as point number 1 framed for determination is concerned, it is maintained that a petition seeking appointment per an *undeniably* non-existent deceased quota is not maintainable against an unarrayed public listed oil marketing company devoid of statutory rules of service.

Application of the discussion to the present lis

28. As a consequence hereof, in so far as point number 2 framed for determination is concerned, consequent upon the determination of point number 1 *supra*, it is held that the present petition is misconceived, hence, dismissed.

Conclusion

29. Therefore, I do hereby concur with the rationale and conclusion meticulously enunciated by *Muhammad Abdur Rehman J* and dismiss this petition on the touchstone of maintainability.

30. The matter may be placed before the honorable Chief Justice for consideration of constituting the Division bench, for announcement of the rule of Court, based on the majority opinion.

Referee Judge