

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Suit No.595 of 2011

---

Date	Order with signature of Judge
------	-------------------------------

---

1. For hearing of CMA No.15319 of 2016.
2. For Arguments.

Dated 19-01-2017

Mr. Ansar Hussain Zaidi, Advocate for Plaintiff.  
Mr. Choudhary Atif Rafiq, Advocate for Defendants.

\*\*\*\*\*

According to learned counsel for the Plaintiff, the instant suit is to be converted into a Constitutional Petition in view of the Judgment handed down by the Hon'ble Supreme Court and reported in 2015 SCMR Page-456 [Ali Azhar Khan Baloch and others Versus Province of Sindh and others], more particularly Paragraphs-152 to 158 thereof. It would be advantages to reproduce Paragraph-158 of the Judgment herein below\_

*“In the same manner, the Civil Suits filed by the employees of statutory bodies or Government Servants relating to their terms and conditions of service inclusive of the disciplinary proceedings, who are serving in the organizations having statutory service Rules, shall be transferred to be heard by a Division Bench in Constitutional jurisdiction treating them as Constitutional Petitions for disposal in accordance with law. The Chief Justice of the High Court of Sindh shall constitute the Special Benches within a week from the date of communication of this judgment. The Special Benches, as directed above, shall take up the cases on day to day basis and complete the aforesaid exercise within two months from the date of constitutional of the Benches. The Registrar, High Court of Sindh, shall submit periodic compliance report after every two weeks for our perusal in Chambers.”*

**(Underlining to add emphasis)**

The learned counsel has further relied upon a case reported in 2016 SCMR Page-1362 [PTCL Versus Masood Ahmed Bhatti] {***Bhatti Case***}, wherein the Hon'ble Apex Court has observed that earlier case of PTCL, that is, the present Defendant, reported in PLD 1996 SC Page-222 was incorrectly decided, whereas, the another reported Judgment with regard to present Defendant, viz. PLD 2011 SC Page-132, was distinguished. At Page-1369 of above ***Bhatti Case***, the Hon'ble Court has come to the conclusion that the Service Rules of employees of Defendant-PTCL are essentially statutory in

nature and its violation can make the present Defendant amenable to the writ jurisdiction of High Court. He has invited Court's attention to the order dated 26.09.2016 passed in Suit No.1030 of 2010 (appended with the instant listed application), wherein, the learned single Judge of this Court has converted the aforementioned suit into a writ petition to be heard and decided by the learned Division Bench of this Court. In the above order of 26.09.2016 reliance has been placed on the above mentioned earlier Judgment of the Apex Court.

The above arguments have seriously been controverted by Mr. Choudhary Atif Rafiq, Advocate, the learned counsel for Defendant-PTCL as according to him, the present *lis* has to be decided in accordance with order dated 08.09.2014 handed down in HCA No.174 of 2013, which was filed by the present Defendant-PTCL against grant of an injunctive relief by the learned Single Bench. In the above order dated 08.09.2014, the learned Division Bench has directed that the matter shall be decided through a proper trial; framing of issues and leading of evidence. He has further relied upon a decision of Hon'ble Supreme Court reported in 2006 SCMR Page-1163 to fortify his arguments that Judgments laying down a principle of law have to be given effect prospectively and not retrospectively. According to learned counsel for Defendant, since this *lis* was filed way back in the year 2011, thus it has to be decided in terms of the law prevailing on that day as well as in the light of the above mentioned orders passed in HCA No.174 of 2013. His other submissions are that Plaintiff has claimed damages, which can only be proved through evidence and the same cannot become a subject matter of a writ jurisdiction, as it is a factual controversy.

I have given my anxious consideration to the arguments of learned counsel for the parties. The above reported decision given in [**Ali Azhar Khan Baloch case**] has in an unequivocal term has directed that how pending litigations of either Government Servant in the form of Civil Suits and or employees of statutory bodies shall be dealt with. With regard to the first category, the Hon'ble Supreme Court has directed that the same should be sent to specially constituted Services Tribunal under the law, whereas with regard to second category of employees of statutory bodies, the same shall be scrutinized and then transferred to, heard and decided by a Division Bench in accordance with law.

Page No.3.

In view of the above discussion and in my considered view, this suit also falls in the second category and is to be heard and decided by a learned Division Bench of this Court in its constitutional jurisdiction. Therefore, the Office is directed to place this cause before a Division Bench of this Court for a decision in accordance with law, after notices to the parties.

In view of above, listed CMA No.15319 of 2016 stands disposed of.

**JUDGE**