IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5229 of 2015
(Karachi Tax Bar Association and another v. Pakistan and 2 others)

C.P. No. D-5230 of 2015
(Sukkur Tax Bar Association v. Pakistan and 2 others)

C.P. No. D-5231 of 2015
(Hyderabad Tax Bar Association v. Pakistan and 02 others)

C.P. No. D-5232 of 2015
(BalochistanTax Bar Association v. Pakistan and 02 others)

C.P. No. D-5418 of 2015
(Karachi Bar Association v. Federation of Pakistan and 02 others)

C.P. No. D-5470 of 2015
(Sind High Court Bar Association v. Federation of Pakistan and 02 others)

C.P. No. D-6020 of 2015
(Hyderabad High Court Bar Association v. Federation of Pakistan and another)

M/s. Anwar Mansoor Khan and Zeeshan Bashir Khan, advocates for the petitioner in C.P. No.D-6418/2015

Ms. Saima Anjum, advocate in CP No.D-5230, 5231, 5232 and 5229 of 2015

Mr. Tahmasp Rasheed Rizvi, advocate in CP No.D-6020/2015

Barrister Faraz Nawaz Mahar, advocate in CP No.D-5470/2015

Mr. Nadeem Ahmed, advocate in CP No.D-5229/2015

M/s. Vishwa Mittar, Sajjad Solangi, and Shafay Javed Zakaria advocate in CP No.D-5229/2015

Mr. Muhammad Nishat Warsi, DAG.

Date of hearing order : **15.02.2022**
Date of announcement : **07.03.2022**

O R D E R

The above-referred Constitutional Petitions are being disposed of by this common order as the questions raised therein are similar.

2. Through these petitions, all the petitioners have assailed the vires of the notification dated 04.06.2015, whereby petitioner No.2 in C.P No.D- 5229 of 2015 namely Javed Zakria, Judicial Member of the Appellate Tribunal Inland Revenue (`**ATIR**`) Karachi has been terminated with immediate effect. It is prayed on his behalf that he

may be reinstated in service as a Judicial Member of ATIR with all back benefits, etc. Petitioners also seek a declaration to the effect that the judicial members of the ATIR are not civil servants, thus are not governed by terms of the Civil servant Act, 1973 and rules framed thereunder.

3. The facts relevant arising out of these petitions are that through the advertisement published in daily newspaper 'The News' dated 05.02.2012, 12 posts of Judicial Members in BS-21 in the ATIR were invited. Out of these 12 posts, one seat had to be filled on merit, 06 from Punjab, 2 seats were reserved for Sindh (Rural), and one seat each was prescribed for Sindh (Urban), KPK, and Baluchistan. Per petitioners, the above appointments were routed through the Federal Public Service Commission (FPSC) in which petitioner No.2 in C.P No.D- 5229 of 2015 secured the top-most position on merit and was selected by the FPSC; and on whose recommendations, the competent authority of respondent-department was pleased to appoint him as a Judicial Member in BS-21 in the ATIR with immediate effect, vide notification dated 07.06.2013. It is stated that the advertisement dated 05.02.2012 referred to the appointment as "likely to continue indefinitely", which meant that once the appointment was made the appointee derived a right in legitimate expectancy to continue for an indefinite period lasting up to his superannuation age, provided that there would be no adverse entry, concerning integrity and competence of the appointee. Per petitioner he performed exceptionally well as a Judicial Member of the ATIR, however, termination of his service was made abruptly vide notification dated 04.06.2015, and the same was without jurisdiction, and lawful authority, on the premise that he was not served with the purported disciplinary proceedings, including show-cause notice, which was in breach of the principle of natural justice and violation of the law laid down by the Honorable Supreme Court in its various pronouncements, besides that they also violated Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for which it was requested to the Prime Minister of Pakistan vide letter dated 06.07.2015 to reinstate the petitioner with all back benefits and perks, but his all efforts went in vain. The petitioner being aggrieved by and dissatisfied with the impugned notification dated 04.06.2015 approached this Court.

4. Mr. Anwar Mansoor Khan learned Counsel for the petitioner in C.P. No.D-6418/2015 has led the arguments; and, all other learned counsel has followed him. learned counsel in unequivocal terms contended that the regular appointment of petitioner No.2 in CP No.D-5229/2015 as member ITR was illegally terminated before the completion of the tenure of service; that no reason has been assigned in the termination order; that no disciplinary proceedings were conducted against the petitioner about purported allegations made by the chairman as discussed supra; that there being no allegation of misconduct or inefficiency, the impugned order of termination was/is liable to be set aside; that even during the purported period of probation, the member ITR could not be terminated without resorting the procedure provided under the law. Even the termination during the probationary period has been declared by the Hon'ble Supreme Court as not tenable. In this respect, wisdom is derived from the judgment of the Hon'ble Supreme Court in a case of *Secretary, Ministry of Education, Government of Pakistan*

Islamabad and others v. Muhammad Azam Chaudhry and another **2009 SCMR 194**. The Hon'ble Supreme Court in a case of *Nematullah and others Vs. Chairman Governing Body Workers welfare Board KPK and others* **2017 PLC 1** held that the employer could not put the employee on contract basis/ probation for an unreasonably long period when the appointment was made against a permanent vacancy/sanctioned post.

5. Mr. Muhammad Nishat Warsi, learned DAG, has forcefully rebutted the contentions of the learned counsel for the petitioners and contended that the petitioner-bar associations have no locus standi to invoke the extraordinary jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan in terms of bar contained in Article 212 of the Constitution, hence, the Petitions are not maintainable in the eyes of law; that the post of Judicial Member (BS-21), Appellate Tribunal Inland Revenue was advertised in the light of SRO No. 5(1)/98 which provides experience and qualifications for the said post. In pursuance of this advertisement, petitioner No.2 in C.P No. D- 5229 of 2015 namely Javed Zakaria applied for the said post. He was recommended for appointment as a Judicial Member (BS-21), Appellate Tribunal Inland Revenue by the Federal Public Service Commission. The notification for his appointment was issued on 07th June 2013 with the clear indication at para 2 that his services will be governed under Civil Servants Act, 1973 and he will be on probation for one year extendable for a further period of one year. Further that the appointment shall be subject to verification of academic degrees, Character, and antecedents. In terms of Section 11 of the Civil Servants Act, 1973, the competent authority can terminate the services of a Civil Servant during the period of probation without any notice. After accepting the terms and conditions of Service the Petitioner joined the services as Judicial Member (BS-21). Thus the notification dated 04-06-2015 was issued lawfully and under the provision of law/rules; after the recommendations FPSC, an offer of appointment letter was issued to all the selectees who accepted the terms and conditions of service. The advertisement dated 05-02-2012 for twelve (12) posts was issued by the Federal Public Service Commission (FPSC) on requisition by respondent No.2 which indicates that the posts are Temporary likely to be continued indefinitely, thus the Petitioner No.2 has no legitimate right to continue his service for an indefinite period lasting up to superannuation. His services were terminated based on allegations leveled against him by the Chairman. Not only the staff members were fed up with his behavior but also the lawyers, taxpayers, and the tax Department i.e. Chief Commissioner. He was also found guilty of professional misconduct by submitting two charge assumption reports one on 04.08.2014, when he was on a private foreign visit of Thailand and Malaysia etc., and submitted the second assumption report on return from abroad on 11.08.2014. In this way, he is guilty of misconduct. An inquiry was ordered in this regard. The Inquiry Officer in his report concluded that there are apprehensions that the petitioner was out of the country on the date of submission of the charge assumption report on 04-08-2014 and it seems that he was predetermined to submit the same report in his absence purporting to be present in the office on the date of joining. Needless to say that during the period of probation, the service of the incumbent can be terminated if his performance/conduct is unsatisfactory. To save the future of the petitioner, despite the commission of serious misconduct, his services were simply

terminated by the competent authority, therefore, his services were terminated on the recommendations of respondent No.3; that the Notification of termination of the petitioner was issued under the Civil Servants Act and rules made thereunder because the Judicial Member were appointed under the Civil Servants Act/rules by FPSC and their appointment cannot be termed as Judicial Officer of a sub-ordinate judiciary; that it is an admission on the part of Petitioner No. 2 that considering himself Civil Servant he filed a departmental representation before the Prime Minister being departmental appellate authority; that the petitioner had a proper remedy which he availed and he cannot invoke two forums at one time. He lastly prayed for the dismissal of the instant petition.

6. In exercising the right of rebuttal, learned counsel for the petitioners submitted that the impugned Notification dated 4.6.2015 is illegal, unreasonable, unconstitutional, beyond the lawful authority, void-ab-initio, and is of no legal effect, the same is bad in law as well. Per learned counsel under section 130(5) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") it is provided that the Federal Government shall appoint members of the ATIR, neither section 130 of the 2001 Ordinance nor any other provision of law provides for the appointment of a member of the Tribunal on a probationary basis. He emphasized that the initial appointment of petitioner No.2 in C.P No.D- 5229 of 2015 was confirmed on his service after completion of the probationary period of two years and it is incorrect for anyone to contend that it was on a probationary basis. Learned counsel asserted that the Tribunals which are constituted under the law and the Constitution are in essence courts of law and owe their origin to both Articles 175 and 212 of the Constitution. Article 175(3) of the Constitution, as interpreted in *State v. Ziaur Rehman* **PLD 1973 SC 49** prescribes the principle of trichotomy of powers. Therefore, any member of the statutory tribunal, in particular a Judicial Member thereof, is not a civil servant in terms of the Civil Servants Act, 1973 and the rules thereof. He added that in terms of Article 203 of the Constitution, the said Judicial Member is essentially a Judge of a court, falling under the superintendence of this Court within whose territorial jurisdiction the Tribunal or its registry/circuit/bench operates or is situated in or wherein the said Member is posted. Therefore, the respondent department has no power to terminate the service of a Judicial Member of a Tribunal without consulting with the Chief Justice of this court; and, such power is and can only be vested in the Chief Justice of this Court and on this count alone the impugned Notification is void as the same has been issued by a functionary which has no jurisdiction in the matter. Per learned Counsel, any other interpretation would be perverse to the concept of independence of judiciary and access to justice so also the concept of the right of life available in Articles 9 and 14 of the Constitution. Learned counsel emphasized that the ATIR is established under section 130(1) of the Income Tax Ordinance, 2001 (hereinafter "the 2001 Ordinance"). Section 130(3) of the 2001 Ordinance provides for the appointment of Judicial Members of the ATIR. Section 130(3) (a) and (b) of the 2001 Ordinance, inter alia, prescribes the qualification for the appointment of a Judicial Member to include those who have exercised the power of a District Judge or those who are or have been Advocates of this Court, provided under both the said categories falling under section 130(3)(a) and(b), the appointee should be qualified to be a Judge of the High Court. The said section 130 of the 2001 Ordinance does not state that

Judicial Members so appointed would be Civil Servants; that no methodology has been prescribed for the dismissal or termination of Judicial Members in section 130 of the 2001 Ordinance or any other provision of the said Ordinance or any other law; that at present SRO 5(1)/98 dated 5.1.1998 (hereinafter "SRO 5") is bereft of any efficacy. The said SRO has been issued in pursuance of rule 3(2) of the Civil Servant (Appointment, Promotion, and Transfer) Rules, 1973 (hereafter: "the 1973 Rules"). The said 1973 Rules will only be applicable if the incumbent in question is a civil servant; that a Judicial Member in ATIR is not a civil servant. Therefore, there is no question of applying the 1973 Rules to Judicial Members of the ATIR and if the 1973 Rules do not apply to the Judicial Members of the ATIR, then following this analogy SRO 5 will also not apply to Judicial Members of the said ATIR; in which event whatever has been prescribed in the said SRO 5 will not be applicable for appointment of Judicial Members in the ATIR. Furthermore, there is nothing in section 130 of the 2001 Ordinance, which permits the making of rules such as those prescribed in SRO 5, therefore, the said SRO cannot co-exist with the present section 130 of the 2001 Ordinance and is, therefore, ultra vires thereto (i.e. of section 130 of the 2001 Ordinance). He further submitted that under section 24 of the General Clauses Act, delegated legislation issued under a repealed statute can only continue if the same is coherent within the ambit of the new statute; that SRO 5 cannot exist/co-exist alongside section 130 of the 2001 Ordinance; that in the wake of the new Judicial jurisprudence, that has been developed in contemporary times, a Judicial Member of a Tribunal such as the ATIR, is reckoned to be a Judge, who functions within the superintendence of the Provincial High Courts, one cannot perceive as to how SRO 5 could be sustained, as the latter is squarely applicable to civil servants. Learned counsel next submitted that in light of the above, SRO 5 is of no consequence and is labile to be struck down, being a violation of Articles 175 and 203 of the Constitution. It is also urged that under section 130 of the 2001 Ordinance, or any other law or provision, there is nothing that provides for the termination of Judicial Members of the Tribunal. Per learned counsel, this necessarily means that the appointment of the said Judicial Members would continue indefinitely i.e. till their superannuation; that vide Notification dated 7.6.2013 petitioner No.2 in C.P No. D- 5229 of 2015 was appointed as Judicial Member in BS-21 with immediate effect in the ATIR on a probationary period for one year, which probation was extendable for a further period of one year. It was also provided in the said notification dated 7.6.13 that if no order was made following the expiry of the one-year probationary period, the appointment would hold till further orders. After the lapse of one year, there was no order extending the probation period which meant that petitioner No.2 in C.P No.D- 5229 of 2015 stood confirmed as a Judicial Member in BS-21 in the ATIR. It is further pointed out that the advertisement dated 5.2.12 prescribed that the appointment was "likely to continue indefinitely". This meant that the appointment of the petitioner was not only confirmed, but the said the appointment was also to last indefinitely up to superannuation. He added that this is fortified also by the website of the Law Ministry updated on 1st of April 2015 (after completion of the maximum period of probation i.e. one year) in which petitioner's tenure has been shown to run till 5.2.2021; that section 11 of the 1973 Act, inter alia, permitting the termination of probationary and ad-hoc employees without a show-cause notice is without jurisdiction, unconstitutional, malafide, unlawful,

void ab initio and of no legal effect. He asserted that the said section 11 of the 1973 Act militates against Articles 2-A, 10-A, 18, 23, 24, 25, and 175 of the Constitution. Learned counsel averred that there is a plethora of case law in terms of which any statutory provision which permits the ouster of incumbents without compliance with the principles of natural justice is void ab initio and of no legal effect. In support of his contentions, he relied upon the cases of *Pakistan v. Public at **Large*** **PLD 1987 SC 304** and *Chairman, Pakistan Broadcasting Corporation v. Nasir Ahmed* **1995 SCMR 1593**, *Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences Jamshoro, and others* (**2014 SCMR 1236**). He added that impugned Notification is in breach of natural justice as no notice or show cause notice was given to petitioner; that barring petitioner and another Judicial Member i.e. Mr. Anwar ul Haq Arif all the remaining appointees were confirmed; that termination of services of the petitioner is patently discriminatory and arbitrary, militating against article 25 of the Constitution; that the said impugned action also violates section 24-A of the General Clauses Act, as no reasons whatsoever have been given; that the Federal Service Tribunal has no jurisdiction under section 4(1)(b) of the Federal Service Tribunal Act, 1974. Furthermore, in the manner as aforesaid, the bar contained in Article 212 of the Constitution would not come in the way of the said petitioner maintaining the petition under Article 199 of the Constitution. in support of the contentions, the learned counsel placed reliance on *Aslam Warraich and others vs. Secretary, Planning and Development Division and 2 others* (**1991 SCMR 2330**), *Dr. Naveeda Tufail and 72 others vs. Govt. of Punjab and others* (**2003 PLC (C.S) 69**), *Muhammad Aslam vs. Vice-Chairman and others* (**2010 PLC (C.S) 266**), *High Court Bar Association and others vs. Govt. of Balochistan* (**PLD 2013 Balochistan 75**), **PLD 2013 SC 443** and *Muhammad Tariq Malik vs. Pakistan through Secretary Establishment Division* (**PLD 2014 Islamabad 38**). All the learned counsel prayed for allowing the instant petitions.

7. We have heard the learned Counsel for the parties and perused the material available on record and case-law cited at the bar.

8. In essence, the grievance of the petitioner No.2 in CP No.D-5229/2015 is that despite his appointment as Judicial Member in the Appellate Tribunal Inland Revenue vide notification dated 07.06.2013, through the competitive process, however, his appointment was subject to a probationary period of one year unless extended for a similar period. On 04.06.2015 the services of the petitioner were terminated by treating him as a probationer. He has challenged his termination and also assailed section 11 of the Civil Servants Act, 1973 which authorizes termination in certain circumstances.

9. According to the letter of appointment dated 07.06.2013, the petitioner was on probation initially for one year with effect from the date of joining, extendable for a further period of one year. However, it was made clear in the appointment order that if no order is made by the day following the expiry of either of the aforementioned probationary period, the appointment shall be made to hold until further orders. In this case service of the petitioner was dispensed with on 04.06.2015, just three days before

completion of the probationary period. The law on the subject is clear in its terms that the services of a probationer could be dispensed with based on undeniable material then no inquiry is required to be conducted. When there is some sound reason in the mind of the competent authority that an employee who is serving in his or her probationary period is not suitable to be given permanent employment and his or her services need to be dispensed with then it matters not if the competent authority expresses such reason without conducting a regular inquiry.

10. The moot issue is whether a person employed on probation can be terminated during the period of probation, without assigning any reason for the same. The aforesaid point has already been set at naught by the Hon'ble Supreme Court of Pakistan vide order dated 24.5.2019 as discussed supra, no further deliberation is required on our part. Additionally, the Honorable Supreme Court in *Agha Salim Khurshid's case* (**1998 $CMR 1930**) had discussed the scope and rights of a 'probationer', such as the present petitioner, in terms that:

> "The learned counsel for the appellants has further contended that before terminating their services, the appellants were entitled to notice and that the appointment being statutory, the Federal Government had no power to terminate their service contract. We are unable to subscribe to the above contention of the learned counsel for the appellants. The contract of service, under which the two appellants were appointed, specifically 7 provided that their appointments shall be liable to termination on 3 months' notice or 3 months' salary in lieu thereof on either side without assigning any reason. Such a contract, in our view, does not create any vested right in the appointee to make him entitled to notice before termination of the contract of service." ..... "Since the services of appellants were governed by the terms of contract which they executed at the time they entered the employment, their services could be terminated by the terms contained in their service contract which provided 3 months' notice or 3 months' salary in lieu of the notice. Our above conclusions are supported by the following observations in the case of *Secretary, Government of Punjab v. Riazul Haq* (**1997 $CMR 1553**):-
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> > There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of *Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan* (**PLD 1974 $C 393**)."

11. The 'ratio decidendi' of the aforementioned judgment provides that in case, the termination during the period of probation is not for misconduct, then there is no requirement for providing any reason or proceedings against terminated employees through a regular inquiry. In essence, there exists no right during the probationary period to claim protection under the maxim "Audi alteram partem" for issuance of a show-cause notice before any termination can take effect as it is against the spirit and true meaning of putting an employee on probation. On the aforesaid proposition, we seek guidance from the decision of the Honorable Supreme Court rendered in the case of *Rizwana Altaf vs. Chief Justice High Court of Sindh and others* **2020 $CMR 1401.**

12. It is a well-established principle regarding probation that the same is to judge whether a probationer has the capability and potential to make a satisfactory career in the organization, and whether or not the organization/employer will have any benefit of his services. We are of the view that the period of probation provides equal opportunity to the employer and employee to decide whether they would like to continue with the engagement or not. This being the spirit of probation, the same cannot be termed or deemed as discriminatory, provided it is fixed for a reasonable period. It may be observed that only after successful and satisfactory completion of the probationary period according to both the stakeholders, the service of a probationer could be considered for confirmation. The Hon'ble Supreme Court in the case of *Muhammad Iqbal Khan Niazi v. Lahore High Court through Registrar* [**2003 PLC (C.S.) 282**] has been pleased to observe as under;

> "As regards the principle of natural justice enshrined in the maxim "Audi alteram partem" suffice it to say that it has been held in *Rehan Saeed Khan and others v. Federation of Pakistan* (**2001 PLC (C.S.) 1275**) that a probationer has not vested right to continue in service, therefore, his services can be terminated without a show-cause notice and the question of violation of the principles of audi alteram partem does not arise except in case of mala fides. It is scarcely necessary to mention that the impugned order cannot be termed as mala fide by any standard."

13. The main objection to the instant petition is that the petitioner was a civil servant and therefore his remedies for reinstatement lay before the learned Federal Service Tribunal. The colleagues of the petitioner being aggrieved by and dissatisfied with the termination order approached the Hon'ble Supreme Court of Pakistan in Civil Petitions *No.2314-L to 2316-L/2017*; and, the Hon'ble Supreme Court vide **order dated 24.5.2019** dismissed their petitions for leave to appeal with the following observation:

> *"3. As a civil servant the remedy of the petitioner in relation to the terms and conditions of his service lay before the learned FST. The challenge made by the petitioner to Section 11 of the Act is collateral to his prayer for reinstatement. A collateral attack upon the vires of a law is not maintainable, therefore, his petition as presently filed before the learned High Court was rightly held to be not maintainable.*
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> *4. Consequently, this petition is also dismissed, and leave to appeal is refused. However, the office shall obtain a report on the present status of C.P No.D-5229, 5230, 5231, and 5232 of 2015 statedly pending before the learned Sindh High Court at Karachi.*
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> *5. C.P. No.2315-L and 2316-L of 2017: The petitioner does not wish to press these petitions and seeks to withdraw the same. Dismissed as not pressed."*

14. Primarily the case of the petitioners ends here when the Hon'ble Supreme Court vide order dated 24.5.2019 dismissed the petitions of the colleagues of the petitioner No.2 and has held that the civil servant has the remedy to the terms and conditions of his service before the learned FST. The challenge made by the petitioner to Section 11 of the Act, 1973 is collateral to his prayer for reinstatement. A collateral attack upon the vires of law is not maintainable.

15. At this juncture learned counsel for the petitioners intervened and has submitted that petitioner is no more Civil Servant on the premise that during the pendency of the instant petition, he reached the age of superannuation on 05.02.2021, thus he could not approach the learned FST. The contentions of the petitioner are correct as the record reflects that this Court vide order dated 01.09.2015 suspended the operation of the termination from service notification dated 04.06.2015, and the petitioner under the garb of the interim order, continued to serve as Judicial Member in the Appellate Tribunal Inland Revenue, and finally reached at the age of 60 years, and now petitioner seeks the protection Rule 54(a) of the Fundamental Rules. If this is the stance of the petitioner, it would be appropriate to first consider the appointment order, which would play a pivotal role in determining the stance of the petitioners in the instant petitions.

16. The appointment order of the petitioner in CP No.D-5229/2015 was made vide notification dated 07.06.2013, ("appointment order"), which reads as under:

*"**NOTIFICATION***

No.F.1(11)/2009-A.I.V.- On the recommendations of the Federal Public Service Commission and with the approval of competent authority, the following persons are appointed as Judicial Member (BS-21), in the Appellate Tribunal Inland Revenue (ATIR), with immediate effect, as per following posting plan:-

S.#	*Name of Judicial Member*	*Place of posting*
1.	*Mr. Muhammad Jawed Zakaria*	*ATIR, Karachi*
2.	*Mr. Anwar-Ul-Haq Arif*	*ATIR, Lahore*
3.	*Mr. Shahid Masood Manzar*	*ATIR, Karachi*
4.	*Mr. Shahid Iqbal*	*ATIR, Lahore*
5.	*Mr. Abdul Qayoom Sheikh*	*ATIR, Karachi*
6.	*Mr. Muhammad Waseem ch.*	*ATIR, Lahore*
7.	*Syed Manazir Hussain Zaidi*	*ATIR, Karachi*

2. Their services will be governed under the Civil Servants Act, 1973 (LXXI of 1973) and they will be on probation for one year with effect from the date of joining, extendable for a further period of one year. Provided if no order is made by the day following the expiry of either of the aforementioned probationary period, the appointment shall be made to hold until further orders.

3. Further the appointment shall be subject to their degrees, character, and antecedents."

17. The impugned termination was passed vide notification dated 04.06.2015, ("termination order"), which reads as under:-

"GOVERNMENT OF PAKISTAN
LAW, JUSTICE AND HUMAN RIGHTS DIVISION
****

Islamabad the 4th June 2015.

NOTIFICATION

No.F.1(11)/2009-A.IV (Vol-III).- In terms of Section 11 (Termination of Services) of the Civil Servants Act, 1973, the competent authority is pleased to terminate the services of the following Judicial Members (BPS-21), of the Appellate Tribunal Inland Revenue (ATIR) with immediate effect:

Sl. No.	*Name of Judicial Member*	*Place of posting*

1.	*Mr. Javed Zakria*	*ATIR, Karachi*
2.	*Mr. Anwar-ul-Haq Arif*	*ATIR, Lahore*

18. The plea raised by the learned counsel for the respondents to Fundamental Rule 54 that petitioner No.2 in CP No.D-5229/2015 has not honorably acquitted from the charges leveled against him, therefore, he is not entitled to pensionary and back benefits, we are of the view that Honorable Supreme Court has already dealt with this proposition of law in the case of *Superintendent Engineer GEPCO Sialkot Vs. Muhammad Yusuf* vide **Order dated 23.11.2006** passed in *Civil Petition No. 1097-l of 2004*.

19. In view of the dicta laid down by the Honorable Supreme Court in the case referred supra, we do not agree with the contention of the learned DAG that the case of the petitioner needs to be landed in the FST after his superannuation for the reason that protection was provided by this Court to the petitioner vide order dated 01.09.2015 by which the termination notification dated 04.06.2015 was suspended, which order remained intact till he reached the age of superannuation i.e. 60 years. In this scenario, the Fundamental Rules 54-A is clear and does not support the case of the respondents, which provides as under:-

> *"If a Government servant, who has been suspended pending an inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty."*

20. The petitioner No.2 in CP No.D-5229/2015 on attaining the age of superannuation on 05.02.2021, cannot approach the learned FST.

21. The question remains to be determined whether the petitioner No.2 in CP No.D-5229/2015 deems to be treated as retired from government service on attaining the age of superannuation on 05.02.2021, as such impugned notification has lost its efficacy, in view of the protection of the interim order passed by this Court at the first date of hearing, requires an academic exercise.

22. The aforesaid question could only have been determined by FST, if the petitioner was in service as the Honorable Supreme Court in the cases of the colleagues of the petitioner has already dismissed their petition, therefore we cannot travel into that controversy at this point.

23. We simply disposed of this petition. The respondent department may examine the case of the petitioner in line with Fundamental Rules 54-A. So far as pensionary benefits are concerned, we have been informed that the petitioner getting pension, therefore, we would not make any observation on this aspect.

J U D G E

J U D G E

Nadir*