

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto

Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-2805 of 2022**

(Ansar Ahmed Gorar v. Province of Sindh and 02 others)

**C.P. No. D-2833 of 2022**

(Sohail Shehzad and another v. Province of Sindh and 04 others)

**C.P. No. D-2898 of 2022**

(Muhamad Yaseen v. Province of Sindh and 03 others)

**C.P. No. D-2995 of 2022**

(Ghulam Asghar Brohi v. Province of Sindh and 02 others)

**C.P. No. D-3013 of 2022**

(Sadoro and 02 others v. Province of Sindh and 02 others)

**C.P. No. D-3024 of 2022**

(Shamas Uddin Dhoki and 07 others v. Province of Sindh and 03 others)

M/S Malik Naeem Iqbal, Faizan H. Memon and Muhammad Saleem Khaskheli, advocates for the petitioner in CP No.D-2805/2022

Mr. Manzoor Hameed Arain, advocate for the petitioners in CP No.D-2833/2022

Mr. Ali Asadullah Bullo, advocate for the petitioners in CP No.D-3013/2022

Mr. Abdul Qudoos Jatoy, advocate for the petitioner in CP No.D-2898/2022

Mr. Irfan Yaqoob Arfani, advocate for the petitioners in CP No.D-3024/2022

None present for the petitioner in CP No.D-2995/2022

Mr. Ali Safdar Depar, AAG alongwith Ms. Suhai Aziz, Incharge AIG Complaint Cell and lookafter charge of AIGP Establishment and DSP Raza Mian on behalf of I.G Sindh

Mr. Muhammad Nishat Warsi, DAG

Dates of hearing : **20.05.2022 and 23.05.2022**

Date of announcement : **30.05.2022**

## **JUDGMENT**

Through the captioned petitions, the petitioners have assailed the vires of common office order dated 26.04.2022, issued by the Inspector General of Sindh Police (IGP), whereby they have been repatriated to their respective parent departments, i.e. Islamabad Capital Territory (ICT), Baluchistan Police, and Pakistan Railways Police, in compliance with the judgments passed by the Hon'ble

Supreme Court of Pakistan in the cases of *Criminal Original Petition No.89/2011, 2013 SCMR 1752* and *Ali Azhar Khan Baloch v. Province of Sindh and others, 2015 SCMR 456*, therefore, all the Petitions are taken up together and are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein. An excerpt of the impugned order dated 26.04.2022 is reproduced as under:

“The following Police Personnel were appointed in Islamabad Police / Railway Police & Baluchistan Police in different ranks, and were subsequently absorbed in Sindh Police on various dates as mentioned against each:

Sr. #	Name of officers	Date of Absorption in Sindh Police	Rank at the time of absorption	Name of Parent Department
1	Inspector Muhammad Sharif Kolachi	31.12.1996	S.I	Islamabad Police
2	Inspector Qaimuddin Soomro	20.04.1994	ASI	Islamabad Police
3	Inspector Naimatullah Jatoi	27.07.1995	ASI	Islamabad Police
4	Inspector Ali Asghar Solangi	06.04.1995	ASI	Islamabad Police
5	Inspector Akram Ali Soomro	14.04.1995	ASI	Islamabad Police
6	Inspector Mukhtiar Ali Bughti	25.05.1995	ASI	Islamabad Police
7	Inspector Saith Ali Abro	26.03.1995	ASI	Islamabad Police
8	Inspector Fida Hussain Sangi	13.04.1995	ASI	Islamabad Police
9	Inspector Muhammad Ibrahim Junejo	25.03.1995	ASI	Islamabad Police
10	Inspector Muhammad Yasin Taggar	25.03.1995	ASI	Islamabad Police
11	Inspector Ghulam Hussain Chandio	06.12.1995	ASI	Islamabad Police
12	Inspector Imamuddin Brohi	03.03.1995	ASI	Islamabad Police
13	Inspector Khan Muhammad Hisbani	16.03.1995	ASI	Islamabad Police
14	Inspector Zulfiqar Ali Abbasi	05.01.1995	ASI	Islamabad Police
15	Inspector Imtiaz Ali Mirani	12.02.1995	ASI	Islamabad Police
16	Inspector Muhammad Bux Kubar	28.08.1991	ASI	Islamabad Police
17	Inspector Nazar Muhammad Panhwar	07.09.1994	ASI	Islamabad Police
18	Inspector Malik Dilawar Khan	04.11.1994	ASI	Islamabad Police
19	Inspector Asadullah Mangi	21.02.1995	ASI	Islamabad Police
20	Inspector Shamsuddin Dhoki	10.12.1995	ASI	Islamabad Police
21	Inspector Ansar Ahmed Gorar	14.07.1998	ASI	Islamabad Police
22	Inspector Noor Mustafa Magsi	-	Inspector	Balochistan Police
23	ASI Noor Muhammad Bhayo	21.04.2011	ASI	Pakistan Railways
24	ASI Momin Khan	04.02.2010	ASI	Pakistan Railways
25	ASI Sohail Shahzad	24.12.2009	ASI	Pakistan Railways

26	ASI Muhammad Afzal	08.08.2006	ASI	Pakistan Railways
----	--------------------	------------	-----	-------------------

2- Later on, judgment was passed by Honorable Supreme Court of Pakistan in Criminal Original Petition No. 89/2011 and its judgment reported in 2013 SCMR 1752 Civil Review Petition No. 193/2003 reported in 2015 SCMR 456 through which absorption was declared illegal and further order was passed about their seniority on repatriation to parent Department as follows:

*"The officers / officials who have been repatriated to their parent department shall be entitled to salaries and other benefits from the date they were relieved to join their parent departments. Their seniority shall be maintained in their parent departments with their batchmates as if they were never relieved from their parent departments. Expiry of period lien shall not come in the way of the officers to deprive them from joining the parent department"*

3. Besides, in presence of the judgment passed by the Hon'able Sindh Service Tribunal in Service Appeals Nos. 724, 792 & 832/2019 and as per observation of the Advocate General Sindh vide letter No. AG-425 of 2017 dated 24.01.2017 and legal opinion given by the Government of Sindh Law Department in case of DSP Nooruddin Sanjrani (now retired from service) and DSP Muhammad Yaseen Kalwar vide letter No. U.O No. OP-5(50/2015)/891 dated 05.07.2017 **too should have been repatriated to their parent office.**

4. Therefore, in compliance of Apex Court's order and in presence of legal opinion given by the Law Department, there is no need for further guidance.

5- Moreover, this is creating ill-discipline in ranks of Police and resulting in endless litigation in Honorable Courts.

6- Hence, in compliance of order of **Honorable Supreme Court of Pakistan**, the reference already made to Home Department vide letter No. 2181-82/E-11/ Insp., dated 25-03-2021 stands withdrawn / cancelled immediately and they are hereby repatriated to their parent province/ units for protection of their original seniority / promotion benefits which are their vested right according to the spirit of the decision of Honorable Supreme Court of Pakistan.

7. In compliance of the order of **Honorable Supreme Court of Pakistan** mentioned in para-2 above, all seniority / promotional service benefits (except salaries) which they got in Sindh Police are treated withdrawn / cancelled.

8- On cancellation of their absorption in Sindh Police their names are struck-off from the strength of Sindh Police Department."

2. At the outset, we have asked the learned counsel for the petitioner in CP No.D-2805/2022, the principle governing the law which envisages appointment of Assistant Sub Inspector (ASI), through the mode either of direct recruitment or by promotion, and in such a situation, whether a person can be appointed and inducted in another Provincial Police Service by way of absorption and/or transfer.

3. Malik Naeem Iqbal, learned counsel for the petitioner, simply replied to the query with the assertion that the petitioner had been selected by the competent authority after assessing his fitness, eligibility, and suitability and as such the absorption and/ or transfer of the petitioner from ICT to Sindh Police could not be canceled/withdrawn by the IGP Sindh. He further contended that IGP Sindh is not authorized to issue any Standing Order (SO) under section 12 of the Police Act, 1861 without the approval of the Provincial Government, and even with the approval of the Provincial Government, no orders can be issued by IGP

about the terms and conditions of service of the members of the Police Force in different branches /establishment and cadre, as such powers could only be exercised by Provincial Government under section 12 of Police Act, 1861. Learned counsel heavily relied upon the decision of the Honourable Supreme Court in the case of Gul Hassan Jatoi and others v. Faqeer Muhammad Jatoi and others, **2016 SCMR 1254**, and contended that there is no provision in law for repatriation of Police Inspectors from the Province of Sindh to ICT, Baluchistan Police and Pakistan Railways Police, therefore, the impugned common order issued by IGP Sindh violates the law and dicta laid down by the Hon'ble Supreme Court in the aforesaid decision. He next contended that although under section 2 of the Police Act 1861, and the Police Rules 1934, the Police Establishment is one Police Force, thus their repatriation to the parent police establishment is illegal after the lapse of a considerable period; that even otherwise, the IGP cannot alter the terms and conditions of service of persons in the Police Force on the touchstone of Article 240(b) of the Constitution, the same was/is within the sole competence and exclusive domain of the provincial legislature. He next contended that under the Police Rules, the entry point of all the Police personnel in the Executive Police cadre is common; that they have a common recruitment process, police training, and practical training as prescribed under the Police Rules and once these training after their appointments are completed, they are transferred to the different establishments under the Rules; that the posting and transfer to an establishment of a member of Police Force is permissible under Police Rule 1.5 would not change the Cadre of police personnel. Rule 1.5 allows the police personnel to progress vertically by the rules prescribed and could be transferred to any of the police establishments in the country; there is no restriction placed on a police officer for transfer from one police establishment to another. Learned counsel submitted that a cherry-picking has been made in the case of repatriation of Police personnel and relied upon the statement dated 23.05.2022 coupled with the office order dated 26.04.2022 issued by IGP whereby two Deputy Superintendent of Police (DSP) have been retained, which is discriminatory attitude on the part of respondent IGP Sindh; that Rule 1.5 is a clear clause that remained to govern the status of the petitioner transferred to Sindh Police, which is to the effect that petitioner transferred under Rule 1.5 shall continue to be employee of the Sindh Police and could not be transferred back to the ICT Police as he was permanently absorbed by consent in service of the Sindh Police; that the petitioner had been transferred in the Sindh Police with the consent of the ICT Police and Sindh Government as envisaged under Rule 1.5; that the terms and conditions of civil servants could only be altered by an Act of the Parliament enacted in the exercise of powers under

Article 240 of the Constitution of the Islamic Republic of Pakistan, 1973 and not otherwise. The learned counsel further submitted that the IGP Sindh has failed to understand the ratio of the judgment passed by the Hon'ble Supreme Court discussed supra; that the petitioners had a legitimate expectation to be absorbed in Sindh Police based on mutual transfer under the relevant law; and that the respondent IGP was estopped from issuing the impugned repatriation order, after spending more than 24 years' service in Sindh Police. Learned counsel further submitted that the petitioner's service was mutually transferred to Sindh Police, thereafter petitioner continued to serve in Sindh Police and got a promotion and seniority up to the level of Inspector. Learned counsel further contended that all police officers appointed or enrolled in General Police constitute one police force and are liable to, and legally empowered for police duty anywhere in the country/within the Province and that is why the concurrence was given for the transfer of the service of the petitioner from ICT Police to the Sindh Police, thus no illegality was committed in the appointment of the petitioner by way of transfer in the Sindh Police, which is in consonance of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi and others supra. Learned counsel further submitted that the principle of locus poenitentiae appears to be in favor of the petitioner as he has been condemned unheard before impugned action which violates Article 10-A of the Constitution. Learned counsel referred to Section 190 of Sindh (Repealed) of Police Act, 1861 and revival of Police Order 2002 (Amendment) Act, 2019, and submitted that IGP is not empowered to make correspondence with the Federal Government, save under law as provided under Section 12 of the Police Act. In support of his contentions, he heavily relied upon the case of IGP Lahore and others v. Mushtaq Ahmed Waraich, **PLD 1985 SC 159**, and submitted that the Civil Servants Act and rules framed thereunder are not *ipso facto* applicable to the case of police personnel. He next submitted that transfer of the petitioner was made on compassionate grounds, thus unilateral action on the part of IGP Sindh without the concurrence of the Home Secretary Government of Sindh and the ICT/Federal Government is illegal and violates Section 12 of the Police Act and Section 24-A of the General Clauses Act, as well as the same, is in contravention of Article 10-A of the Constitution. Learned counsel submitted that under the terms of Police Service of Pakistan (Composition, Cadre, and Seniority) Rules, 1985 inter se transfer and posting of police cadre officers is permissible.

4. At this stage, we confronted him that no posting of a provincial cadre police officer on a post specified in the schedule of Police Service of Pakistan (Composition, Cadre, and Seniority), Rules, 1985, could be made without first being appointed in PSP cadre under Rule 7 thereof. He agreed and added that the same

analogy could be applied in the cases of Police Inspectors. He further submitted that those police officers who have served in the ICT could be transferred to the Federal Government or other Provincial Police Establishments, as the case may be, in the public interest. He next argued that under the wedlock policy police officers can be posted closest to their places of posting. He lastly prayed for allowing the instant petitions.

5. Mr. Manzoor Hameed Arain, learned counsel for the petitioners in CP No.D-2833/2022, has adopted the arguments put forward by Malik Naeem Iqbal, learned counsel for the petitioner in CP No.D-2805/2022, however, he added that the mutual transfer of the petitioners was made by the Committee constituted by the Provincial Government as such IGP, Sindh was/ is not empowered to take a unilateral decision without the concurrence of the two governments/Pakistan Railways Police Establishment involved in the matter. He further argued that petitioners were inducted into Pakistan Railways in 2003; and were transferred from Pakistan Railways Police Establishment to Sindh Police on a mutual basis and their seniority was assigned at the bottom, on the date of their arrival in the year 2006. Per learned counsel, they appeared in the final examination of the Upper School Course and passed accordingly and their result was announced in compliance with the order dated 30.04.2012 passed by this Court. Learned counsel argued that during service in Sindh Police, petitioners earned promotion and seniority up to the level of Inspector and they have been working in Sindh Police since they arrived from Pakistan Railways Police. Learned counsel referred to the compliance report dated 14.04.2016 regarding the implementation of the decision of the Hon'ble Supreme Court and the implementation committee decided to retain their services on the premise that there was/is the provision of initial recruitment in the rank of ASI as per recruitment rules of Sindh Police, besides that training and experience of both the Police Establishments, are similar. The learned counsel has, however, further argued that the petitioners had been selected by the competent authority after assessing their fitness eligibility, and suitability, and as such the absorption and/or transfer of the petitioners could not be canceled/withdrawn by the IGP Sindh all alone. He prayed for allowing the petitions.

6. Mr. Ali Asadullah Bullo learned counsel for the petitioners in CP No.D-3013 of 2022 has submitted that the petitioners had been selected by the competent authority/committee after assessing their fitness, eligibility, and suitability, and as such the absorption and/ or transfer of the petitioners from Baluchistan Police and Pakistan Railways Police to Sindh Police could not be canceled/withdrawn by the IGP Sindh under section 12 of the Police Act, 1861

without the approval of the Provincial Government. Learned counsel relied upon the case of Gul Hassan Jatoi and others v. Faqeer Muhammad Jatoi and others, **2016 SCMR 1254**, and contended that there is no provision in law for repatriation of Police Inspectors from the Province of Sindh to Baluchistan Police and Pakistan Railways Police, therefore, the impugned orders dated 26.04.2022 and 27.04.2022 issued by IGP Sindh violate the law and dicta laid down by the Hon'ble Supreme Court in the aforesaid decision. He next contended that under the Police Rules 1934, the entry point of all the Police personnel in the Executive Police cadre is common; that they have a common recruitment process, police training, and practical training as prescribed under the Police Rules, 1934 and once these training after their appointments are completed, they are transferred to the different establishments under the Police Rules; that the posting and transfer to an establishment of a member of Police Force is permissible; that there is no restriction placed on a police officer for transfer from one police establishment to another; that the petitioners had been transferred in the Sindh Police with the consent of the Baluchistan Police and Pakistan Railways Police and Sindh Government. Learned counsel further submitted that the petitioners had a legitimate expectation to be absorbed in Sindh Police based on mutual transfer under the relevant law. Learned counsel further submitted that the petitioners have been serving in Sindh Police and got a promotion and seniority up to the level of Inspector. Learned counsel further contended that all police officers appointed or enrolled in General Police constitute one police force and are liable to, and legally empowered for police duty anywhere in the country/within the Province and that is why the concurrence was given for the transfer of the service of the petitioners from Baluchistan Police and Pakistan Railways Police to the Sindh Police, thus no illegality was committed in the appointment of the petitioners by way of transfer in the Sindh Police, which is in consonance of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi and others supra. Learned counsel further submitted that the petitioners have been condemned unheard before impugned action which violates Article 10-A of the Constitution. Learned counsel next submitted that transfer of the petitioners was made on compassionate grounds, thus unilateral action on the part of IGP Sindh without the concurrence of the Home Secretary Government of Sindh and the Provincial/Federal Government is illegal and violates Section 24-A of the General Clauses Act, as well as the same, is in contravention of Article 10-A of the Constitution. He next argued that under the wedlock policy police officers can be posted closest to their places of posting. He also emphasized appointment by transfer to Sindh Police is permissible under the law. He lastly prayed for allowing the instant petition.

7. Mr. Abdul Qudoos Jatoi, learned counsel for the petitioner in CP No.D-2898/2022, and Mr. Irfan Yaqoob Arfani, learned counsel for the petitioners in CP No.D-3024/2022 have adopted the arguments of Malik Naeem Iqbal, learned counsel for the petitioner in CP No.D-2805/2022.

8. Mr. Ali Safdar Debar learned AAG has opposed these petitions, inter-alia on the ground that the petitioners are employees of the ICT, Railways Police, and Baluchistan Police, who were transferred to Sindh Police at different times. Learned AAG further submitted that the Honorable Supreme Court in the Criminal Original Petition No. 89/2011 and review petition had declared all the inductions of government employees to other departments other than their parent departments including police establishments as illegal and unconstitutional and had directed all the Federal and Provincial Governments to repatriate the employees to their parent departments at original positions, thus their transfers are alien to the prevailing laws and rules, hence void ab-initio. And the impugned order is an intimation of withdrawal of an illegal and irregular arrangement made in the past. He further submitted that petitioners also received promotions during their tenure in the Sindh Police and have been now repatriated to their parent police departments and units at the same ranks at which they had joined the Sindh Police. He added that this was done in light of the orders of the Honorable Supreme Court, thus no illegality has been committed by the IGP Sindh. He agreed to the extent that the petitioners would be able to claim their seniority from their parent departments. He prayed for the dismissal of the instant petitions.

9. We have heard the learned counsel for the parties at length on the issues raised in these petitions and have perused the material produced and/or placed on record and the case-law cited at the bar.

10. The main issues involved in the present proceedings are whether the impugned notification is, in conformity with the judgments passed by the Hon'ble Supreme Court of Pakistan in the cases of *CrI. Org. Petition No.89/2011*, *Ali Azhar Khan Baloch and Gul Hassan Jatoi*; and, whether IGP Sindh is competent to issue the impugned notification under Section 12 of the Police Act, 1861, or it is for the Government of Sindh to order the repatriation of the petitioners to the ICT Police, Baluchistan Police and Pakistan Railways Police; and, whether police establishment is indivisible one force; and inter se transfer and subsequent absorption from the Federal Capital Police, Railways Police or Baluchistan Police to Sindh Police is permissible under Rule 1.5 of Police Rules, 1934; and, whether the repatriation of the petitioners to ICT Police, Baluchistan Police, and Pakistan Railways after rendering service for a considerable period in Sindh Police, attracts the principle of



locus poenitentia and the same are within the principles laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid cases.

11. Before, we answer the questions it is worthwhile to see what is the ratio of the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch (supra), and what has been summed up therein is well illustrated in different paragraphs. Principally, the essence of the judgment of the Hon'ble Supreme Court of Pakistan is that the appointments made on deputation, by absorption, or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day would further deteriorate the efficiency and good governance within the police establishment.

12. In the present case, the petitioner in CP No.D-2805/2022 has questioned the notification, repatriating him to his parent department on the ground that he possessed the requisite qualification for being absorbed against the post of Inspector in BPS-16 in Sindh Police and he has not disturbed the seniority of others. It has not been disputed before us that the petitioner was appointed in ICT Police and was transferred and absorbed in which ex-facie has disturbed the seniority of the police officers of Sindh Police. The ICT Police is an independent police establishment having separate seniority, and promotion processes and it cannot be said that Islamabad police and Sindh police establishments which have separate seniority and promotion policies are governed by common law. In principle, no police officer from foot constable to DSP can be horizontally transferred and absorbed from ICT to any province or vice versa. The same is the position of the Pakistan Railways Police. Likewise and there is no provision permitting interprovincial transfer and absorption.

13. Paragraph 126 of the judgment rendered by the Hon'ble Supreme Court in the case of Contempt proceedings against the Chief Secretary Sindh and others (supra) would cover the case of the petitioners from all corners. We, thus, do not feel persuaded to create an exception against all the accepted norms of law and justice for the reason that the Sindh Police is working under The Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019. IGP who heads the Sindh Police is the overall in charge of all the branches other than the field formations such as Regions, Ranges, Districts, Specialized Units, etc. Sindh Police is categorized into four regions i.e. Karachi, Hyderabad, Larkana, and Sukkur and the judgments of the Honorable Supreme Court referred to hereinabove, clearly direct repatriation of the petitioners. Primarily, the judgment of

the Honorable Supreme Court was not time-bound and the IG Police, in law was under obligation to comply with its directions.

14. It is an admitted position that all the petitioners do not belong to Sindh Police rather some of the petitioners belong to the Province of Balochistan and their terms and conditions of service were/are governed under their own service rules and regulations, whereas some of the petitioners belong to Pakistan Railways Police and their terms and conditions of service are governed under Pakistan Railways Police Act 1977, thus the service of the petitioners is not governed under Sindh Civil Servants Act, 1973 or rules framed thereunder and/or under The Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019.

15. Besides the above, we have not come across any provision of law that permits interprovincial transfer from one provincial police establishment to another provincial police establishment. However, learned AAG has pointed out that Articles 13 and 17 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 deal with the interprovincial transfer of the cadre officers of Police Service of Pakistan and not Provincial Police Inspectors; and, the present case is not related to the interprovincial transfer of PSP cadre officers but relates to the repatriation of the services of Police Inspectors to their parent province of Balochistan, ICT Police and Pakistan Railways Police.

16. Progressing further on the subject, we have been informed that the Sindh and Baluchistan Governments have repealed the Police Order 2002, i.e Sindh (Repeal of the Police Order 2002 and Revival of the Police Act 1861) Act 2011, and the Balochistan Police Act No. X of 2011 respectively. The Khyber Pakhtunkhwa (KP) Assembly, on 24<sup>th</sup> January 2017, also passed its version of the Police Act 2017 (Act No. 11 of 2017). However, Punjab Government has retained the Police Order 2002, with amendments.

17. We have noticed that The Sindh (Repeal of the Police Order 2002 and Revival of the Police Act 1861) Act 2011 was challenged by several civil society organizations before this Court. In the judgment dated 07-09-2017 in CP No. D-7097 of 2016 and CP No. D-131 of 2017, this Court held as under:

“103. In view of the foregoing discussion and analysis, these petitions are disposed of in the following terms:

a. It is declared that the legislative competence of “Police” is in the exclusive Provincial domain.

b. It is declared that the Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011 is intra vires the Constitution and that therefore the Police Act, 1861, as revived and restored by the said Act is the law in force in this Province and not the Police Order, 2002.

c. The Respondents, and all authorities and bodies of the Provincial Government, and also as appropriate the Federal Government and all authorities and bodies thereof, are directed to give full and immediate effect to the orders made and directions given in this judgment and to act only in accordance and conformably with the same.

d. Without prejudice to the generality of the foregoing, the Respondents as aforesaid are directed to give full and immediate effect to the orders made and directions given in para 101 of this judgment and to act only in accordance and conformably with the same.

e. The Respondents as aforesaid are restrained from acting in any manner that is inconsistent with, or which contradicts, any orders made or directions given in this judgment and, without prejudice to the generality of the foregoing, from issuing, acting upon or giving effect to any circular, notification, guideline, instruction, order or direction that is inconsistent with, or contradicts, this judgment. 98

f. There will be no order as to costs."

18. The ratio of the judgment passed by this Court in the aforesaid case is that The Sindh (Repeal of the Police Order 2002 and Revival of the Police Act 1861) Act 2011, in its pith and substance being un-relatable to criminal law, criminal procedure, and evidence, was intra vires the Constitution.

19. Learned counsel for the petitioners also submitted that the surrendering of service of the Sindh Police Inspectors, without adverting to a meaningful consultative process with the parent provincial police establishment, has of direct effect and nexus with the transfer and posting of the petitioners, so without meaningful consultation, the services of petitioners cannot be repatriated/surrendered to their parent police establishment. The aforesaid stance of the petitioners cannot be accepted for the reason that this arrangement is for up to the level of cadre officer i.e. IGP Sindh and not for Police Inspectors who belong to Provincial Police Establishment or ICT or Railways Police. Thus the ratio of the order dated 22.03.2018 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.149/2018 is not applicable in the case of petitioners.

20. Coming to the question of absorption in Sindh Government departments, the basic Rule deals with the absorption is Rule 9-A of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974, that a person who has been rendered surplus on account of abolition of a post of the Government or any autonomous body or on account of permanently taking over the administration of such autonomous body wholly or partially by the, within the said, Government may be appointed to any post in any Department of the Government with the following conditions:

- (i) Such persons possess each qualification as are laid down under rule 3(2), for appointment to such post;

- (ii) Such person shall be appointed to a post of equivalent or comparable Basic Scale and if such post is not available, then to a post of lower Basic Scale;
- (iii) The seniority of such person in the new cadre shall be reckoned from the date of appointment in that cadre; and
- (iv) Previous service, if not pensionable, shall not count for pension and gratuity unless Government directs otherwise.

21. On the aforesaid question the Hon'ble Supreme Court has held in paragraph No.139 in the case of Ali Azhar Khan Baloch (supra) that:

“A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case if the department requires restructuring, reform, or to meet the exigency of services in the public interest. The department can abolish a post for a justiciable reason. Therefore, in the future, if a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition.”

22. From the above, it would be seen that under what circumstances, the person can be declared a surplus employee and may be absorbed into another department of the Government of Sindh. This aspect of the case is addressed and settled in the judgment of the Hon'ble Supreme Court (supra) that without the concurrence of SGA&CD the posts cannot be abolished. However, the Petitioners failed to demonstrate that they meet the criteria and test laid down by the Hon'ble Supreme Court in Criminal Original Petition No.89/2011 in Paragraph 126 (Supra). Admittedly all the petitioners were appointed by the establishments outside the Sindh and Rule 9-A of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974 would apply to persons within Sindh and not otherwise. In this context, the Hon'ble Supreme Court in the order dated 27.09.2016 passed in Crl.Org. Petition No.106 to 111 of 2016 has held as follows:-

“Once the employees were de-notified in compliance with the judgments of this Court, the employees aggrieved have to approach this Court in review instead of obtaining interim orders from the Sindh High Court.”

23. The similar view was also taken earlier in the order dated 02.02.2016 passed by the Hon'ble Supreme Court in CMA No.243/2016 as follows:

“It has been observed in the Judgment reported as Ali Azhar Khan Bloch (supra) that once the officer is denotified by the Sindh Government pursuant to the Judgment and /or orders of this Court no Court including the High Court can pass an order suspending such notification. If an officer who was denotified has any grievance he has to approach this Court by filing review, therefore, any order of the High Court either interim or otherwise will not come in the way of said Government.”

24. To elaborate further on the subject, we seek guidance from the decision of the Honorable Supreme Court in the case of Muhammad Sharif Tareen, Chief of Section (Acting) (BPS-19), Planning and Development Department, Government of Balochistan, Civil Secretariat v. Government of Balochistan through Chief Secretary and another, 2018

**SCMR 54**, whereby it has been held that absorption of a person thus appointed not only damages the fabric of civil service but also barricades the channels of promotion for those who have no political links and connections to achieve the desired goal; and, the repatriation of the petitioners to the parent department was maintained.

25. Much emphasis has been laid on the term appointment by transfer. The concept of appointment by transfer is known to the service jurisprudence. However, the present case does not deal with appointment by transfer from Federation to Provincial Government under Rule 9(1) of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974. This is a simple case of transfer of the petitioners from ICT, Province of Baluchistan, and Pakistan Railways Police to Sindh Police for which there is no provision in the Sindh Civil Servants Act, 1973 or rules framed thereunder. Nor the law permits their absorption as interpreted by the Honorable Supreme Court.

26. The impugned notification/orders explicitly shows that the purported transfer and absorption of petitioners in Sindh Police was/is against the landmark judgment pronounced by the Hon'ble Supreme Court of Pakistan in Criminal Original Petition No.89/2011 (supra), whereby absorption of employees in different cadres was declared as illegal and they were ordered to be reverted to their respective parent departments. However, to our surprise and shock, they are still holding the subject posts in Sindh Police in violation of the judgment of the Honorable Supreme Court in the above-cited authority as well as in the case of Ali Azhar Khan Baloch and others (supra).

27. The entire claim of the petitioners is that their appointments, enrollments, and transfer are regulated under the Police Rules, 1934, therefore, their retention in Sindh Police is within the parameters of the law and their case does not fall within the ambit of the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Crl. Org. Petition No.89/2011 and Ali Azhar Khan Baloch's case supra. Primarily, there is no provision in the Sindh Civil Servants Act and the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974, to empower the IGP Sindh and/or the Government of Sindh to requisition the service of the Police officers from another Province. Besides, the Hon'ble Supreme Court has nullified the transfer and/ or absorption, into the police, from another Province to the Province of Sindh. In our view, the petitioners ought not to have been transferred and then absorbed into Sindh Police. The Honorable Supreme Court in the case of Fayyaz Hussain and others v. Federation of Pakistan and others **2020 SCMR 2166** has refused to allow absorption in FIA with the findings that the

recommendations made by the Committee or any absorption undertaken according to such recommendations, suffered from lack of legal basis or statutory support and declared it without lawful authority.

28. In the light of the above discussion, we are only concerned as to whether the decisions rendered by the Honorable Supreme Court of Pakistan in the case of Contempt proceedings against the Chief Secretary, Sindh 2013 SCMR 1752 and Ali Azhar Khan Baloch vs. Province of Sindh, 2015 SCMR 456 have been complied with by the official respondents on the premise that the absorption of all the employees working in different establishments of Police was declared nullity in the eyes of law. Thus the status of the petitioners in terms of aforesaid judgment is that they were neither transferred nor absorbed and have no vested right to remain to claim as such, and stood repatriated to their parent department in the light of aforesaid decisions of the Honorable Supreme Court.

29. So far as the issue of repatriation of the petitioners to their parent departments is concerned, we are fortified with the decision of the Hon'ble Supreme Court of Pakistan rendered in the case of Ali Azhar Khan Baloch (supra), whereby in paragraphs 162 and 163 it has been held that:

“162. By the judgment under review, we had directed the Sindh Government to repatriate the officers beneficiaries of the legislation, which was struck down by the judgment under review. We are informed that many Departments of the Federal Government have declined to accept the officers repatriated by Sindh Government in compliance with the judgment under review. The Additional Advocate General, who appeared in the Review Petition has brought to our notice the grievances of the officers, which belong to the Federal Government or to the institution run under the patronage of the Federal Government inter alia, on the ground that their period of lien with the parent Department has expired and or there was no vacancy to accommodate them.

163. This Court has already held in the judgment under review that the initial order of their transfer from the parent departments to the Sindh Government was not backed by the mandate given by the civil servant law, which is promulgated pursuant to Articles 240 and 242 of the Constitution. Therefore, such orders by the parent Departments are without lawful authority. Consequently, the expiry of the period of the lien will have no bearing.”

30. In the light of the above, we are of the considered view that the petitioners cannot be allowed to continue in Sindh Police. As regards the contention of the learned counsel for the petitioners that they were not provided an opportunity of hearing before passing of the impugned action, it is stated that there is no cavil to the proposition that the principle ‘audi-alteram partem’ has always been considered to be embedded in the statute even if there is no implied or express provision because no adverse action can be taken against anyone yet at the same time the principle could not be treated to be of universal nature. Because before invoking/applying the said principle one has to specify the infringement of a vested right. It is well-established law that where the claimant has no entitlement in his favor he would not be entitled to the principle of natural justice. The impugned

notification issued by the IGP Sindh was/is in compliance with the judgment of the Honorable Supreme Court which is judgment in rem. In this background reference may be made to the decision of the Hon'ble Supreme Court of Pakistan in the case of Justice Khurshid Anwar Bhindar v. Federation of Pakistan, **PLD 2010 SC 483**.

31. Regarding the question of powers of IGP Sindh to withdraw/cancel the seniority / promotional service benefits and absorption of the petitioners in Sindh Police Department and their repatriation to their parent province / ICT/Pakistan Railways Police without the concurrence of the Home Department, Government of Sindh, are concerned, suffice it to say that under Article 190 of the Constitution of the Islamic Republic of Pakistan, 1973, all executive and judicial authorities throughout Pakistan shall act in aid of the Honourable Supreme Court. Since the IGP Sindh has acted in compliance with the direction of the decisions of the Hon'ble Supreme Court of Pakistan in the cases of Contempt proceedings against the Chief Secretary, and Ali Azhar Khan Baloch (supra), thus no illegality has been committed by the IGP Sindh to complying with the directions of the Hon'ble Supreme Court of Pakistan, which has binding effect under Article 189 of the Constitution.

32. Beside the above, the Hon'ble Supreme Court in the case of Shahid Pervaiz v.s Ejaz Ahmed and others, **2017 SCMR 206**, was pleased to hold, inter alia, that if an illegal benefit was accrued or conferred under a statute, whether repealed/omitted or continuing, and its benefits continue to flow in favor of beneficiaries of such an unconstitutional Act which is declared ultra vires, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not; and, such beneficiaries cannot take the plea of past and closed transaction as such plea would apply only in cases where rights were created under a valid law.

33. It may be noted that the case of Shahid Pervaiz supra went under review and the judgment of the said review proceedings is reported as Akhtar Umar Hayat Lalayka and others V/S Mushtaq Ahmed Sukhaira and others, **2018 SCMR 1218**, whereby the review petitions were dismissed/disposed of, and even the exception granted in paragraph 111 of the judgment in Shahid Pervaiz supra read with paragraph 143 thereof was withdrawn. As held by the Hon'ble Supreme Court in various pronouncements that its decisions laying down any proposition in law becomes the law binding on all whether or not they were party to the proceedings before the Hon'ble Supreme Court. Primarily, under Article 187(2) of the Constitution, this Court has to ensure the execution and enforcement of the directions, orders, and judgments of the Hon'ble Supreme Court.

34. In the light of the foregoing, these petitions are dismissed along with all the pending application(s) with no order as to costs. However, the parent department of the petitioners shall grant all benefits and promotions in terms of the directions of the Honorable Supreme Court as if they were never transferred or absorbed into Sindh Police.

Let a copy of this judgment be transmitted to the competent authority of respondents, Secretary Establishment Division Islamabad, Home Secretary /IGP Baluchistan, IGP ICT Islamabad, and IGP Pakistan Railways Police Lahore for compliance.

**J U D G E**

**J U D G E**