

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
ITRA No.192 & 193 of 2023**

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| Date | Order with Signature of Judge |
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Fresh Case

1. For orders on office objection No. 24 & 26
2. For orders on CMA No. 257/2023
3. For hearing of Main Case

24.02.2026

Mr. Qaim Ali Memon Advocate for the Applicants
Mr. Zulfiqar Ali Memon, Commissioner IR Zone-II, MTD, Karachi

These references have been pending since 2023 with no effort being discernible on the part of the applicant to ever have them listed or heard. On 10.02.2026, the matter came up for hearing and it was noted that perhaps the references were unmerited in view of the Supreme Court edict in the case of *Millat Tractors* reported as 2024 SCMR 700. Since no assistance was forthcoming, hence, it was deemed appropriate to seek assistance from the applicant himself. The following order was passed:

“These matters are pending since 2023 without any progress. Diary demonstrates that no efforts have been made by the applicant-department to even have these matters listed. Three years later when the matters came up, learned counsel was confronted as to whether the controversy was covered by the Supreme Court Judgment in the case of *Millat Tractors* reported as 2024 SCMR 700, he remains unable to assist and merely seeks time. Let Commissioner Inland Revenue be present in person on the next date to assist this Court. To come up on 24.02.2026.”

Today, Mr. Zulfiqar Ali Memon, Commissioner IR Zone-II, MTD, Karachi is present and admits that while the questions raised / issue in the references stood clearly determined against the department by virtue of *Millat Tractors*, however, the edict does not have applicability on matters decided prior thereto. The entire crux of the argument articulated by the learned Commissioner was that *Millat Tractors* had no retrospective effect.

Respectfully, we find the argument of the learned Commissioner to be rather innocent of the law. While the retrospective effect of judicial interpretation is a settled judicial principle, maintained by a Full Bench of the Supreme Court in *Malik Asad*¹, it was recently expounded and illumined by *Shafi Siddiqui J*, speaking for the Supreme Court in *Muhammad Rizwan*², as follows:

“29. There are two theories/doctrine which could be worth considering for the point raised.

a) Blackstonian view - the courts do not make laws. They only declare what the law has been. When a court interprets a statute that is deemed to be a true meaning from the date of statutes' existence and thus the interpretation is given from the date of its creation.

b) Doctrine of prospective overruling - this has also developed in many jurisdictions where the court realises that on account of longstanding interpretation, the new, recent and corrected interpretation may cause injustice and thus limit its effects to the future.

¹ *Malik Asad Ali vs. Federation of Pakistan* reported as PLD 1998 Supreme Court 161.

² *Collector of Customs vs. Muhammad Rizwan* (Civil Petition 4334 of 2025); judgment dated 04.12.2025.

The later doctrine though limits the retroactive effect, it however creates unfairness by denying a successful party the benefits of the success/victory they fought for and may undermine the incentive for parties to seek legal changes in the future. The successful litigant, under the said doctrine, never gets the fruits of success.

30. Judicial interpretation of a statute thus ordinarily applies and operates retrospectively. It, however, varies when the vires of the law is challenged on the touchstone of any right guaranteed by the Constitution of the Islamic Republic of Pakistan and is/was being infringed and the interpretation/pronouncement nullifies it; both however have different effects.

31. For the proposition, challenging the vires of law, one can argue and claim the bona fide actions undertaken and rights acquired, till the law is declared to be ultra vires, however, such is not the case here, as question of vires is not before us. We are more focused to provide an answer as to whether the "interpretation" of any provision of law, statute, notification, circular, SRO etc. having the force of law, to operate in a declaratory form retrospectively or should it be applied prospectively.

32. The effect of interpretation in the form of a declaration of any law is defined as Blackstonian principle and has been consistently approved with reasons, in several jurisdictions including this Court, Indian Courts, Courts of Commonwealth countries and the United States of America.

33. Our Courts, in order to prevent severe injustice and to protect the vested rights, have applied approaches such as Blackstonian rules and the doctrine of prospective overruling depending on the circumstances and the vested rights which were being claimed and adjudged.

34. In the instant cases, however, in the light of an earlier pronouncement of the High Court, which findings were not disturbed while the leaves were refused by this Court, respondents' claim that vested rights have been created and any deviation from such finding could only be given prospective application, sounds strange.

35. We do not, in general, agree with the proposition of Mr. Salman Akram Raja, ASC. We have noted that the High Court gave only conclusion and the law was not interpreted in its true spirit. Even otherwise, when an earlier incorrect understanding of law and/or interpretation led to a wrongful action, it does not bestow any right including the vested right and the Court may apply its corrected interpretation retrospectively for the pending cases to the least. It is only the correct view that presents the correct meaning of the statute and that principle is to be exercised whenever a relief is being sought by a litigant, otherwise there cannot be a relief for a "contesting litigant" who is before a Court for a correct appreciation of law and is also able to plead successfully. Thus, the judicial interpretation is conceptionally retrospective.

36. Indeed, in terms of Cornelious' principles, as he discussed in the case of Muhammad Yousaf⁸ that the judicial decisions declaring the correct interpretation of a statute applied to cases that comes before the courts after the judgment, but were not made applicable to invalidate administrative actions/orders and matter "concluded" judicially, as being past and closed transaction on the basis of earlier mistaken interpretation. Cases before us are yet to be concluded and hence cannot be summarized, under any stretch of imagination, as past and closed transaction. Malik Asad⁹, gave a more exhaustive view when it ruled that judicial interpretation is declaratory and, therefore,

retrospective, leaving the court only in the exceptional circumstances to make it operative prospectively. ARF Pirzada, Mustafa Impex and PMDC, highlighted extensively how the retrospective and prospective effect of a particular judgment could be given and according to the jurisprudence developed in the aforesaid cases, it depends upon the facts Muhammad Yusuf v. The Chief Settlement and Rehabilitation Commissioner Pakistan (PLD 1968 SC 101) Malik Asad Ali v. Federation of Pakistan (PLD 1998 Supreme Court 161) Begum Nusrat Ali Gonda v. Federation of Pakistan (PLD 2013 Supreme Court 829) Mustafa Impex v. Government of Pakistan (PLD 2016 Supreme Court 808) Pakistan Medical and Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956) and circumstances of each case and it is for the court to decide in each case if the judgment could be given an exceptional consequences than its normal effect of retrospective in its application.

37. Taisei Corporation described the issue in the comprehensive way that the law so declared by the court, as a general principle, applies to the future cases prospectively as well as retrospectively to the pending cases, including the one in which it is declared. It is only as an exception to the general principle that while considering the possibility of some grave injustice, due to its retrospective effect, the court occasionally provide for prospective effect to the judgment from such date as they think just and proper in the peculiar facts and circumstances of the case. Even Muhammad Jalal saved only past and closed transaction, i.e., appointment by way of a notification only and nothing else was saved; even pending applications for such recourse of appointment were not saved as the judgment was applied to pending cases retrospectively.

38. The jurisprudence developed in India is not different from the jurisprudence developed by our courts. In the cases such as (i) Directorate of Revenue Intelligence v. Raj Kumar Arora (2025 INSC 498), (ii) P.V. George v. State of Kerala (AIR 2007 Supreme Court 1034), (iii) Goan Real Estate & Construction Ltd. v. Union of India (2010 5 Supreme Court Cases 388), (iv) Vasanta Sampat Dupare v. Union of India (2025 INSC 1043), (v) Sarwan Kumar v. Madan Lal Aggarwal (AIR 2003 Supreme Court 1475) and (vi) Suresh Chandra Verma v. Chancellor, Nagpur University (AIR 1990 Supreme Court 2023), all have unanimously reiterated and re-affirmed the Blackstonian theory. According to the jurisprudence developed through their judgments, judicial declarations are retrospective as the courts merely discovers what the law has always been, as is being clarified (at the time of Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd. (2024 SCMR 640) General Post Office v. Muhammad Jalal (PLD 2024 Supreme Court 1276) announcing a judgment). A legal decision only clarifies the true legal position and has retrospective effect, even if earlier courts misunderstood the law. The prospective overruling was considered as an exception and not a rule. When, however, a statute or a notification/SRO having the force of law is struck down, which is not the case here, the past and closed transactions, in the earlier operative legal framework, would remain protected, which might have been found to be saved under a constitutional frame.

39. The cases cited above have reiterated the doctrine of Blackstonian declaratory theory and the temporal reach of new interpretation lies entirely in the court's discretion. When a court overrule an erroneous earlier view, it does not create a law rather restores the law as it always existed. Therefore, when a court verifies a correct rule, it is deemed that the law was never otherwise. The US jurisprudence is also not dissimilar to the aforesaid view. Fleming, described it as a judicial construction which does not create new law. It describes what the statute always meant.

40. The blanket exceptional rule of prospective application of interpretation is not only contrary to the settled jurisprudence of our court but also contrary to the settled jurisprudence of every major common law country.

41. The conclusion of the above analysis leads us to an irresistible conclusion that interpretation and the judicial pronouncement is always retrospective in its operation as described in the Blackstonian theory whereas contrary is only an exception under severe circumstances, which is faraway in the instant cases.”

The issue was also considered by a three member edict of this High Court recently, in the case of *Sanaullah*³, wherein *Adnan Iqbal Chaudhry J* maintained that judicial pronouncement is retrospective in its operation unless expressed otherwise.

Therefore, we find that the argument articulated by the learned Commissioner is alien to the law. Since, no question of law has been articulated before us to merit adjudication before us, hence, these references are hereby dismissed *in limine*.

Respectfully, the matter ought not to end here. The Supreme Court has taken judicial notice of the fact that the fiscal docket in the superior courts has been clogged with unmerited litigation, including that precipitated / perpetuated at the behest of Revenue. The Supreme Court has used the phrase *habitual litigant* to highlight such conduct in the recent Supreme Court judgment in the case of *Umar Tariq Khan*⁴ especially paragraphs 8, 9 and 10 thereof; that read as follows:

“8. When government departments routinely file appeals/petitions (often up to the High Courts and the Supreme Court) on questions of law that have already been authoritatively settled, the practice results in serious institutional harms. The most 1 As sought vide statement dated 13.02.2026; filed in Court and hereby taken on record. immediate consequence is the clogging of court dockets. Courts are compelled to spend scarce judicial time revisiting issues that are no longer *res integra* at the cost of undecided legal and constitutional questions, criminal appeals involving personal liberty, and civil disputes pending for years. This undermines the constitutional mandate of speedy justice. Repeated appeals/petitions on settled law weaken respect for Article 189 of the Constitution, the doctrine of *stare decisis*, and judicial discipline within the executive branch. When the State itself disregards binding precedents, it sends the wrong signals to subordinate courts, tribunals, and litigants. Such appeals/petitions result in unavoidable litigation costs, consumption of public funds for counsel, court fees and administrative processing.

9. The State is expected to act as a responsible and fair litigant, not as a compulsive appellant/petitioner. The practice and tendency within government departments to file appeals/petitions mechanically, particularly when the outcome is foreseeable in light of settled law, has already been deprecated by this Court in the judgments reported as *Federal Public Service Commission through Secretary, Islamabad Vs. Kashif Mustafa* (PLJ 2025 SC 386), *Director General, Rawalpindi Development Authority Vs. Mian Muhammad Sadiq* (PLD 2006 SC 142), *Regional Manager, NADRA RHO, Hayatabad, Peshawar Vs. Mst. Hajira* (2024 SCMR 197), *State Life Insurance Corporation of Pakistan Vs. Mst. Zubeda Bibi* (2024 SCMR 426) and *Amjad Ali Vs. Board of Intermediate and Secondary Education* (2001 PLC (CS) 280).

³ *Sanaullah vs. DC Larkana* (CP D 99 of 2025); referee judgment dated 24.11.2025.

⁴ Per *Miangul Hassan Aurangzeb J* in *ACIR Rawalpindi vs. Umar Tariq Khan* (CPLA 1990 of 2025); judgment dated 15.01.2026.

10. Courts already possess both constitutional authority and jurisprudential tools to address the problem of repeated appeals/petitions by government departments on settled questions of law. Not just can the courts dismiss such appeals/petitions in limine, one of the most effective tools is the imposition of costs. In egregious cases, courts may require identification of the officer for authorizing the appeals/petitions. It is imperative for there to be internal accountability by government departments and careful legal scrutiny before filing appeals/petitions. Had such scrutiny taken place before the filing of the instant petition, it would have been realized that the primary question of law sought to be agitated by the petitioners already stands authoritatively settled by a number of judgments of this Court referred to herein above. In the case of order to address this problem it is imperative for the Chairman, F.B.R. to consider constituting committees which function with the highest degree of independence and includes a retired Judge of the superior judiciary, an experienced tax practitioner, and senior serving or retired officers of the F.B.R. with distinguished record and impeccable credentials with the mandate to timely examine each case before a decision is made to file a reference before the High Court or a petition before this Court. The F.B.R. may also consider undertaking review of all pending cases in order to determine whether the questions of law sought to be agitated therein already stand settled by judgments of superior courts.”

It is apparent that precipitation and / or perpetuation of unmerited litigation has been unequivocally disapproved by the superior courts and the aforementioned judgment meticulously reiterates the same.

Prima facie the present case appears to fall within the ambit of such proscription. Perpetuating such matters clogs the docket of the Courts and the consequence thereof is eventually borne by Revenue. The learned Commissioner's assistance was sought, however, the outcome was as particularized supra. While exercising maximum restraint, we leave mitigation of such matters to the better judgment of the executive.

The Office is instructed to directly convey a copy hereof to the learned Attorney General Pakistan, Secretary Revenue Board and Chairman Federal Board of Revenue at Islamabad.

A copy of this decision may be sent under the seal of the Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001. A copy hereof may also be placed in connected file.

Judge

Judge