

Form No. HCJD/C-121

**ORDER SHEET****IN THE LAHORE HIGH COURT  
MULTAN BENCH MULTAN  
JUDICIAL DEPARTMENT****Case No. WP No.5309-2010**Malik Muhammad Hashim **Versus** Chief Secretary Punjab, etc.  
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S.No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary
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23.02.2016	Mr.Muhammad Khan Ghauri, Advocate for the petitioner Mr.Mudassar Shahzad-ud-Din, Advocate for the respondent Mr.Aziz-ur-Rehman Khan, AAG alongwith Mirza Saleem Baig, Asstt. (Legal) PRTC Transport Deptt.
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Through the instant writ petition the petitioners have called into question the legality and validity of order dated 07.09.2006 and 27.10.2009 whereby relief claimed by them was refused by the respondents.

2. The relevant facts for the disposal of this writ petition are that the Punjab Road Transport Corporation (PRTC) offered Golden Handshake Scheme-97 vide letter No.PRTC/Reg-208/97/412, dated 21.06.1997 to its employees in the process of closing down the PRTC. The petitioners and many other employees accepted the offer and were retired from service w.e.f. 30.06.1997. In compliance of order dated 21.06.2006 passed by this Court in Writ Petition No.3139/2006 filed by the petitioners, respondents No.2 and 4 intimated to the petitioners vide impugned letter dated 07.09.2006 that the inclusion of Adhoc Relief of Rs.300/- p.m. in Basic Pay of PRTC retired employees for payment of pensionary benefits is not permissible under the rules. However,

move-over will be considered by the Committee after giving personal hearing to each petitioner. The petitioners moved an application dated 07.10.2009 to the respondents for the grant of annual increment/move-over in accordance with the rules and orders of this Court. Respondent No.4 vide impugned letter dated 27.10.2009 submitted a report/letter to the Govt. of Punjab to the effect that as regards the grant of annual increment, it is not covered under the rules as according to Finance Department Notification dated 03.01.2002, this facility is allowed to employees of Govt. w.e.f. 01.06.2000 whereas the employees of PRTC were retired prior to this date. Hence this writ petition.

3. It is contended by the learned counsel for the petitioners that the petitioners are entitled for the grant of annual increment/move over on completion of six months service from 01.12.1996 to 30.06.1997 in the year of their retirement i.e. 1997. He further contends that the cut-off date i.e. 01.06.2000 mentioned in Notification dated 03.01.2002 is discriminatory qua the petitioners. On the other hand learned Assistant Advocate General assisted by learned counsel for the respondent-department has supported the impugned orders. Learned counsel for the respondents submits that rules of Punjab Road Transport Corporation are non-statutory, therefore, writ petition is not competent. He further submits that the petitioners were retired from service in the year 1997, therefore, they cannot take benefit of notification No.FD(PC)10-1/78 dated 03.01.2002 as it will operate prospectively.

4. Arguments heard. Record perused.

5. The contention of learned counsel for the respondent-department that the rules of the Punjab Road Transport Corporation are non-statutory has not been controverted by the learned counsel for the petitioners,

therefore, writ petition is not competent. While disposing of Writ Petition No.21496 of 2009 vide order dated 03.11.2010 it has been held that rules of PRTC employees are non-statutory, therefore, writ petition is not competent. In another case titled *Mst. Razia Sultana vs. Govt. of Punjab, etc.*, vide order dated 26.02.2001 passed in ICA No.124/2001, Hon'ble Division Bench of this Court has held that the rules of the Punjab Road Transport Corporation are non-statutory, therefore, writ petition is not competent. Reference may also be made to case titled *M.H. Mirza vs. Federation of Pakistan through Secretary Cabinet Division Government of Pakistan, Islamabad and 2 others* (1994 SCMR 1024) in which it has been held by the Hon'ble Supreme Court of Pakistan as under :-

*“6. Sections 37, 38, 50 and 51 of the C.D.A. Ordinance, 1960 (Ordinance XXIII of 1960) are relevant. An examination of these provisions shows that the CDA was itself to determine the terms and conditions of its employees and that the Government had no say in the matter. None of its Regulations whether framed by it itself or adopted by reference had a statutory basis in law. This view is supported by the view taken in Ch.Abdul Rashid v. Capital Development Authority, Islamabad and another (PLD 1979 Lahore 803) and the Principal, Cadet College, Kohat and another v. Muhammad Shoab Qureshi (PLD 1984 SC 170). The adoption of the rules of the Government or their application by reference will not lend a statutory cover or content to these rules, as held in Lahore Central Co-Operative Bank Limited v. Saif Ullah Shah (PLD 1959 SC (Pak.) 210) and finally very recently in Chairman, Pakistan Council of Scientific and Industrial Research, Islamabad and 3 others v. Dr.Mrs. Khalida Razi (Civil Appeal No.270 of 1993). There being no statutory rules in the field, a Constitution petition was not at all competent on the subject.”*

Further reference may also be made to case titled *Pakistan International Airline Corporation and others vs. Tanweer-ur-Rehman and others* (PLD 2010 SC 676). The relevant portion of the judgment is reproduced herein below:-

*19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.”*

Further reference may be made to case titled Syed Nazir Gillani versus Pakistan Red Crescent Society and another (**2014 SCMR 982**) wherein it has been held as under:-

*“4. Having heard learned counsel for the petitioner at some length, we find that it has now been well settled that the Rules framed by the Pakistan Red Crescent Society are non-statutory and on that count the writ petition was not maintainable.”*

In the aforesaid judgment reference has also been made to case titled Pakistan Defence Officer’s Housing Authority v. Lt. Col. Syed Jawaid Ahmad (**2013 SCMR 1707**).

6. Moreover, it is an admitted fact that the petitioners were retired from service in the year 1997 whereas notification for which they want to take advantage was issued in the year 2002, therefore, they cannot take benefit of the said notification as it is an established principle of law that the notification takes effect prospectively and not retrospectively. Reliance is placed on case titled “Commissioner of Sales Tax (West), Karachi v. Messrs Kruddsons Ltd.” (**PLD 1974 SC 180**), relevant portion of which is reproduced as under:-

*“It is well settled proposition that a notification by the Provincial Government cannot operate*

*retrospectively to impair an existing right or to nullify the effect of a final judgment of a competent Court even if the notification be expressly so designed.”*

Reliance is also placed on case titled “Messrs Army Welfare Sugar Mills Ltd and others v. Federation of Pakistan.” (1992 SCMR 1652).

7. This Court fully agrees with the finding given in para No.3 of impugned order dated 27.10.2009, which is reproduced herein below:-

*“3. As regards the grant of annual increment, it is not covered under the Rules as according to Finance Department Notification No.FD(PC)10-1/78(Pt.II) dated 03.01.2002, this facility is allowed to the employees of the Government Servant w.e.f. 01.06.2000 whereas the PRTC employees were retired prior to this date.”*

8. Even otherwise the notification dated 03.01.2002 whereby the concession has been made admissible w.e.f. 01.06.2000 could be said to be a Policy of the Government which has been made for the benefit of those employees retiring on or after 01.06.2000. It is an established law that in Policy matters this Court should not interfere unless the Policy is arbitrary. Reference may be made to case titled Dossani Travels Pvt. Ltd and others versus Messrs Travels Shop (Pvt) Ltd. and others (PLD 2014 SC 1).

9. Sequel to the above, this writ petition is devoid of force, hence dismissed leaving the parties to bear their own cost.

**(SHAHID MUBEEN)  
JUDGE**

**APPROVED FOR REPORTING.**

**(SHAHID MUBEEN)  
JUDGE**