

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Intra Court Appeal No.1066 /2016

JUDGMENT

Province of Punjab through Secretary to the Government
Versus
Dr. Muhammad Zafar Iqbal and 10 others

Dates of Hearing: 13.11.2017, 14.11.2017 & 21.11.2017.

Appellants by: Rana Shamshad, Additional Advocate-General, Mr. Muhammad Siraj us Salam Khan, Additional Advocate-General, Ch. Muhammad Yaqoob Sindhu, Advocate in ICA No.1088/2016, Mr. Mehmood Ahmad Qazi, Advocate in ICA No.1089/2016, Mr. Noshab Ali Khan, Advocate and Mr. Muhammad Asad Manzoor Butt, Advocate in ICA No.1090/2016.

Respondents by: Mr. Muhammad Shahid Tasawar Rao and Mr. Mohsin Raza Advocates, in ICA No.1088/2016, Mr. Mansoor Humayun, Advocate .

Applicants by: Rao Muhammad Akbar Khan Mayo, Mr. Qamar Zaman Qureshi, Mian Inam ul Haq and Mr. Talaat Farooq Shaikh, Advocates in their respective Applications.

JAWAD HASSAN, J. Through this judgment, we intend to decide the instant Intra Court Appeal as well as I.C.A. No.1088/2016, I.C.A. No.1089/2016, I.C.A. No.1090/2016 and I.C.A. No.100342/2017 as all the Appeals are outcome of impugned order dated 23.05.2016 passed in W.P. No.34501/2015 by the learned Single Judge whereby the writ petitions filed by the Respondents No.1 & 2 in I.C.A. No.1066/2016, I.C.A. No.1088/2016 and I.C.A. No.100342 whereas the Respondents No.3 and 4 in

I.C.A.No.1089/2016 and the Respondents No.4 and 5 in I.C.A. No.1090/2016 (the “**Respondents**”) were allowed.

2. Through all these Applications mentioned-below, filed in all the Appeals under Order I Rule 10 C.P.C. the Applicants seek permission to implead them as party to the Appeals respectively on the grounds that the Applicants are the necessary parties; that they are direct affectees; that if the permission to implead them is not granted, they may suffer an irreparable loss. Since the Appellants and the Respondents have no objection to implead the Applicants, therefore, all these Applications are allowed subject to all just and legal exceptions. Hence, the learned counsels for the Applicants were also heard at length.

I.C.A. No.1090/2016

Serial No.	Application number	Filed by
1	C.M. No.1/2017	Dr. Khizar Hayat Gondal
2	C.M. No.3/2017	Dr. Iffat Javed
3	C.M. No.1/2017	Dr. M. Azam Khan etc.
4	C.M. No.3/2017	Dr. Sohaila Mushtaq

I.C.A. No.1088/2016

Serial No.	Application number	Filed by
1	C.M. No.1/2017	Dr. Khizar Hayat Gondal
2	C.M. No.3/2017	Dr. Iffat Javed
3	C.M. No.1/2017	Dr. M. Azam Khan etc.
4	C.M. No.4/2017	Dr. Sohaila Mushtaq

I.C.A. No.1089/2016

Serial No.	Application number	Filed by
1	C.M. No.1/2017	Dr. Khizar Hayat Gondal
2	C.M. No.4/2017	Dr. Iffat Javed
3	C.M. No.1/2017	Dr. M. Azam Khan etc.
4	C.M. No.3/2017	Dr. Sohaila Mushtaq

I.C.A. No.1066/2016

Serial No.	Application number	Filed by
1	C.M. No.1/2017	Dr. M. Azam Khan etc.
2	C.M. No.3/2017	Dr. M. Azam Khan etc.

Main Case

3. The instant Appeal as well as the abovementioned Appeals have been filed by the Appellant in ICA No.1066/2016 Province of Punjab (the “**Department**”) and the Appellants in ICAs No.1088/2016, No.1089/2016 and No.1090/2016 (the “**Appellants**”) against the impugned judgment dated 23.05.2016 passed by the learned Single judge in W.P. No.34501/2015 whereby the writ petitions filed by the Respondents were allowed in the following manners:

“As a sequel of discussion above, while placing reliance on the judgments supra, the instant writ petition and connected W.P. No.13794 of 2015 are allowed, impugned order dated 26.08.2015 and subsequent orders including order dated 28.09.2015 are declared illegal, ab initio void, coram non iudice, against Articles 4, 9 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, as well as against the summary/policy dated 22.07.2009; the Respondent No.1 is directed to regularize the Petitioners and other doctors place in similar situation against their respective posts by considering their cases at par with Respondents and other doctors of contract appointee group whose services were regularized vide Notification dated 03.08.2009 and 06.08.2009.”

A. Essential Facts for all the cases

4. According to record, the essential facts of the cases abovementioned are that the Respondents filed writ petitions before the learned Single Judge to declare the order dated 26.08.2015 passed by the Department regarding non-considering the case of the Respondents and other similarly placed doctors of the Regular Medical Officer Group at par with the case of the Contract Appointees Group. Mainly the dispute is between the Medical Officers/Senior Medical Officer/Additional Medical Officers of the General Cadre, who got their Cadre changed from the General Cadre to Senior Registrar, Assistant Processor in the Teaching Cadre and

consultant in the Special Cadre. The change of Cadre was permitted by transfer, through option for the post of the Assistant Professor by amendments in the Punjab Health Department (Medical and Dental Teaching Post) Service Rules, 1979 (the “**1979 Rules**”) dated 16.08.2011 and for post of Senior Registrar dated 17.03.2012 in the 1979 Rules. For the post of Consultants in the Specialist Cadre an amendment was made on 17.03.2012 in the Punjab Health Department (General, Specialist and Miscellaneous Post) Service Rules, 1981 (the “**1981 Rules**”). The option for the change of the Cadre admissible only for one time was inserted through a sunset clause. In sequel of the above said amendments, doctors of the General Cadre (MO/SMO/APMO) opted to apply for change of Cadre. After scrutiny of eligibility criteria of applications, the Health Department appointed the General Cadres doctors to the Teaching and Specialist Cadre vide order dated 23.09.2011 as the Assistant Professor, 23.05.2012 as the Senior Registrar and 25.05.2012 as the Consultant.

5. Whereas the second set of doctors, who were appointed on contract basis in different posts i.e. Senior Registrar, Assistant Professors and Consultant, who were regularized after the approval of summary dated 22.07.2009 and the Health Department regularized the contractual services of the Senior Registrars vide order dated 03.08.2009 and 06.08.2009, the Assistant Professors vide order dated 10.08.2009 and Consultant vide order dated 15.09.2009. The main grievance of the Respondents in the writ petitions was that their appointment in the Teaching/Specialist Cadre as AP&SR/Consultant (which was made through transfer after amending the Service Laws) be treated from the date of regularization of contractual Teaching/Specialist Cadre AP&SR/Consultants on the sole ground that the regularization of contractual services of the above Teaching/Consultants Cadre doctors in August 2009 and their appointment through transfer in September 2011 and May 2012 was approved through a single summary on 22.07.2009. The Respondents

without any objection accepted the terms and conditions of appointment order whereas it was clearly mentioned that order should be prospective in nature and they will have no right/entitlement to any back benefits of past in terms of seniority. Nevertheless, the Respondents changed their Cadre in which there was an express provision that they will be at the bottom of the seniority and will not see their appointment from the date when the Contract Appointees Group was regularized. The Respondents started writing letters and filing representations before the Department and ultimately the Secretary Health on 26.08.2015 decided the matter of the Respondents by clearly holding that the claim of the Respondents for counting of their services of General Cadre is not justified. It also held that the Respondents were granted extra ordinary permission by allowing them to change their Cadre from the General Cadre to Teaching Cadre, therefore, no discrimination was made out. Feeling aggrieved thereby the Respondents filed writ petitions which were allowed by the learned Single judge vide the impugned order. Hence, these Appeals.

B. Appellants' Submissions

6. Rana Shamshad, the learned Law Officer appeared on behalf of the Department in the instant Appeal and *inter alia* submitted that the impugned order is liable to be set aside on the grounds that the same is illegal and has been passed against the judgments of Hon'ble Supreme Court of Pakistan and facts on record; that the learned Single Judge has not taken into consideration the fact that the Respondents had challenged the promotion of the Proforma Respondents which ousts the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"); that the superior Courts cannot interfere in the policy matters of the Government under constitutional jurisdiction; that the learned Single Judge has failed to appreciate the fact that

after regularization the matter of the Respondents for promotion pertained to the terms and conditions of their services which is specifically barred under Article 212 of the Constitution, as such the impugned order is a clear-cut violation of the judgment of the Hon'ble Supreme Court of Pakistan passed in case titled *National Assembly Secretariat through Secretary v. Manzoor Ahmed and others* (2015 SCMR 253); that the Respondents had alternate remedy of Appeal before the Punjab Service Tribunal and where the law provides an alternate remedy, the writ petition is not maintainable; that as the Respondents are civil servants and the learned Single Judge erred while observing that the Respondents had raised the issue of violation of the statutory Rules, therefore, it was competent to decide the issue; that this fact has also been ignored in the impugned order that the Respondents had accepted the terms and conditions of their appointments without any objection and that too their previous service record shall not be counted for the purpose of seniority and they shall be placed on the bottom of the Cadre; that the policy dated 22.07.2009 under which the Respondents are demanding their rights, basically relates to the doctors appointed on contract basis and not to the doctors on regular basis; that after about one year of their change of Cadre and appointment by transfer the Respondents challenged their seniority.

7. Ch. Muhammad Yaqoob Sidhoo, Advocate appeared on behalf of the Appellants in I.C.A. No.1088/2016 and reiterated the same arguments as noted above and also added that the Respondents did not come to the Court with clear hands; that the Respondents exercised their option under the amended Rules dated 17.03.2012 and as such were appointed by transfer on 23.05.2012 and 25.02.2012; that thereafter the Respondents could not be allowed to approbate and reprobate and adopt two different positions as they cannot, at the same time, blow hot and cold; that the learned Single Judge has failed to appreciate the fact that there was no discrimination; that it was provided in the approved summary para-162 (vii) that seniority

of the General Cadre doctors being adjusted in the Teaching Cadre, by transfer, shall fall after contract assistant professor whose services are now regularized; that the Respondents accepted their appointment by transfer but now estopped to claim seniority and promotion from back dated when the services of the Appellants were regularized on 11.08.2009; that the learned Single Judge has not taken into consideration the guidelines given in the summary prepared for redressing the grievance of the doctors; that the writ petitions were defective due to non-joinder of necessary parties i.e. a number of doctors which have been condemned unheard; that the impugned order in the writ petition was passed under the Rules which neither have been challenged by the Respondents nor set aside by this Court in the impugned order; that the vested rights which had been created in favour of the Appellants cannot be taken away by treating the Respondents at par with the Appellants; that it is the accepted principle according to the PMDC (Para-22) that for the purposes of appointment/promotion the experience gained in one specialty shall not be counted for promotion/appointment in other specialty.

8. Mr. Noshab Ali Khan, Advocate appeared on behalf of the Appellants in I.C.A. No.1089/2016 and reiterated the similar arguments as noted above and further added that the judgments cited by the learned Single Judge were distinguishable to the case in hand, therefore, could not be relied upon.

9. Mr. Asad Manzoor Butt, Advocate for the Appellant in I.C.A. No.1090/2016 submitted that the learned Single Judge has failed to appreciate the fact that the summary does not have any discrepancy regarding regularization process as it clearly states that all the contract doctors will be regularized immediately and remaining vacancies will be filled by promoting regular Medical Officer/Women Medical Officers on the basis of seniority; that it was clearly mentioned and approved by the competent authority that the Respondents would not be entitled to claim back dated seniority and benefits after being adjusted in teaching Cadre, as such the impugned

order is defective; that the general Cadre doctors while joining as senior Registrars in teaching Cadre accepted the terms and conditions mentioned in their appointment orders which state that the orders shall be prospective in nature and the officer shall have no right or entitlement to any back benefits of past service in terms of seniority, therefore, they cannot deviate from their commitment at belated stage; that the impugned order has failed to deal with the issue that the decisions of the Health Department dated 26.08.2015 and 28.09.2015 were made/approved in accordance with the law and in compliance of the order of the Hon'ble Supreme Court of Pakistan dated 28.05.2015 passed in CPLA No.160-L to 162-L/2015, as such there is no violation of Articles 4, 9 and 25 of the Constitution; that the back dated claim of seniority of the Respondents is not justifiable in view of the Punjab Civil Servants Act, 1974 (the "Act") as well as the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 (the "1974 Rules"); that the promotion orders of the doctors of different specialties were issued after notified seniority list and recommendations of the Lawful Departmental Promotion Committee, as such the same cannot be declared illegal. Learned counsels for the Department and Appellants have placed reliance on the case titled *Ikram Bari and 524 others v. National Bank of Pakistan through President and another* (2005 SCMR 100), *Fayyaz Ali and 7 others v. Province of Sindh through Secretary Services, General Administration and Coordination Department, Karachi and 2 others* (2013 PLC (C.S.) 592), *Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission etc.* (In the matter of *Suo Motu Case No.18 of 2016*) and *Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and another v. Messrs. Shoaib Bilal Corporation and 2 others* (2004 CLC 1104).

C. Respondents' Submissions

10. On the contrary, Mr. Muhammad Shahid Tasawar Rao, Advocate appeared on behalf of the Respondents and vehemently controverted the arguments raised by the learned counsels for the Department and Appellants and submitted that there is no illegality or jurisdictional defect in the impugned order passed by the learned Single Judge; that the same has been passed keeping in view the dictum laid down by the Hon'ble Supreme Court of Pakistan; that the orders dated 26.08.2015 and 28.09.2015 were discriminatory in nature and that too against the policy dated 22.07.2009, order dated 26.12.2014 passed by this Court and order dated 28.05.2015 passed by the Hon'ble Supreme Court of Pakistan.

11. We have heard the arguments of the learned counsels for the parties and perused the record.

D. Decision

12. In order to render/pass judgment upon the above mentioned facts, circumstances and arguments urged by the counsels for the parties at length, some important points/questions are mentioned below and considered for determination of this Court, arising out of these Appeals. The essential points/questions in these Appeals are that (i) *whether the writ petitions filed by the Respondents being civil servants regarding their appointment by transfer were competent under Article 199 of the Constitution before this Court* (ii) *whether the Respondents are estopped by their commitment by virtue of change of their Cadre in light of notification dated 17.03.2012 and appointment letters dated 23.05.2012 and 25.02.2012* and (iii) *whether the Department has discriminated the Respondents by not considering their appointment by transfer from 03.08.2009 and 06.08.2009 at par with that of the contract employees who were later on regularized since 2009.*

13. We have given anxious consideration to the contentions of the learned counsels for the parties and have gone through the whole record annexed therewith.

E. Determination

- (i) *Whether the writ petitions filed by the Respondents being civil servants regarding their appointment by transfer were competent under Article 199 of the Constitution before this Court.*

14. The first question is with respect to the bar contained under Article 212 of the Constitution. From the perusal of record it reveals that basically the Respondents have sought a direction to the Department to regularize them and other doctors placed in similar situation w.e.f. 03.08.2009 and 06.08.2009 instead of 23.05.2012 and 25.05.2012 with all benefit accordingly considering their cases at par with the Appellants and other doctors of contract appointee group whose services were regularized vide Notification dated 03.08.2009 and 06.08.2009. The Respondents are seeking relief regarding their appointment by transfer. Although their appointments were made on the basis of their own choice in pursuance of amendment as 'appointment by transfer' yet it was an appointment and any appointment made of a civil servant does not come within the purview of terms and conditions of service of a civil servant.

15. The impugned judgment reveals that albeit the learned Single Judge has assumed the jurisdiction of this Court by considering the petition maintainable before the High Court yet the reasons given in the impugned judgment were not in accordance with law as the learned Single judge has declared the writ petitions maintainable in the following manner:

“Pursuant to above, it is very much clear that where the authority competent to award promotion or to appoint to a particular post acts in violation of law, in excess of jurisdiction, without jurisdiction or in colourable exercise of powers conferred on it extraordinary

jurisdiction of High Court in terms of Art. 199 of the Constitution, can always be invoked for redressing the wrong and this Court has ample jurisdiction to dilate upon the controversy in question.”

16. From the above quoted paragraph, it is clear that the learned Single Judge has declared the maintainability of the petitions on the basis of acts in violation of law, in excess of jurisdiction, without jurisdiction or in colourable exercise of powers conferred on the Authority as well as on discrimination. However, we are of the opinion that the bar of Article 212 of the Constitution is not applicable because the main controversy in the writ petitions is with regard to the appointment by transfer of the Respondents which does not fall within the domain of terms and conditions of service of a civil servant and therefore, the Respondents had rightly chosen the forum of this Court for redressal of their grievances. Also there is no evidence of any mala fide or colorable exercise of powers on behalf of the Department. As the writ petitions have been declared to be maintainable, therefore, it would be essential to touch the abovementioned remaining questions in the Appeals.

(ii). *Whether the Respondents are estopped by their commitment by virtue of change of their Cadre in light of notification dated 17.03.2012 and appointment letters dated 23.05.2012 and 25.02.2012*

(iii). *Whether the Department has discriminated the Respondents by not considering their appointment by transfer from 03.08.2009 and 06.08.2009 at par with that of the contract employees who were later on regularized since 2009.*

17. While adverting to the above two essential points/questions, which are being decided together, the record depicts that admittedly, the necessary amendments in the Service Rules were notified vide No.SOR-III(S&GAD) 1-2/2007(PI) dated 17.03.2012. Pursuant to the amendment in the Service Rules the process of appointment by transfer started and in the light of approval of the Chief Minister on the recommendations of the Selection Committee Additional

Principal Medical Officers (APMOs)/ Additional Principal Women Medical Officers (APWMOs)/ Senior Medical Officers (SMO)/ Medical Officers/ Women Medical Officers (SMOs) having qualification prescribed for the posts of Senior Registrar (BS-18) were appointed by transfer as Senior Register (BS-18) in relaxation of Rule-11 of the Rules vide Order No.SO (AMI)6-2/2011 dated 23.05.2012 and 25.05.2015. It is pertinent to mention here that it was explicitly mentioned in the said amendments that the previous service of the said Officers shall not be counted for the purpose of seniority and they shall be placed at the bottom of the Cadre. After the Respondents accepted the terms and conditions of their orders, all were posted on the basis of said terms and conditions.

18. Similarly, the Chief Minister Punjab regularized the services of Specialist Doctors (BS-18) who were appointed through Special Selection Board/ District Recruitment Committee. Subsequently, upon regularization all were appointed as per usual terms and conditions including the doctors who were party in the writ petitions. Record further depicts that in Specialist Cadre, consultants are promoted as Senior Consultants (BS-19) and Chief Consultant (BS-20) in General Cadre. The Medical Officers are promoted to the rank of Senior Medical Officers (BS-18) APMOs (BS-19) and PMOs (BS-20). It is not out of place to mention here that the Respondents without any objection accepted the terms and conditions of their appointment orders wherein it was clearly mentioned that the order should be prospective in nature and they will have no right or entitlement to any back benefits of past in terms of seniority. For the sake of clarity, the relevant portion of the said amendments made vide notification dated 17.03.2012 is hereby reproduced below and are as follows:

“a) By transfer from amongst Additional Principal Medical Officers (BS-19) and Additional Principal Women Medical Officers (BS-19) possessing the qualification and experience prescribed for the post of Senior Registrar (BS-18).

- b) *The remaining vacancies, if any, shall be filled from amongst Senior Medical Officers (BS-18) and Senior Women Medical Officers (BS-18) possessing the qualification and experience prescribed for the post of Senior Registrar (BS-18).*
- c) *After filling the vacancies as per (a) and (b) the remaining vacancies, if any, shall be filled from amongst Medical Officers (BS-17) and Women Medical Officers (BS-17) possessing the qualification and experience prescribed for the post of Senior Registrar (BS-18).*

Provided that the previous service of the said Officers in any of the above case shall not be counted for purposes of seniority, and they shall be placed at the bottom of the Cadre of Senior Registrars (BS-18)

Provided further that only such of Officers shall be considered as opt, in writing, to join as Senior Registrars (BS-18)."

19. From the above notification, it is very much clear that the seniority of the Respondents and similarly placed persons shall not be counted for the purposes of seniority and they shall be placed at the bottom of the Cadre. The bare reading of the appointment letters of the Respondents vividly shows that the Respondents were appointed by transfer and the said letters have been issued with certain terms and conditions of their appointment. The Respondents accepted the terms and conditions and thereafter joined the respective services coupled with the fact that the said terms and conditions were accepted without any objection. The terms and conditions No.(i) and (ix) are more relevant to the case in hand which are reproduced below in verbatim:

- "i. He/She shall be governed under the laws, rules and instructions/ orders issued by the Punjab Government from time to time.*
- ix. The order shall be prospective in nature and the officer shall have no right or entitlement to any back benefits of past service in terms of seniority."*

20. From the above, it is crystal clear that the orders shall be prospective in nature and the Officer shall have no right or entitlement to any back benefits of past service in terms of seniority. It has been argued by the learned counsel for the Appellant that the amendment notification cannot be given retrospective effect as alleged by the Respondents because the appointment letters issued in pursuance of the said amendment notification dated 17.03.2012 containing specific condition that the order shall be prospective in nature. The said contention of the learned counsel for the Appellants has substance. In **Imtiaz Ahmed and others v. Punjab Public Service Commission (PLD 2006 SC 472)** it was held that notification issued in exercise of executive powers or in the shape of subordinate legislation should not be retrospective in operation. In **Sheikh Fazal Ahmed v. Raja Ziaullah Khan and another (PLD 1964 SC 494)** it was observed by the Apex Court that power to issue notification does not include the power to give notification retrospective effect. Similar view was expressed in **Islamic Republic of Pakistan v. Mazhar ur haq (1977 SCMR 509)** and **Trustees of Port of Karachi v. Zafar Zaid Ahmed (1988 SCMR 810)**.

21. It is further observed here that the Ex-Cadre doctors were appointed through transfer on 23.05.2012 and 25.05.2012 and retrospective effect could not be given to their appointments as per law, because they were appointed by transfer and not promoted. Under Section 7 of the Act the seniority in post service of Cadre shall be determined in prescribed manner and take effect from the date of regular appointment to the post. Reliance can be placed on the case titled **Nohiria Ram.v. Director General of Health Services, Government of India and another (AIR 1958 Supreme Court 113)**. Furthermore, it is settled principle of law that the employees who opted to change Cadre shall be placed at the bottom of already serving employees. Reliance in this regard is placed on the **Contempt Proceedings against Chief Secretary, Sindh and Others (Criminal Original Petition No.89 of 2011), Ali Azhar Khan Baloch and**

others v. Province of Sindh and others (2015 SCMR 456) and Ch. Muhammad Akram v. Registrar, Islamabad High Court and others (PLD 2016 Supreme Court 961).

22. Another important point/question to be determined by us is estoppel. The record reveals that in pursuance of said notification dated 17.03.2012 and their appointment letters dated 23.05.2012 & 25.05.2012, the Respondents joined their services whereas the writ petitions were filed in the year 2013, as such after about one year of their appointments the Respondents have challenged their appointment. It is pertinent to mention here that the learned counsel for the Respondents has failed to show from the record that the Respondents have also challenged the vires of said notification. Moreover, the Respondents had accepted the terms and conditions of their appointment letters and at belated stage they cannot deviate from their own acceptance. In this view of the situation, the principle of estoppel shall apply in the present cases. The Hon'ble Supreme Court of Pakistan in case titled **Secretary Economic Affairs Division, Islamabad and others v. Anwar ul Haq Ahmad and others (2013 SCMR 1687)** has held that doctrine of estoppel meant a disability whereby a party was precluded from alleging or proving in legal proceedings that a fact was otherwise than it had been made to appear by the matter giving rise to such disability. For the sake of clarity followings are the citations in respect of estoppel:

*“A bar or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. **Demarest v. Hopper, 22 N. J. Law, 019; Martin v. Railroad Co., 83 Me. 100, 21 Atl. 740; Yeeder v. Mudgett, 95 N. Y. 295; South v. Deaton, 113Ky. 312, 08 S. W. 137; Wilkins v. Suttles, 114 N. C. 550, 19 S. E 000.** A preclusion, in law, which prevents a man from alleging or denying a fact, in consequence of his own previous act, allegation, or denial of a contrary tenor. **Steph. l'1.239.** An admission of so conclusive a nature that the party whom it affects is not permitted to aver against it or offer evidence to controvert it. **2 Smith, Lead. Cas. 778.***

Estoppel is that which concludes and “shuts a man’s mouth from speaking the truth.” When a fact has been agreed on or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as the judgment or decree stands unreversed; and when parties, by deed or solemn, act in pais, agree on a state of facts, and act on it, neither shall ever afterwards be allowed to gain say a fact so agreed on or be heard to dispute it; in other words, his mouth is shut, and he shall not say that is not true which he had before in a solemn manner asserted to be true. Armfield v. Moore, 44 N. C. 157.”

23. Lastly, on essential question of discrimination, the record also reveals that in the writ petitions the Respondents have claimed their appointment to be at par with that of the Appellants w.e.f. 22.07.2009 instead of 17.03.2012 demanding retrospective effect of the said notification. It is to be noted here that the Respondents were working in the General Cadre in the year 2009 and changed their Cadre from the General Cadre to the Teaching Cadre in the year 2012 by accepting certain terms and conditions of their appointment letters which clearly mentioned that on change of their Cadre the Respondents would be at the bottom of the Cadre/seniority and the order shall be prospective in nature. As such, no discrimination has been made with the Respondents as they worked against the post in General Cadre till 2012 and how can they be benefited of the Teaching Cadre from 2009 to 2012. Whereas the Appellants were regularized from 2009 in the Teaching Cadre, therefore, their seniority was rightly considered from 2009. Also they knew that they had to wait for the Rules to be made. We, therefore, are of the considered view that the learned Single Judge erred while holding that this is a case of discrimination and assumed the jurisdiction under Article 199 of the Constitution.

24. We disagree with the finding of the learned Single Judge who declared the petitions maintainable on the basis of discrimination irrespective of the fact that there was no such discrimination. The case

laws cited by the learned Single Judge in the impugned order cannot be relied upon as they are distinguishable from the cases in hand.

25. In view of what has been discussed above, we are of the opinion that the impugned order was not passed in accordance with the law, facts as well as recent judgments of the Hon'ble Supreme Court of Pakistan, as such is liable to be set aside. Consequently, the impugned order is hereby set aside and the writ petitions are accordingly dismissed. Resultantly, the instant Appeal as well as abovementioned Appeals are allowed.

(Ayesha A. Malik)
Judge

(Jawad Hassan)
Judge

Approved for reporting

Judge

Judge