

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 27212 /2016

JUDGMENT

Muhammad Yousaf Javaid Phapra etc.
Vs.
Ombudsman Punjab and 121 others.

Date of Hearing: 07.11.2017

Petitioners by: Sardar Khurram Latif Khan Khosa,
Mr. Muhammad Yousaf Javaid
Phaphra, Mian Muhammad Nawaz,
Mr. Ehsan Elahi, Mr. Akhtar Abbas
and Mr. Muhammad Riaz Shahid,
Advocates.

Respondents by:- Ch. Muhammad Shan Gull,
Additional Advocate-General.
Mr. Ashfaq Ahmed Kharal, Assistant-
Advocate General.
Mr. Shahrukh Humayon Khan, Senior
Law Officer and Zia ur Rehman,
Legal Advisor.
Mr. Nadeem Hassan Gohar, Registrar
Ombudsman.

C.M. No.7/2017

This is an application filed by the Applicant, Mr. Muhammad Riaz Shahid, under Order I Rule 10 of the Code of Civil Procedure, 1908 seeking permission to implead himself as co-Petitioner in the Writ Petition No.27212/2016 having same grievance, same stance and same prayer. The application is allowed subject to all just and legal exceptions.

Main Case

JAWAD HASSAN, J:- Through this single
Judgment, I intend to decide the instant Writ Petition as well as

following Writ Petitions as common questions of law and facts are involved in all the matters:

1. *Akhtar Abbas Naqvi vs. Ombudsman Punjab and 20 others*, Writ Petition No. 36026/2016;
2. *Ehsan Elahi vs. Ombudsman Punjab and 5 others*, Writ Petition No. 25023/2016, and
3. *Ghulam Mustafa vs. Ombudsman Punjab and another*, Writ Petition No. 25835/2016.

By virtue of these Petitions, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the Petitioners have assailed orders dated 22.07.2016 and 17.08.2016 whereby the honorary appointments of all the Petitioners were terminated (the “**Impugned Orders**”) by the Ombudsman Punjab, Lahore/the Respondents. For the sake of clarity, the prayers made in all the above mentioned petitions are respectively reproduced verbatim:

W.P. No.27212/2016

“(i) *In the view of the above made submissions it is therefore, most respectfully prayed that this writ petition may very kindly be admitted and impugned order dated 22.07.2016 passed the Respondent No.1 may very kindly be declared illegal, unlawful, against the principles of natural justice and against the equity and fair play, without lawful jurisdiction, without lawful authority, vindictive based on malafide and bias and ulterior motives in derogation with the fundamental rights of the Petitioners coupled with un-*

constitutional and reflecting malice and be declared in operative and void ab-initio, improper and be quashed/set aside in the supreme interest of justice, and Petitioners be ordered to be re-instated.

It is further prayed that during the pendency of the titled writ petition the operation of the impugned order dated 22.07.2016 may very kindly be suspended by staying and holding in abeyance and Petitioners may very kindly be allowed to continue with their services/functions as per their appointments and liabilities as per extending outreach program.

It is also prayed that Respondent No.1 may very kindly be restrained for further induction of TAs on the basis of his whims and wishes against the seats whose are lying isolated in subsequence of the impugned order in extending outreach program in the best interest of justice.

It is further prayed that during the pendency of the titled writ petition, the Respondent No.1 may very kindly be directed to be restrained to any action which is detrimental towards the services of the Petitioners in subsequences of the impugned order dated 22.07.2016 and no adverse action under the shield of the same be taken regarding to the functions/liabilities being rendered by the Petitioners in extending outreach program.

W.P. No.36026/2016

In the view of the above made submissions it is therefore, most respectfully prayed that this writ petition may very kindly be admitted and impugned order dated 17.08.2016 passed the Respondent No.1 may very kindly be declared illegal, unlawful, against the principles of natural justice and against the equity and fair

play, without lawful jurisdiction, without lawful authority, vindictive based on malafide and bias and ulterior motives in derogation with the fundamental rights of the Petitioners coupled with unconstitutional and reflecting malice and be declared in operative and void ab-initio, improper and be quashed/set aside in the supreme interest of justice, and Petitioners be ordered to be re-instated.

It is further prayed that during the pendency of the titled writ petition the operation of the impugned order dated 17.08.2016 may very kindly be suspended by staying and holding in abeyance and Petitioners may very kindly be allowed to continue with their services/functions as per their appointments and liabilities as per extending outreach program.

It is also prayed that Respondent No.1 may very kindly be restrained for further induction of D/A on the basis of his whims and wishes against the seats whose are lying isolated in subsequence of the impugned order in extending outreach program in the best interest of justice.

It is further prayed that during the pendency of the titled writ petition, the Respondent No.1 may very kindly be directed to be restrained to any action which is detrimental towards the services of the Petitioners in subsequences of the impugned order dated 17.08.2016 and no adverse action under the shield of the same be taken regarding to the functions/liabilities being rendered by the Petitioners in extending outreach program.

W.P. No.25023/2016

In view of submissions made above, it is most respectfully prayed that this petition may kindly be allowed and by

issuing an appropriate writ/order/direction the impugned order dated July 22, 2016 passed by the Respondent No.1 may very kindly be declared as non-est, non-speaking, passed in a mechanical manner, ab-initio void, malafide and nullity in the eyes of law to the extent of the Petitioner in the interest of justice, equity and fair play.

It is further prayed that pending final disposal of the captioned petition, the operation of the impugned Order may kindly be held in abeyance too meet the ends of justice.

W.P. No.25835/2016

In the light of aforesaid submissions instant writ petition may please be accepted and impugned office order dated 27.07.2016 issued by the learned Respondent No.1 may please of set aside in the interest of justice, equity as same is in conflict with the Constitution of the Islamic Republic of Pakistan and even against the policy of sitting regime to ameliorate the lots of poor people.”

A. The Essential Facts:

2. The facts succinctly revealed from the W.P. No.27212/2016 are that in pursuance of a project of Ombudsman Punjab, introduced as Extending Outreach of Ombudsman Punjab Office to District down to Tehsil and Union Council level by utilizing the services of potential volunteers, the five tier structure was proposed viz: (i) Provincial Advisor, (ii) Divisional Advisor, (iii) District Advisor, (iv) District Advisor Tehsil Advisor, and (v)

Liaison/Complaint Officer. Except the position of Provincial Advisor, the placements were made on honorary basis vide notification No.A & AO (POP) 8-103/2014 dated 31st March 2014. The Petitioners were appointed on 20.02.2015, 20.05.2015, 01.04.2015 and 09.07.2015 and 20.03.2015 respectively after completion of their training by the Ombudsman Punjab under Section 20 read with 37 of the Punjab Office of Ombudsman Act, 1997 (Act X of 1997) (the “Act”) as Tehsil Advisors and Child Commissioners having about 20, 29 and 19 years standing as an Advocate of High Court respectively without any remuneration and on honorary basis. The Petitioners started their jobs/assignments with full zeal and zest and continued for more than a year but suddenly, inspite of regularization of the Petitioners’ services, they were terminated vide the general Impugned Order on 22.07.2016.

3. In *W.P. No.36026/2016*, it is alleged that in pursuance of a project of the Ombudsman Punjab introduced as Extending Outreach of Ombudsman Punjab office to District down to Tehsil and Union Council level by utilizing the services of potential volunteers, the five tier structure was proposed viz: (i) Provincial Advisor, (ii) Divisional Advisor, (iii) District Advisor, (iv) District Advisor Tehsil Advisor, and (v) Liaison/Complaint Officer. Except the position of Provincial Advisor, the placement was made on honorary basis vide notification No.A & AO (POP) 8-103/2014 dated 31st

March 2014. The Petitioner was appointed on 18.02.2016 after completion of his training by the Ombudsman Punjab under Section 20 read with 37 of the Act as Tehsil Advisor and Child Commissioner having about 6 years standing as an Advocate of High Court without any remuneration and on honorary basis. The Petitioner started his job/assignments with full zeal and zest but suddenly, inspite of regularization of the Petitioner's services, he has been terminated on 17.08.2016.

4. In *W.P. No.25023/2016*, the Petitioner was appointed as Tehsil Advisor Kasur under Section 20 of the Act vide order dated 27.06.2014 and started performing his duties. Subsequently, the Petitioner was designated as District Child Commissioner Kasur vide order dated 12.01.2015 but he was terminated vide the Impugned Order dated 22.07.2015 without assigning any reason.

5. In *W.P. No.25835/2016*, the Petitioner is resident of Chak No.484/GB Tehsil Samundari District Faisalabad where one Altaf Hussain was appointed vide order dated 19.02.2015 under Section 20 read with Section 37 of the Act in pursuance of project namely Extending Outreach of Ombudsman Office and he started his services alongwith other colleagues but later on vide the Impugned Order dated 22.07.2016, he was terminated from service.

B. Submissions of the Petitioners:

6. The learned counsel for the Petitioners *inter alia* submitted that the Impugned Orders are against the law and facts; that the Impugned Orders have been passed in violation of the fundamental rights guaranteed under Articles 2, 2-A, 4, 10-A, 14 and 25 of the Constitution; that the Impugned Orders have been passed without providing any opportunity of hearing to the Petitioners, as such the Petitioners have been condemned unheard; that the Impugned Orders are liable to be set aside as the same have been passed against the principle of natural justice; that the Impugned Orders are general termination orders and have been passed without mentioning any reason, as such have no value in the eye of law; that the Impugned Orders have been passed on the basis of *mala fide* by the successor of the former Ombudsman; that the Petitioners were appointed in accordance with law but at the time of their termination only reason given is that their services are no longer required which itself is not a reason to terminate an employee; that when the extending outreach programme is still existed then there was no reason to terminate the Petitioners as they were appointed in pursuance of the said programme; that the Impugned Orders have been passed without any jurisdiction and lawful authority; that as the Petitioners were recruited through the course of law and therefore, could not be terminated without adopting due course of law; that in other Provinces of the Pakistan the said programme is being benefited but the Petitioners have been

terminated only in Punjab Province, as such a discriminatory attitude is being adopted towards that case of the Petitioners; that the Impugned Orders are non-speaking, as such liable to be set aside on this sole ground; that the elements of misconduct and misuse of authority are missing in the case in hand, therefore, termination of the Petitioners are without any legal justification; that no law regarding the termination or dismissal of the Petitioners has been provided, hence the instant petition is competent before this Court; that the Petitioners have been terminated prior to their settled tenure and that too without any backing of law; and that on the termination of the Petitioners all the welfare projects which were free and conducive to the public at large have become upset. The learned counsel for the Petitioners has placed reliance on the case titled *The Board of Trustees of Port of Bombay, v. Dilipkumar Raghavendranath Nadkarni and others* (AIR 1983 Supreme Court 109), *Abdul Wahid and 4 others v. City District Government through District Coordination Officer, Lahore and 3 others* (2014 PLC (C.S.) 820), *The Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others* (PLD 1972 Supreme Court 279), *Muslimabad Cooperative Housing Society Ltd. through Secretary v. Mrs. Siddiq Faiz and others* (PLD 2008 Supreme Court 135), *Malik Nazar Hussain v. National Bank of Pakistan and another* (2004 SCMR 28), *Messrs Ahmed Clinic v.*

Government of Sindh and others (2003 CLC 1196),
Muhammad Hafeez v. Judge Family Court and others (2013
CLC 470), *JIA Ram v. Smt. Kundana Wanti and 4 others*
(PLD 1978 Quetta 91), *Babar Hussain Shah and another v.*
Mujeeb Ahmed Khan and another (2012 SCMR 1235),
Petition Regarding Miserable Condition of Schools in the
matter of Constitutional Petition No.37 of 2012 (2014 SCMR
396), *Tahir Mahmud v. Qasim M. Niazi and others* (2014
PLC (C.S.) 1199), *Delhi Transport Corporation v. DTC*
Madosar Congress and others (AIR 1991 Supreme Court
101), *Muhammad Jameel and 45 others v. Taluka Nazim*
Taluka Muncipal Administration Khairpur and 5 others (2014
PLC (C.S.) 479), *Rab Nawaz Dhadwana Advocate and others*
v. Rana Muhammad Akram, Advocate and others (PLD 2014
Lahore 591) and *Arshad Mehmood v.*
Commissioner/Delimitation Authority Gujranwala and others
(PLD 2014 Lahore 221).

C. Submissions of the Respondents:

7. On the contrary, in reply to these petitions, the Respondents filed report and parawise comments raising certain preliminary objections regarding the maintainability of the Petitions as well as on merits. Mr. Shan Gull, Additional Advocate-General appeared on behalf of the Respondents and vehemently controverted the arguments advanced by the

learned counsel for the Petitioners and prayed for dismissal of these petitions on the grounds that these petitions are not maintainable on the sole ground that the Department/Ombudsman Punjab have no statutory Rules; that the Petitioners have rightly been terminated or their contract has not been extended by the Authority because it is well settled principle of law by virtue of provision of Section 21 of the General Clauses Act, 1897 that the Authority which has the power to appoint the Petitioners, has also the power to terminate them; that there is no right of the Petitioners at stake as the Petitioners were appointed against honorary posts without any remuneration or emoluments; that the Petitioners have no legal or justifiable right to remain on the said posts as it depends on the sole prerogative of the Authority; that the appointment letters of the Petitioners are self-explanatory and do not confer any right in favour of the Petitioners to remain on the said posts; that the posts against which the Petitioners are appointed are honorary in nature and do not create any vested rights in favour of the Petitioners to continue their services rather it is a State Largesse; that there were no terms and conditions in the appointment letters of the Petitioners, as such there was no need to adopt any procedure for termination of their services; that the Impugned Orders/termination orders depict that the Petitioners were terminated simplicitor because their services were no longer required and the Impugned Orders

do not reflect any allegation etc., as such no question of stigma arises; that the right may be at stake when Article 10-A of the Constitution is attracted but in the instant case as the Petitioners had no vested rights on the said posts therefore, Article 10-A of the Constitution does not attract to their case; that there is no disadvantage to the Petitioners on their termination because the posts were honorary and without any remuneration.

8. Learned counsel for the Respondents No.1 to 10 also opposed the contentions raised by the learned counsel for the Petitioners and *inter alia* submitted that as no right of the Petitioners was infringed, therefore, they have no *locus standi* or cause of action to file these petitions; that in view of the provisions of Sections 29 and 30 of the Act, these petitions are incompetent; that the outreach programme was a policy decision of the former Ombudsman, which can be reviewed, revised and modified, therefore, cannot be challenged in writ jurisdiction of this Court under Article 199 of the Constitution; that the reason given in the Impugned Orders was sufficient in view of the Petitioners' honorary status; that the Petitioners accepted the honorary assignments with their own choice and they cannot thrust themselves on this office as of statutory right had been created in their favour; that the outreach programme was a policy decision of the former Ombudsman Punjab which was not endorsed by the Government inasmuch as neither the posts were sanctioned nor extra funds were provided, therefore,

the Impugned Orders cannot be challenged in these petitions; that the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 is not attracted to the cases of the Petitioners as they were appointed on the posts which were not sanctioned; that the Petitioners have no legal right to continue with their honorary assignments when their assistance is no more required by the Ombudsman in discharge of their duties; that the question raised in these petitions does not call for judicial review as the administrative policy bars the jurisdiction of this Court. The learned counsel for the Respondents have placed reliance on the case titled *Dr. Akhter Khan federation of Pakistan etc.* (2012 SCMR 455), *Ashok Kumar Pandaey v. State of West Bengal* (AIR 2004 SC 280), *Babar Sattar v. Federation of Pakistan etc.* (2016 CLD 134), *Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others* (PLD 1993 SC 341), *Messrs. Gadoon Textile Mills and 814 others.v.WAPDA and others* (1997 SCMR 641), *Dunn v. Queen.* (1896 (1) QB 116), *Shenton v. Smith* (1895 AC 229), *Dr. Said Quam v. Secretary Education and others* (1998 PLC (C.S.) 1218), *B.P. Singhal's v. Union of India and others* (2010 6 SCC 331),

9. The Petitioners also filed rejoinder to the comments, vehemently denying the arguments of the learned counsel for the Respondents and mainly submitted that although the Petitioners were appointed on honorary posts but the same

procedure was followed for their appointment which was followed for appointment of Sanctioned posts, therefore, they cannot be terminated through such Impugned Orders rather due process of law should have been adopted. It is further added that when there is law for appointment of any person, there must be some law to deal with when he is being terminated, therefore, if the Act is silent about termination of the Petitioners presumption of which attached with the natural justice i.e. due process and affording personal hearing etc. to the Petitioners.

D. Determination:

10. In order to pass judgment upon the above mentioned facts, circumstances and arguments urged by the counsel for the parties at length, it is essential to discuss some moot points, arising out of these petitions.

E. Institution of the Ombudsman Punjab:

11. In order to resolve the controversy and to deal with the issues raised, I am of the view that before dilating upon any determination, it is essential to discuss the relevant law in respect of the Ombudsman Punjab.

12. Importantly, the Institution of the Ombudsman Punjab has been created by the Act of Punjab Assembly known as the Punjab Office of the Ombudsman Act, 1997 (Act X of 1997). It enjoys the status of 'Special Institution' as envisaged in the Punjab Government Rules of Business, 2011. Creation of

Ombudsman is made under Section 3 of the Act, which is reproduced below and is as follows:

“3. Appointment of Ombudsman.— (1) There shall be an Ombudsman, for the Province of Punjab who shall be appointed by the Government.

(2) An Ombudsman shall be a person who is, or has been or is qualified to be a judge of the High Court or any other person of known integrity.

(3) Before entering upon office, the Ombudsman shall take an oath before the Governor in the form set out in the First Schedule to this Act.

(4) The Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the Executive and all executive authorities throughout the Province shall act in aid of the Ombudsman.”

13. The Act distinctively provides two independent modes of appointments in the Office of the Ombudsman. One of the two modes is appointment under Section 8 of the Act for regular cadre, for which PPSC is not required to be consulted for seeking its recommendations for appointments, determining the method of recruitment and qualifications for the posts. The second mode is temporary appointments by the Ombudsman under Section 20 of the Act (which does not form a regular cadre or even any entitlement for regularization) for his assistance in the performance of his duties under the Act. The Authority regarding appointments under Section 20 of the Act has been specifically conferred upon the Ombudsman Punjab.

When exercising such authority Ombudsman may appoint persons to assist it in the discharge of his duties under the Act and if it requires such assistance the sole criterion for such appointment is competence and integrity of the prospective appointee. The appointments made under Section 20 of the Act are purely temporary in nature and without any specific period, solely dependent upon the discretion of the Ombudsman, keeping in view the assistance required if any. It is pertinent to mention here that such appointments are not regular appointments and can be dispensed with as and when the assistance of the staff is no more required by the Ombudsman or the Ombudsman is not satisfied with the competency or integrity of the appointee. For the sake of clarity Sections 20 and 37 of the Act are reproduced below and are as follows:

“20. Appointment of advisors, etc.—The Ombudsman may appoint competent persons of integrity as advisors, consultants, fellows, bailiffs, interns, commissioners and experts as well as ministerial staff with or without remuneration to assist him in the discharge of his duties under this Act.

37. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.”

14. Now I would like to advert to the essential points i.e. work assigned to the Petitioners and status/nature of their duties. It is the Ombudsman, who is to decide whether assistance is required or not and if required, it is the

Ombudsman who is to ensure that the employees' competence and integrity are beyond any doubt as well. Admittedly, the Petitioners claimed that they volunteered to assist the Ombudsman in discharge of their duties under the Act thereafter they were appointed as honorary Advisors without remuneration by the predecessor of the Respondent No.1. It is also not denied that the Petitioners were appointed under Sections 20 and 37 of the Act as advisors without any remuneration. As stated above that the appointments made under Section 20 of the Act are purely temporary in nature and without any specific period, solely dependent upon the discretion of the Ombudsman, keeping in view the assistance required, if any. It is pertinent to mention here that such appointments are not regular appointments and can be dispensed with as and when the assistance of the staff is no more required by the Ombudsman or the Ombudsman is not satisfied with the competency or integrity of the appointee.

15. The Petitioners have prayed for their reinstatement in service so that their assistance may be taken by the Respondents for an indefinite period. It is necessary to point out here that no period of employment was mentioned in all the honorary appointment orders. But in case of reinstatement on this ground it would tantamount to bind the Respondent No.1 to take such forced assistance which would go on forever. The law

does not envisage that the honorary appointees would continue to provide the assistance as long as they desire to do so, since no period of appointment has been mentioned in the honorary appointment orders. The question arises here whether the assistance is required or not. It is to be noted here that the same is to be decided by the person who is to be assisted upon and not by the person who offers his assistance or desires to assist. A person cannot be compelled to take assistance voluntarily and compelling to do so would be entirely against the concept of assistance. As the posts of the Petitioners were not regular posts and even no period of employment was mentioned in all the honorary appointment orders, therefore, they cannot claim their posts to be a regular post or they have any vested rights on that posts. The appointments of the Petitioners were honorary and do not create any vested right in their favour to be regularized or reinstated in service. Reliance in this regard can be placed on the case titled **Mumtaz Ali Bohio and 24 others v. Federal Public Service Commission through Chairman at Islamabad and another** (2002 SCMR 772) wherein the Hon'ble Supreme Court of Pakistan has held that the vested rights originate from contracts, statutes, and by operation of law and none of the above conditions is attracted to this case. Reliance can also be placed on the case titled **Syed Muhammad Amin and another v. Federal Public Service Commission through Chairman and 2 others** (2002 PLC (C.S.) 1538).

17. From the above it is clear that vested rights originate from contracts, statutes and by operation of law but none of the conditions is attracted in the case in hand. Infact the status of the advisor under the Act is just that of an Assistant to the Ombudsman and cannot be construed to be an independent officer working at Tehsil and District level like the other Tehsil and District Officers of the Government. It may also be observed here that there is no post of Tehsil or District Advisors in the budget. The Petitioners were appointed in pursuance of a programme namely Extending Outreach Programme which is allegedly a concept paper and the said paper does not create any right of the Petitioners.

18. It is also worth mentioning here that the word advisor used in the Act cannot be construed to confer upon the honorary Tehsil Advisor or honorary District Advisors status of independent officer performing specific duties under the law. The advisors, including the Petitioners alleged to be an honorary Tehsil and District Advisors, cannot perform any duties unless and until specifically delegated by the Ombudsman under Section 19 of the Act. For the sake of brevity the said Section is reproduced hereby below and is as under:

“19. Delegation of powers.—The Ombudsman may, by order in writing, delegate such of his powers as may be specified in the order, to any

member of his staff or to a standing or advisory committee, to be exercised subject to such conditions as may be specified and every report of such member or committee shall first be submitted to the Ombudsman with his or its recommendations for appropriate action.”

19. The contention of the learned counsel for the Petitioners that the said created posts were near to confirmation/approval when these are removed, is not instructive for the reasons that these posts are purely on temporary basis coupled with the fact that no mutually agreed terms and conditions existed between the parties, e.g. regarding period of employment, leave matters, conduct, recovery of losses, performance evaluation etc.

20. The question of discrimination, as has been arisen by the learned counsel for the Petitioners while arguing the case, is being dealt with. In this regard it is stated that all the honorary Tehsil Advisors were relieved vide Impugned Order dated 22.07.2016 and all the honorary District Advisors were relieved vide Impugned Order dated 17.08.2016. Now neither a single honorary Tehsil or District Advisor with or without any remuneration is allegedly working for the Office of the Ombudsman Punjab at present nor a single new appointment on honorary basis has been made, therefore, no question of discrimination arises. It is also pointed out here that each Province is empowered and entitled to make its own decision

regarding the subjects that fall within their respective domain in accordance with their own circumstances. A decision by one Province regarding any matter cannot be cited as ground for discrimination if another Province does not take the same decision. To hold otherwise would be an intrusion into the provincial economy of the Provinces. In this view of the matter, the Petitioners have failed to make out a case of discrimination.

21. The Petitioners including other similarly placed persons were appointed as Tehsil Advisors on honorary basis without any remuneration in the year 2014 and onward under the Outreach Programme. As such, they have no vested right to be regularized or reinstatement in service having no cause of action and *locus standi* to challenge the Impugned Orders. As the posts of the Petitioners were honorary in nature therefore, do not confer any vested rights upon the Petitioners and can be withdrawn at any time. It is an established law that an authority having power to make appointment shall also have power to remove any person appointed in exercise of that powers. As per Sections 20 and 21 of the Punjab General Clauses Act, 1956 authority having power to make an order also has the power to undo the same. For the sake of brevity, the said Sections are reproduced below and is as follows:

“20. Power to make to include power to add to, amend, vary or rescind orders, rules or bye-laws.— Where, by any [Punjab Act], a power to issue notifications, orders,

rules, scheme, form or bye-laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind, any notifications, orders, rules, scheme, form, bye-laws so issued.

21. Making of rules or bye-laws and issuing of orders between passing and commencement of enactments. Where, by any [Punjab Act] which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any judge or officer thereunder or with respect to the person by the time when, or the place where, or the manner in which, or whom, or the fees for which anything is to be done under the Act, then that power may be exercised at any time after the passing of the Act, but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.”

22. In this regard reliance can be placed on the case titled **Muhammad Zakir Khan. V. Government of Sindh and others** (2004 SCMR 497) wherein the Hon’ble Supreme Court of Pakistan has held that power of rescission or recall of the earlier order is always available to the Authority passing that order.

23. The learned counsel for the Petitioners has laid much stress that before removal of the Petitioners from their posts, an opportunity of personal hearing should have been afforded to them which is essential under the principle of natural justice. No doubt the principle of natural justice provides fair trial and opportunity of personal hearing etc. But in the present case, the Petitioners were not afforded any opportunity of personal hearing for the following reasons:

- i. The Petitioners were appointed as honorary Advisors.
- ii. The Petitioners were appointed without any remuneration.
- iii. The Petitioners were appointed on temporary posts.
- iv. The Petitioners were appointed without specifying any period of tenure.
- v. The Petitioners were appointed without any terms and conditions of service.
- vi. The Petitioners were to assist voluntarily.
- vii. The Petitioners accepted their posts voluntarily with their free will and confident without any benefit.
- viii. The Petitioners would not suffer loss of any kind in case they are removed.
- ix. The discretion was solely depends upon the Ombudsman.

24. From the above, it can safely be held that there was no need to afford personal hearing before removing the Petitioners for the reason that they had no vested rights to defend. Reliance in this regard can be placed on the case titled *Nazir Ahmed Panhwar v. Government of Sindh through Chief Secretary Sindh and others* (2009 PLC (C.S.) 161) and *Abdul Haq Indhar and others v. Province of Sindh through Secretary, Forest, Fishries and Livestock Department Karachi and 3*

others (2000 SCMR 907) wherein the Hon'ble Supreme Court of Pakistan has held as under:

“The principle of natural justice enshrined in maxim "audi alteram partem" is always deemed to be embedded in the statute and even if there is no such specific or express provisions, it would be deemed to be one of the parts of the State because no adverse action can be taken against a person without providing right of hearing to him. But at the same time this principle cannot be deemed to be of universal nature because before invoking/applying this principle one has to specify that the person against whom action is contemplated to be taken prima facie has a vested right to defend the action and in those cases where the claimant has no basis or entitlement, in his favour he would not be entitled for protection of the principles of natural justice.

Principle of "audi alteram partem" is to be read into the relevant provision if the action is to affect any vested right of a person. If this rider is not placed for applying the principle of "audi alteram partem" then in certain cases where the law demands that action must be taken promptly shall defeat the ends of justice and there is very likelihood that the object is required to be achieved by an immediate action shall not be accomplished and in the meanwhile a person who has no vested right shall continue to enjoy the benefits of the deeds without any legal entitlement. It is high time to ensure that transaction between the individuals vis-a-vis the State are just, fair, open, honest and transparent. Therefore, action of individuals which is not honest and based on mala fides may not be allowed to exist merely for the reason that the principle of natural justice was violated.”

25. Furthermore, from the bare examination of the Impugned Orders, it is reveals that the same has been passed on the basis that the services of the Petitioners are no more

required. The Petitioners services were removed simplicitor and there is no stigma on their career/character. Therefore, the Petitioners have nothing to agitate before this Court through availing the remedy under Article 199 of the Constitution.

26. From the above detailed discussion, I am of the affirmed view that there is no illegality in the Impugned Orders which have been rightly passed. The Petitioners have failed to point out any illegality or perversity in the Impugned Orders or make out a case in their favour. Resultantly, the instant petition as well as the above mentioned writ petitions are hereby dismissed.

(JAWAD HASSAN)
JUDGE

Announced in open Court on the 22nd day of December 2017

Approved for reporting

JUDGE