

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT LAHORE.
JUDICIAL DEPARTMENT

W.P. No.28225 of 2016.

Muhammad Qamurdin. Versus Federation of Pakistan etc.

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23.04.2018. Mr. Ishtiaq A. Chaudhary, Advocate for the petitioner in this petition.
Mr. Muhammad Almas, Assistant Attorney General.
Mirza Amer Baig, Advocate for PTCL in this petition.
For attendance in connected petitions see Schedule-A, B & C.

Through this single order, I intend to decide this petition as well as those mentioned in Schedule-A, B & C having commonality of law and facts inasmuch as in the Writ Petitions enumerated in Schedule-A the petitioners have *inter-alia* sought a direction restraining the respondents to alter their basic pay scales and to increase their salary according to the revision introduced by the Federal Government from time to time whereas in the petitions mentioned in Schedule-B the petitioners have *inter-alia* prayed for restoration of their pension from the date of their retirement and payment of arrears of pension on the basis of restored pension in view of the judgment of the Apex Court of the country reported as Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/O Information Technology and

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Telecommunication and others (2012 SCMR 152)

while Schedule-C comprises of petitions filed by the employees who retired from service under VSS wherein they have *inter-alia* prayed for payment of pensionary benefits as admissible to ordinary retirees.

2. Mr. Khalid Ismail, Advocate representing the petitioners in certain petitions submits that the petitioners were appointed by the Pakistan Telecommunication Corporation (hereinafter to be referred as '**the Corporation**') and according to section 35 of the Pakistan Telecommunication (Re-organization) Act, 1996 (hereinafter to be referred as '**the Act 1996**') their terms & conditions of service were fully protected; that as the regulations framed by the Corporation were adopted by the Pakistan Telecommunication Company Limited (hereinafter to be referred as '**the PTCL**') at the time of transfer of the petitioners to the PTCL, their existing terms & conditions were protected; that according to section 20 of the Pakistan Telecommunication Corporation Act, 1991 (hereinafter to be referred as '**the Act 1991**') till the framing of service rules/regulations by the Corporation, the rules/regulations applicable to the employees transferred from Telephone &

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Telegraph Department (hereinafter to be referred as T&T Department) were applicable to the employees of the Corporation and that PTCL sought legal opinion/advice from the Ministry of Information & Technology (I.T. & Telecom Division) regarding the terms & conditions of the transferred employees whereupon it was opined that they were entitled to the same terms & conditions prevalent at the time of their transfer from the Corporation to PTCL.

3. Hafiz Tariq Nasim, Advocate representing the petitioner in W.P.No.168790/2018 (Schedule-A) argues that the petitioner was appointed as Telephone Supervisor upon recommendations by the Establishment Division, his terms & conditions were at par with those of the civil servants; that according to clause 16.2 of the Share Agreement between the Government of Pakistan and Etisalat International Pakistan, all the transferred employees irrespective of their induction by the T&T department or the Corporation were held entitled to the statutory protection regarding their terms & conditions of service. In support of his arguments, learned counsel has referred to Paras No.13, 14 & 18 of the judgment reported as Masood Ahmed Bhatti and others v.

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Federation of Pakistan through Secretary, M/O Information Technology and Telecommunication and others (2012 SCMR 152), Paras No.8 & 23 of the judgment reported as P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), Zarai Taraqiati Bank Limited v. Said Rehman and others (2013 SCMR 642) and Muhammad Riaz v. Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others (2015 SCMR 1783).

4. Mr. Ishtiaq A. Chaudhary, Advocate representing the petitioners in most of the petitions, in addition to adopting the arguments advanced by M/s Khalid Ismail and Hafiz Tariq Nasim, Advocates submits that the employees who were transferred firstly to the Corporation and then to the PTCL are entitled to the same perks & privileges as admissible to the civil servants; that since the Act 1991 did not repeal the rules applicable to the employees of T&T department, they were also applicable to the employees of the Corporation; that none of the petitioners, being represented by him, are either contract or work charge employee, thus, their terms & conditions cannot be altered or varied by the PTCL

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to their disadvantage; that the service regulations which were framed by the Corporation in the year 1996 could not be made applicable retrospectively to the disinterest of the employees of the Corporation who joined prior to the year 1996; that prior to the promulgation of the Act 1996, the Telecommunication Ordinance, 1995 was enforced on 07.03.1995 and according to section 12 thereof all the employees, irrespective of the fact whether recruited by the Corporation or became employees of the Corporation under section 9 of the Act 1991, were transferred to the PTCL on the same terms & conditions which were applicable to them immediately prior to their transfer; that the Apex Court of the country in the case of Masood Ahmed Bhatti and others (Supra) has already held that the employees who were in service, prior to 01.01.1996, were governed under the statutory service regulations and the benefits given by the Federal Government to its employees from time to time were/are admissible to them, thus, they are entitled to revised pay as determined by the Federal Government. Relies on P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), Muhammad Riaz v.

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Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others (2015 SCMR 1783), Pakistan Telecommunication Employees Trust (PTET) through M.D., Islamabad and others v. Muhammad Arif and others (2015 SCMR 1472), Zarai Taraqati Bank Limited v. Said Rehman and others (2013 SCMR 642), Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/O Information Technology and Telecommunication and others (2012 SCMR 152), Pakistan Telecommunication Company Limited through General Manager and another v. Muhammad Zahid and 29 others (2010 SCMR 253), Pakistan Telecommunication Company Limited v. Province of N.-W.F.P. through Secretary, Excise and Taxation, Peshawar and others (PLD 2005 SC 670), Order, dated 09.01.2017, passed by the Apex Court of the country in Crl. Org. Petition No.63 of 2015 in Civil Petition No.797 of 2015 titled Muhammad Riaz v. Walid Irshaid, Order, dated 19.02.2016 passed by the Apex Court of the country in Civil Review Petition Nos247-249 of 2011 in Civil Appeals No.239 to 241 of 2011 titled P.T.C.L. etc. and others v. Masood Ahmed Bhatti etc., Judgment,

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dated 23.08.2013, rendered by the Apex Court of the country in **Civil Petitions No.717 and 718 of 2013 titled The President PTCL and others v. Faiz-ur-Rehman**, Order, dated 06.12.2013, passed by the Hon'ble Supreme Court of Pakistan in **Civil Review Petitions No.253-254 of 2013 in Civil Petitions No.718-718 of 2013 titled President PTCL, Islamabad and others v. Faiz-ur-Rehman and others** and order, dated 19.11.2012, passed by the Apex Court of the country in **Civil Petition Nos. 613 and 614 of 2012 titled Pakistan Telecommunication Company Limited through its President v. Muhammad Samiullah and others, Pakistan Telecommunication Company Limited v. Mohammad Dilpazeer Abbasi and others (2016 PLC 367), Hassan Muhammad Rana v. P.T.CL. through President and another (2012 PLC 386), Atique Hussain and another v. Federation of Pakistan through Secretary, Ministry of Communication and 2 others (2005 CLC 1931)**, Order, dated 21.04.2015, passed by this Court in **W.P. No.10380/2012 titled Asghar Ali v. PTCL through its President etc,** Judgment, dated 25.01.2016, passed by this Court in **ICA No.861/2015, titled PTCL Vs. Asghar Ali,**

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Judgment, dated 16.11.2015, passed by this Court in **W.P. No.19546/2012 titled Ch. Basharat Ali v. Pakistan Telecommunication Company Limited and another**, Judgment, dated 03.05.2016, rendered by this Court in **ICA No.1772/2015, titled Pakistan Telecommunication Company Ltd. and another v. Ch. Basharat Ali**, Order, dated 15.03.2011, passed by the Islamabad High Court, Islamabad in **W.P. No.4853/2012, titled Muhammad Ashraf etc. v. Pakistan Telecommunication Company Limited etc.** and Judgment, dated 21.03.2012, rendered by the Peshawar High Court, D.I. Khan Bench, in **W.P. No.19-D/2012 titled Muhammad Samiullah v. Pakistan Telecommunication Company Limited through its President etc.**

5. Mian Jaafer Hussain, Advocate representing the petitioners in W.P. No. 23575/2016 (Schedule-A) has adopted the arguments advanced by Hafiz Tariq Nasim, Advocate.

6. Mr. Muhammad Imran Chohan, Advocate representing the petitioners in certain petitions states that some of the petitioners being represented by him having already retired from service have filed their

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representations for redressal of their grievances regarding provision of pay and pensionary benefits according to the revised rate and that the petitioners who are still serving the PTCL are being penalized while re-designating their posts just to bring them out of the mainstream with a view to deprive them from service benefits to be given by the Federal Government from time to time.

7. Learned Assistant Attorney General states that as no relief has been claimed against the Federation rather the plea of the petitioners is that as the Federal Government is guarantor towards the protection of terms & conditions of the petitioners, prevalent at the time of their transfer to the Corporation or to the PTCL, the real contest is between the petitioners and PTCL.

8. Mr. Shahid Anwar Bajwa, Advocate representing PTCL in some of the cases argues that as a matter of fact the employees who were in service prior to 01.01.1991 were governed under statutory service rules but the said rules are not applicable to the employees who were inducted in service by the Corporation after 01.01.1991; that in none of the

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judgments, referred by the counsel for the petitioners, it has been held that the employees who joined the Corporation after 1991 were governed under statutory rules; that section 9 of the Act 1991 empowered the Corporation to frame rules without the intervention of the government, thus, the rules framed under the said Act were non-statutory in nature; that as per section 59(2) of the Act 1996 only existing terms & conditions of service of transferred employees which were applicable at the time of their transfer to the PTCL were protected but the said fact cannot be used to declare the Service Regulations framed by the Corporation as statutory, thus, the writ petitions filed on behalf of the transferred employees, who joined the Corporation after 01.01.1991, are not maintainable; that the Apex Court of the country has already decided in Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 SC 132) that the employees who severed their relation with the department under VSS were not entitled to pensionary benefits admissible to the ordinary retirees; that the latest judgment on the subject passed by a Five Member Bench has been reported as P.T.C.L. and others v. Masood Ahmed

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Bhatti and others (2016 SCMR 1362) whereby the earlier judgments passed in the cases of *Muhammad Shahid and Muhammad Riaz* (Supra) have been revisited by the Apex Court of the country, thus, they cannot be quoted as precedent; that all the employees of T&T department were not civil servants as according to section 2(b)(iii) of the Civil Servants Act, 1973 the workmen have been ousted from the definition of civil servant which fact has further been affirmed under clause 9 of Second Schedule to Workmen Compensation Act, 1923 according to which the persons related with establishment of telephone industry etc. are workmen, thus, these petitions are not maintainable; that according to the plain language of Act 1991 and the Act 1996 the employees were entitled to pay protection which was admissible at the time of their transfer but the said fact cannot be used to compel the PTCL to pay salaries to the transferred employees according to the rates revised by the Federal Government from time to time; that the judgment of the Apex Court of the country in the case of *Zarai Taraqiati Bank Limited* (Supra) is not applicable to these petitions inasmuch under section 6 of the Agricultural Development

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Bank of Pakistan (Re-organization & Conversion) Ordinance, 2002 the rules and regulations prevalent in the erstwhile Agricultural Development Bank of Pakistan were protected whereas at the time of promulgation of the Act 1996 though certain legislative pieces and actions taken under the said enactments were protected under section 59(2) of the Act, 1996 but the rules and regulations framed by the Corporation were not given such protection apparently for the reason that they were not applicable to the employees of the Corporation upon their transfer to the PTCL; that as the Share Agreement was executed between the PTCL and Etisalat International Pakistan it has nothing to do with the terms & conditions of the employees who were transferred from Corporation to the PTCL thus the same cannot be used to establish that they were governed under statutory service rules; that in the year 1993 it was administratively decided that all appointments in Federal departments shall be made through the Establishment Division, thus, the recommendation of the petitioner in W.P. No.168790/2018 by said Division does not render his status as civil servant; that though the employees of

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the T&T department were civil servants but they were bound to follow the changed terms & conditions of their service firstly upon their transfer in the Corporation and then in the PTCL. In support of his contentions, learned counsel has relied upon the cases reported as (Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571)), (P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362)), (Muhammad Riaz v. Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others (2015 SCMR 1783)), (State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (2012 PLC (C.S.) 218)), (Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 SC 132)), (Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (1999 SCMR 1526)), (Pakistan Telecommunication Corporation and another v. Riaz Ahmad and 6 others (PLD 1996 SC 222)), (Ahmad Khan Niazi v. Town Municipal Administration, Lahore through Tow

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Municipal Officer and 2 others (PLD 2009 Lahore 657), Muhammad Din v. Nazar Muhammad Khan and others (PLD 1966 (W.P.) Lahore 780); Order, dated 17.05.2017, passed by the Hon'ble Supreme Court of Pakistan in Cr.R.P. No.86/2015 titled Pakistan Telecommunication Employees Trust v. Federation of Pakistan through Secretary, M/o Information Technology, Judgment, dated 27.05.2016, rendered by this Court in W.P. No.5978/2011, titled S.M. Talib Naqvi etc. v. President/CEO PTCL etc., Judgment, dated 21.04.2016, rendered by the Islamabad High Court, Islamabad in W.P. No.3381 of 2012 titled Syed Imran Hussain v. Federation of Pakistan etc. and Judgment, dated 06.05.2013, passed by the Islamabad High Court, Islamabad in W.P. No.1350/2012, titled Ammad Ul Hassan Qureshi v. Pakistan Telecommunication Co. Ltd. and 3 others.

9. M/s Sheikh Aftab Ahmad and Mirza Aamir Baig, Advocates appearing on behalf of PTCL in some of the petitions have adopted the arguments advanced by Mr. Shahid Anwar Bajwa, Advocate.

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10. While exercising his right of rebuttal, Mr. Ishtiaq A. Chaudhary, Advocate submits that dozen of persons who joined the Corporation after 01.01.1991 filed their Writ Petitions before Islamabad High Court which were accepted through order, dated 08.03.2011, passed in W.P. No.4853/2010 against which CPLA filed by the PTCL was also dismissed, thus, these petitions are maintainable; that after pronouncement by the Apex Court of the country that section 2(1) of the Civil Servants Act, 1973 is not applicable to the employees of the PTCL said provision cannot be referred to establish that the petitioners falls within the definition of workmen; that as section 8 of the Act, 1996 relates to consultants, engineers etc. same are not applicable to the petitioners; that as according to section 36(2) of the Act, 1996 the existing terms & conditions of service of the employees who were transferred to PTCL were protected, the rules and regulations applicable to them were automatically protected; that the judgments referred by Mr. Shahid Anwar Bajwa, Advocate from the jurisdiction of Islamabad High Court and Peshawar High Court are *per in curium* for the reason that while deciding the

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matters the earlier judgments of the Hon'ble Supreme Court of Pakistan on the subject were not discussed by the said courts; that the judgment in Iqbal Nasir's case has already been disbelieved by the Apex Court of the country while deciding Review Petition through judgment reported as P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362) and that according to section 39(2) of the Act, 1996 the operation of Etisalat International Pakistan is going to end in the year 2021 and as a result the PTCL would again be under the control of the Federal Government.

11. Mr. Khalid Ismail, Advocate while exercising his right of rebuttal, submits that as existing terms & conditions of service of the employees who were transferred to PTCL were protected through the statutory intervention these petitions are maintainable as the petitioners have agitated their grievance against violation of their terms & conditions of service which were protected under section 36(2) *ibid.*

12. Mian Jaffer Hussain Advocate, in rebuttal, submits that the Apex Court of the country while

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deciding the cases reported as P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/O Information Technology and Telecommunication and others (2012 SCMR 152) has held that Writ Petition by the employees of the Corporation are maintainable, thus, no exception can be taken against the maintainability of these petitions.

13. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with these petitions, as well as the case-law cited at the bar.

14. Firstly, taking up the plea of the petitioners, who joined the Corporation after 01.01.1991, that in view of the judgment reported as Masood Ahmed Bhatti and others (Supra) the employees who were serving in the Corporation prior to 01.01.1996 were covered under statutory rules, thus, their writ petitions are maintainable, I am of the humble opinion that with a view to appreciate the said contention a perusal of the referred judgment is of

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paramount consideration, opening lines whereof read
as under: -

“These appeals have been filed by three individual appellants who admittedly were civil servants employed by the Federation in the Telephone and Telegraph ('T&T') Department prior to the enactment of the Pakistan Telecommunication Corporation Act 1991 (the 'PTC Act').....(emphasis provided).

The afore-quoted portion from the judgment of the august Supreme Court of Pakistan leaves no ambiguity that all the three petitioners before the Apex Court of the country in the referred case were those who were employed by the Federal Government in T&T department. Subsequently, after promulgation of the Act 1991, they were transferred to the Corporation. Further, after enforcement of the Act 1996 they were then transferred to the PTCL. In this scenario, the assertion of learned counsel for the petitioners that the employees who were in service prior to 01.01.1996 were governed under statutory rules, has no substance.

Moreover, the Apex Court of the country in the case of Divisional Engineer Phones, Phones Division, Sukkur and another (Supra) while dealing with the nature of service regulations, framed by the

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Corporation, regarding terms & conditions of its employees has *inter-alia* held as under: -

*“In cases of Corporation created by the Government through statutory instruments if existing employees are transferred to the Corporation, in the absence of any provision to the contrary, the transferred employees continue to remain in the service of Corporation on the same terms and conditions under which they were working before their transfer to the Corporation. **Therefore, if an employee of the Corporation before his transfer to the Corporation was a civil servant, he continues to be a civil servant. In all other cases, where an employee is appointed in the service of the Corporation after the Corporation is established, his service is governed by the service rules of the Corporation. If such rules are not statutory, the principle of master and servant governed the relationship between the employee and Corporation.*** (emphasis provided)

Further, the said issue also came under discussion before the Apex Court of the country in the case reported as *Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others* (PLD 2011 SC 132) wherein the status of the employees, who joined the Corporation after 01.01.1991, was adjudged in the following manner:-

“24. However, this Court, in the case of Principal Cadet Collage Kohat v. Muhammad Shoaib Qureshi (PLD 1984 SC 170), while dealing with the question, as to whether in absence of any breach of statutory provision the employees of a corporation can maintain an action for reinstatement, held that where the conditions of service of an employee of a

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*statutory body were governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules could be set aside by a writ petition; however, where his terms and conditions were not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he was employed, had issued for its internal use, any violation thereof would not, normally, be enforced through a writ petition. Recently, this Court in Tanweer-ur-Rehman's case (supra), while dealing with the issue of invoking of jurisdiction of the High Court under Article 199 of the Constitution by the employees of the PIAC, held that although the appellant-Corporation was performing functions in connection with the affairs of the Federation, but since the services of the respondent-employees were governed by the contracts executed by them with the employer, and not by the statutory rules framed under section 30 of the Pakistan International Airlines Corporation Act, 1956 with the prior approval of the Federal Government, therefore, they would be governed by the principle of 'Master and Servant'. On the question whether in absence of any breach of statutory provision, the employees of appellant-Corporation could maintain an action for reinstatement etc., it was observed that the said question needed no further discussion in view of the fact that this Court was not of the opinion that if a Corporation was performing its functions in connection with the affairs of the Federation, the aggrieved persons could approach the High Court by invoking its constitutional jurisdiction. **But as far as the cases of the employees regarding their individual grievances were concerned, it was held that they were to be decided on their own merits, namely, if any adverse action was taken by the employer in violation of the statutory rules, only then such action would be amenable to the writ jurisdiction. Therefore, in absence of statutory rules, the principle of 'Master and Servant' would be applicable***

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and such employees would be entitled to seek remedy permissible before the Court of competent jurisdiction. Similarly, in M. Tufail Hashmi (supra), after discussing the aforesaid two judgments in detail, it was held that the employees of those organizations, which were performing functions in connection with the affairs of Federation, were eligible to approach the High Court under Article 199 of the Constitution if their services were governed by statutory rules. It was further held that since the employees of AIOU, SME Bank and Pakistan Steel Mills, who approached the Service Tribunal for redressal of their grievances, were not enjoying the protection of statutory rules, therefore, the Service Tribunal had no jurisdiction to adjudicate upon such matters and they would be governed by the principle of 'Master and Servant'.” (emphasis provided).

A survey of the afore-quoted judgments renders it crystal clear that the employees who were transferred from T&T department to the Corporation and then to the PTCL were governed under statutory service rules, prevalent at the time of their transfer to the Corporation, whereas the employees recruited by the Corporation were governed under non-statutory service rules/regulations in respect of their terms & conditions of service and in case of grievance of an individual against violation of the regulations framed by the Corporation under section 20 of the Act 1991 the constitutional petition was not maintainable, however, as the Corporation fell within the definition

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of person as defined under Article 199(5) of the Constitution of Islamic Republic of Pakistan, 1973 in respect of other matters it was amenable to writ jurisdiction of this Court.

15. In support of their contentions that the writ petitions filed by the employees who joined after 01.01.1991 are maintainable, learned counsel for the petitioners have also referred to the judgment of Zarai Taraqati Bank Limited v. Said Rehman and others (2013 SCMR 642). In my humble opinion, the referred case is not applicable to the facts and circumstances of the petitions filed by the employees who joined the Corporation after 01.01.1991 inasmuch as according to section 6 of the Agricultural Development Bank of Pakistan (Re-organization & Conversion) Ordinance, 2002 the service rules and regulations applicable to the employees of the Bank at the time of their transfer to the Company were saved whereas in the matters of the employees of the Corporation who were transferred to PTCL through certain enactments and the actions taken there-under were protected but the service rules and regulations framed by the Corporation were not given any protection.

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Reference in this regard can be made to section 59 of the Act 1996 which for convenience of reference is reproduced herein below: -

“59. Repeal and Savings.—

(1) The Pakistan Telecommunication Corporations Act, 1991(XVIII of 1991), The Pakistan Telecommunication (Re-Organization) Ordinance, 1996 (LXXVII of 1996), and the Ministry of Communications, Government of Pakistan, Notifications numbering 5(4)/95-PTC, dated the 7th August, 1995, are hereby repealed.

(2) Notwithstanding anything contained hereinbefore, all orders made, actions taken, vesting orders or notifications issued, property, assets and liabilities of the Corporation vested or transferred and the employees of the Corporation transferred to the Pakistan Telecommunication Authority, Frequency Allocation Board, Pakistan Telecommunication Company Limited, National Telecommunication Corporation or Pakistan Telecommunication Employees Trust, under any of the powers conferred or vested under the Pakistan Telecommunication (Re-Organization) Ordinance, 1995 (CXV of 1995), the Pakistan Telecommunication (Re-Organization) Ordinance, 1996 (XXX of 1996), the Pakistan Telecommunication(Re-Organization) Ordinance, 1996 (LXXVII of 1996) shall be deemed always to have been lawfully and validly made, taken, issued, vested or transferred under the provisions of this Act and shall continue to be in force unless amended, varied, withdrawn, rescinded or annulled by a person or authority competent to do so under this Act.”

A cursory glance over the afore-quoted provision shows that though certain actions taken under the repealed enactments were saved but the service

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regulations framed by the Corporation were not specifically given such protection, thus, it cannot be presumed that they were intact even after repeal of the Act 1991.

It is added that when the parent statute viz. the Act 1991 was repealed, how the rules framed by the relevant authority while exercising its powers under the said Act could remain in field especially when they were not saved under the repealing/saving clause of the Act 1996.

16. Learned counsel for the petitioners, being swayed with the observation of the august Supreme Court of Pakistan that the Corporation falls within the definition of person in terms of Article 199(5) of the Constitution of Islamic Republic of Pakistan, 1973 have argued that the writ petitions filed by the employees, who joined the Corporation after 01.01.1991, are maintainable. Perhaps, learned counsel for the petitioners has contended so in oblivion of the fact that maintainability of a writ petition by the employees is determined on the basis of the relevant service rules/regulations. So far as the cases filed by the employees, who joined the

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Corporation after 01.01.1991, are concerned, admittedly, prior to their transfer to the PTCL they were governed under non-statutory service rules framed by the Corporation without intervention of the Federal Government, thus, the writ petitions by such employees are not maintainable.

17. While opposing the submissions made by learned counsel for the petitioners, who were initially appointed in T&T department, that they are entitled to same benefits introduced by the Federal Government from time to time, Mr. Shahid Anwar Bajwa, representing the PTCL has argued that pay protection does not mean payment of salary by the Corporation or the PTCL according to the rates revised by the Federal Government from time to time. In this regard, I disagree with learned counsel for the PTCL for the reason that in the case of P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362) while clinching the issue, under discussion, the Apex Court of the country has *inter-alia* observed as under: -

“6. Before we appreciate arguments addressed at the bar, it would be rather necessary to refer to section 9 of the Act of 1991 and sections 35 and 36 of the Act of 1996 which read as under:-

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"9. Transfer of departmental employees to the Corporation.---

(1) Notwithstanding anything contained in any law, contract or agreement, or in the conditions of services, all departmental employees shall, on the establishment of the Corporation, stand transferred to, and become employees of the Corporation, on the same terms and conditions to which they were entitled immediately before such transfer, provided that the Corporation shall be competent to take disciplinary action against any such employee.

(2) The terms and conditions of service of any such person as is referred to in subsection (1) shall not be varied by the Corporation to his disadvantages.

(3) Notwithstanding anything contained in any law for time being in force, no person who stands transferred to the Corporation by virtue of subsection (1) shall be entitled to any compensation because of such transfer."

'35. Vesting of the rights, property and liabilities of the Corporation.---

(1) The Federal Government may, by orders, direct that all or any property, rights and liabilities to which the Corporation was entitled or subject to immediately before such orders, and identified therein, shall, on such terms and conditions as the Federal Government may determine, vest in

- a) the PTCL;*
- b) the National Telecommunications;*
- c) the Authority;*
- d) the Trust; or*
- e) the Board through Federal Government, and become the property, rights and liabilities of the respective entity.*

(2) An order issued under subsection (1) shall specify the employees of the Corporation who

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shall, as from the effective date of the order, be transferred to and become employees of the entity referred to in the order:

Provided that such order shall not vary the terms and conditions of service of such employees to their disadvantage.

(3) An order issued under subsection (1) in favour of the PTCL shall provide for-

a) the continuation by the PTCL of the operations and undertaking of the Corporation on the same basis as were carried on immediately prior to the date of the order save in respect of the operations and undertakings to be carried on by the National Telecommunication Corporation pursuant to section 41; and

b) the dissolution of Corporation as from the effective date of the order.

(4) In consideration of the vesting in the company of the property of the Corporation, the PTCL shall issue such securities in the name of the President of the Islamic Republic of Pakistan as the Federal Government may direct.

(5) Unless an order so directs the property vested under subsection (1) shall be free from any charge, burden, hypothecation or encumbrances to which it may be subject at the effective date of the order.

(6) If any property of the Corporation vests in the PTCL subject to any charge, burden hypothecation or encumbrances the same shall be deemed to be on the assets of the company and the provisions of section 121 of the Companies Ordinance, 1984 (XLVII of 1984), shall apply to such charges, burden, hypothecation or encumbrances as if it had been created on the assets of the PTCL on the effective date for the PTCL.

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(7) If any property of the Corporation vests in the National Telecommunication Corporation, the Authority or the Trust subject to any charge, burden, hyphenation or encumbrance, the same shall be the first charge by way of hypothecation in favour of the creditor.

(8) In this section, "property" includes assets, rights and entitlements of every description and nature wherever situated and "liabilities" includes duties, obligations, loans encumbrance, claims and charges of every description and nature (actual or contingent), whether or not they are capable, under any law of Pakistan or of any other State or under any agreement or otherwise, or being vested, transferred or assigned by the Corporation.

(9) No stamp duty shall be payable under any law for the time being in force on or in relation to the transfer or vesting of property of the Corporation under any order issued under subsection (1).

36. Terms and Conditions of service of employees.—

(1) No person transferred to the PTCL pursuant to subsection (2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the PTCL:

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including Pensionary benefits of the Transferred Employees.

(2) Subject to subsection (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the

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transferred Employees and the award of appropriate compensation.

(3) At any time within one year from the effective date of order vesting property of the Corporation in the PTCL, the Federal Government may, with the prior written agreement of a Transferred Employee, require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer.

(4) Subject to proviso to subsection (1) of section 45 on transfer of a Transferred Employee under subsection (3), the Federal Government shall assume responsibility for his Pensionary benefits without recourse to be Pension Fund referred to in that section.

(5) Under the order vesting property of, the Corporation in the PTCL, the Federal Government shall require the PTCL to assume the responsibility of Pensionary benefits of the telecommunication employees and the PTCL shall not alter such Pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation.'

*A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the PTCL under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. **Since they by virtue of the aforesaid provisions became employees of the***

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Corporation in the first instance and then the PTCL, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court.”
(emphasis provided)

Further, Mr. Shahid Anwar Bajwa, Advocate while appearing in Crl. Org. Petitions No.53 & 54 of 2015 before the Apex Court of the country gave undertaking that the PTCL would give pension to the petitioners except VSS optees alongwith the increase announced by the Federal Government from time to time. Though learned counsel representing the PTCL has argued that his statement was confined only to the petitioners in the said contempt petitions but the said fact suggests that the transferred employees who were initially appointed in T&T department are entitled to the same perks & privileges announced by the Federal Government from time to time for its employees. In this backdrop, the respondents cannot be allowed to treat the similarly placed persons distinctly especially when the Apex Court of the country has already concluded that the employees who were transferred from T&T department, despite

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losing their status as civil servants, were entitled to pay protection including pension alongwith periodical increase, no other interpretation is permissible.

18. While opposing the writ petitions filed by the employees who initially were appointed by the Federal Government in T&T department, Mr. Shahid Anwar Bajwa, Advocate has argued that after establishment of the PTCL it cannot be compelled to pay pensionary emoluments to the retirees. Perhaps, learned counsel for PTCL has raised such plea in oblivion of the fact that the pension to the transferred employees was to be paid from the Pension Fund, established under section 45 of the Act 1996. There is no denying the fact that the PTCL has obligation towards contribution in the said Fund but the said fact cannot be used to argue that the burden of pension is to be borne exclusively by the PTCL.

19. Mr. Shahid Anwar Bajwa, Advocate while arguing that the Apex Court of the country has allowed the respondents to raise all objections before the forums where proceedings are pending, has referred to order, dated 17.05.2017, passed by the

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Hon'ble Supreme Court of Pakistan in Cr.R.P. No.86/2015 titled Pakistan Telecommunication Employees Trust v. Federation of Pakistan through Secretary, M/o Information Technology relevant portion whereof reads as under:-

“2. Mr. Khalid Anwar has also pointed out that some cases by way of constitutional petitions are pending before the High Courts, which have been filed subsequent to the two judgments of the High Court impugned before this in C.P.No.565 of 2014, etc. and decided by judgment under review, and that the PTCL/review petitioners may be permitted to raise all grounds of law and fact apart from the one that has been decided by the judgment under review.

3. Learned counsels appearing for the review petitioners in connected Review Petitions as well as Muhammad Waqar Rana, learned Additional Attorney General for Pakistan, have also made the similar submission.

4. Learned counsel appearing for the Respondents have expressed reservation qua disposal of these petitions in the manner, noted above. We note that the reservation expressed is unnecessary and uncalled for.

5. In the circumstances, submission made by Mr. Khalid Anwar, learned Sr.ASC for the Review Petitions and adopted by counsel for other review petitioners, as noted above, prima facie seem to be fair and reasonable and without expressing ourselves on any of the points involved in the matter, we feel that cause of justice will be met if all these Review Petitions are disposed of accordingly.

6. Consequently, the listed Review Petitions are disposed of and the PTCL/Review Petitioners to the extent as noted above may avail remedy under Section 12(2), CPC which shall be decided by the concerned Court in accordance with law. At

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the same time, the PTCL/Review Petitioners may urge all points available to them in other cases pending before the High Courts in accordance with law. Disposed of.”

A cursory glance over the afore-quoted judgment of the Apex Court of the country makes it abundantly clear that the judgment under review in the said matter was not set aside rather the department was permitted to file application under section 12(2) CPC in the matters wherein the employees succeeded to get orders in their favour while playing fraud with the Court. Further, they were also allowed to raise all the objections in the pending cases, however, the said observation cannot be used to reopen a point before this Court which has already been put to rest by the Apex Court of the country. Reference in this regard can be made to the case reported as Pakistan International Airlines Corporation v. Aziz-ur-Rehman Chaudhry and another (2016 SCMR 14).

20. Now taking up the question relating to the applicability of the principle of *laches*, raised by Mr. Shahid Anwar Bajwa, Advocate, I am of the view that as non-payment of salary/pension according to revised rates introduced by the Federal Government from time to time provides fresh cause of action to

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the retirees each month, thus, the question of *laches* is of little importance in these matters.

21. Mr. Shahid Anwar Bajwa, Advocate, during the course of arguments, tried to establish that as the petitioners fell within the definition of workmen in view of clause 9 of Second Schedule attached with the Workmen Compensation Act, 1923, they were estopped to approach this Court. The said query has already been responded by the Apex Court of the country in the case of *P.T.C.L. and others v. Masood Ahmed Bhatti and others* (2016 SCMR 1362) *inter-alia* with the following observations: -

“8. The argument that where Pakistan Telecommunication Corporation Limited was not under the control of the Federal Government it cannot be construed as a person in terms of Article 199(5) of the Constitution is also misconceived as this question has been set at rest by this Court in the same by holding as under:-

The question whether the PTCL was a 'person' performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid's case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991 and later/on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or

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regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTC], and finally upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which pertained to one of the important affairs of the Federation dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the word 'person' as defined in clause (5) of the Article 199 of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court. However, it was observed that the status of the private respondents, be that of a 'worker' or a 'civil servant' or a 'contract employee' had no nexus to the maintainability of the writ petition on the ground of discrimination meted out to them." (emphasis provided)

22. Mr. Ishtiaq Ahmad Chaudhary, Advocate in support of his plea that after transfer of the employees from the Corporation to PTCL there was no distinction amongst the employees who were transferred from T&T department or those who joined the Corporation after 01.01.1991 has referred to section 12 of the Telecommunication Ordinance, 1995. It is of common knowledge that an Ordinance without its validation by the Parliament dies its

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natural death on expiry of 120 days. Moreover, when the Telecommunication Ordinance, 1995 was replaced with the Act 1996 under which the employees of the Corporation were transferred to PTCL, the emphasis of the learned counsel on section 12 of the Telecommunication Ordinance, 1995 is misconceived.

23. Now taking up the plea of Hafiz Tariq Nasim, Advocate that as the petitioner, being represented by him, was appointed in the Corporation on the recommendations of the Establishment Division he falls within the category of civil servant. I am unable to subscribe to the view point of the learned counsel for the reason that just intervention of Establishment Division in the recruitment without any support from the relevant law did not render the status of the employee as civil servant rather the same was to be determined according to the applicable service rules/regulations. Insofar as the case under discussion is concerned, suffice it to note that after induction in service the terms & conditions of the employees who were recruited by the Corporation were governed under the non-statutory service rules/regulations

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framed by the Corporation, thus, they were governed under the principle of master and servant.

24. Now taking up communication, dated 05.04.2013, addressed by the Section Officer (Coordination), Govt. of Pakistan, Ministry of Information & Technology (I.T. & Telecom Division) to the President/CEO PTCL Headquarters, Islamabad, I am of the view that there is no cavil with the proposition that the transferred employees were entitled to same perks & privileges admissible to them at the time of their transfer but the moot question before this Court is the maintainability of the writ petitions by the employees who joined the Corporation after 01.01.1991. They might have a genuine grievance but they are/were supposed to approach the forum concerned.

25. The mainstay of the arguments advanced by the learned counsel for the petitioners is Section 8 of the Act 1996. There is no cavil with the proposition that under section 8 *ibid* the power to issue policy directives lies with the Federal Government but the said power cannot be used to render the status of the service rules/regulations, framed by the Corporation

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without intervention of the government, as statutory. Further, the point pressed into service by learned counsel for the petitioners that as the employees of the Corporation were transferred to PTCL due to statutory intervention their terms & conditions are statutory in nature does not appeal to reason because the service rules and regulations prevalent at the time of their transfer being non-statutory the enactment of the Act 1996, by virtue of which PTCL was established, cannot be used to change the nature of said service regulations. Moreover, inconsistency on the part of the petitioners is manifest from the fact that on the one hand they took the plea that as the service regulations were framed by the Corporation in the year 1996 same could not be used to the disinterest of the employees of the Corporation who joined it prior to framing of said rules/regulations and on the other have placed reliance on certain provisions of the Act 1996 which did not provide protection to the service rules/regulations framed by the Corporation.

26. With a view to establish that the petitioners are entitled to the revised pay and pension, learned counsel for the petitioners has referred to the

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undertaking given by Mr. Shahid Anwar Bajwa, Advocate, on 15.02.2018, during the course of hearing of Criminal Original Petitions No.53 & 54 of 2015. According to my understanding the said statement can be helpful for the employees who were initially appointed in T&T department but the same cannot be used in the cases of the employees who were recruited by the Corporation after 01.01.1991 for the reason that the petitioners in the contempt petitions, referred Supra, are those who initially were transferred from T&T department to the Corporation and then from the Corporation to the PTCL.

27. As far as reliance of Mr. Khalid Ismail, Advocate on the Shareholders Agreement between the Government of Pakistan and Etisalat International Pakistan is concerned, suffice it to note that though clause 16 of the said agreement relates to the transferred employees but it has nowhere been mentioned that the PTCL was divested to frame rules/regulations regarding terms & conditions of its employees. The only condition precedent for exercise of such powers is that terms & conditions of the employees transferred from the Corporation to PTCL would not be changed to their disadvantage.

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28. In some of the petitions, the employees who opted for VSS have also prayed for grant of pensionary benefits admissible to the ordinary retirees. Since the petitioners in such cases availed special incentive, they were not entitled to benefits of an ordinary retiree. The said question came under discussion before the Hon'ble Supreme Court of Pakistan in the case of State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (2012 PLC (C.S.) 218) which was responded in the following words: -

“28. Since the respondent-employees have not retired from service of the appellant-Bank by application of the Regulations, 1980 nor under the Staff Regulations, 1993 but they have left the service of the appellant-Bank at their own by exercising their own right of option by accepting the Scheme, therefore, their cases are squarely governed and controlled under the terms and conditions as was clearly spelt out in the Scheme itself As no reference can be made as to how and against whom the respondents were differently treated in a discriminatory manner, we have failed to understand as to how there was any violation of Article 25 of the Constitution.”

If the cases of the employees who opted for VSS are considered on the touchstone of the afore-quoted judgment of the Apex Court of the country there remains no ambiguity that no discrimination has been

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meted out to them while paying pension according to VSS.

29. At the cost of repetition, it is clarified that the transferred employees are entitled to same terms & conditions which were prevalent at the time of their transfer from the Corporation to PTCL in view of section 36(2) of the Act, 1996 but the question again is the maintainability of the petitions on behalf of the employees whose terms & conditions prior to their transfer in PTCL were governed under non-statutory service rules/regulations. If any act is being done by the PTCL in violation of the provisions of the Act 1996 the aggrieved persons can resort to appropriate proceedings.

30. Now coming to the case-law referred by learned counsel for the petitioners I am of the view that the same is not applicable to the facts and circumstances of the petitions filed by the employees who were recruited by the Corporation after 01.01.1991 as in none of the cases it has been held that the writ petitions on behalf of the employees of the Corporation whose terms & conditions were governed under non-statutory service rules/

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regulations were maintainable. Further, when the Apex Court of the country in the cases, discussed above, has held that the employees of the Corporation could not approach this Court while invoking its Constitutional jurisdiction vested under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitions filed by such employees cannot be held maintainable.

31. Mr. Ishtiaq A. Chaudhary Advocate has argued that since the agreement between the Government of Pakistan and Etisalat International Pakistan is going to expire in the year 2021, the control of PTCL shall again be held by the Government of Pakistan, thus, the present administration cannot be allowed to introduce any scheme prejudicial to the service benefits of the transferred employees. In this regard, I am of the view that these petitions are to be decided on the basis of law applicable at this particular point and by no stretch of imagination they can be decided on the basis of any future happening.

32. Mr. Ishtiaq A. Chaudhary Advocate has repeatedly argued that as the judgment in *Iqbal*

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Nasir's case has been revisited by the Apex Court of the country the same cannot be used to the disadvantage of the petitioners. A perusal of the judgment, reported as P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362) affirms that though the judgment in Iqbal Nasir's case has been distinguished on the ground that the employees initially appointed in T&T department are amenable to writ jurisdiction in respect of violation of their terms & conditions of service but neither the view taken in the said case has been reviewed nor it has specifically been held that the writ petitions filed by the persons who joined the Corporation after 01.01.1991 are maintainable.

33. As a necessary corollary to the discussion made in the foregoing paragraphs I have reached the following irresistible conclusions; -

- i. That the petitioners, who were initially appointed in T&T department, have competently filed writ petitions and they are entitled to same perks & privileges as admissible to other employees of the Federal Government alongwith periodical increases; hence respondents are

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directed to pay their emoluments accordingly.

- ii. That the Writ Petitions, filed by those who joined the Corporation after 01.01.1991, are not maintainable and in case of any grievance they can resort to appropriate proceedings.
- iii. That the petitioners who opted for VSS are not entitled to the pensionary benefits as admissible to the ordinary retirees.

Consequently, **all these petitions are disposed of in the above terms.**

34. Before parting with this order, it is observed that in some of the cases it is not clear as to when the petitioners joined, in case of any ambiguity their status shall be adjudged on the basis of the record of the department.

**(Shujaat Ali Khan)
Judge**

Announced in Open Court today i.e.08.06.2018.

Approved for Reporting.

Judge