

IN THE SUPREME COURT OF PAKISTAN
(REVIEW JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM

CIVIL REVIEW PETITION NOS.247 to 249 OF 2011 IN
CIVIL APPEALS NO.239 to 241 OF 2011

(Review of the judgment of this Court dated
07.10.2011 passed in CAs Nos.239 to 241 of 2011)

AND

CIVIL PETITION NO.423 OF 2011

(On appeal from the judgment of
Islamabad High Court, Islamabad
Dated 15.03.2011 passed in W.P.
No.4853 of 2010)

AND

CRL.MISC.A. NOS.871 to 873 OF 2014 IN
CRL.MISC.A. NO.533 OF 2012

(Impleadment applications)

P.T.C.L. etc and others

(in all cases)
...Petitioners

VERSUS

Masood Ahmed Bhatti etc and others
Syed Muhammad Dilaveez, etc
Nasir Uddin Ghorl
Muhammad Ashraf & others

(CRP 247/11)
(CRP 248/11)
(CRP 249/11)
(CP 423/11)
...Respondents

For the Petitioners:
(CRP.247 to 249/2011 &
CP 423/11):

Mr. Khalid Anwar, Sr. ASC
Mr. Shahid Anwar Bajwa, ASC.
Ms. Zahida Awan, EVP (Legal Affairs), PTCL
Syed Irfan Ali Shah, GM (Legal)
Mr. Affan Ehsan, Manager (Legal)
Mr. Rasheed Zafar, Manager (Legal)
Mr. Javaid Mukhtar, Sr. Manager (L)

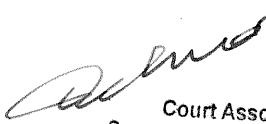
For the Applicants:
(Crl.MAs 871 to 873 &
CMA 723-725/16):

Mr. G. M. Chaudhry, ASC

For the Federation:

Mr. Waqar Ahmed Rana, Addl. AGP.

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For Respondent-1

(CRP.247/11):

Mr. Abdul Rahim Bhatti, ASC

(CRP.248/11):

Mr. Salman Akram Raja, ASC

Respondent-1

(CRP.249/11):

In-person.

Respondents 1&6:

(CP.423/11):

Mr. Abdur Rehman Siddiqui, ASC

Date of Hearing:


19.02.2016.

ORDER

Eiaz Afzal Khan, J.- These civil review petitions have arisen out of the judgment dated 11.8.2011 of this Court whereby Civil Appeals Nos.239, 240 and 241 of 2011 were allowed while Civil Petition No.423 of 2011 has arisen out of the judgment dated 15.3.2011 of the Islamabad High Court, whereby the learned single Judge dismissed Writ Petition No.4853 of 2010 filed by the petitioners.

2. Mr. Khalid Anwar, learned Sr. ASC appearing on behalf of the petitioners contended that where a three-Member Bench of this Court in the case of **Pakistan Telecommunication Company Ltd. through Chairman Vs. Iqbal Nasir and others (PLD 2011 SC 132)** held that the employees of PTCL being governed by the principle of master and servant, cannot invoke the jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, another Bench with an equal number of Judges could not deviate therefrom without referring the matter to a larger Bench. The impugned judgment, the learned ASC maintained, is liable to be reviewed on this score alone. The learned ASC next contended that where Pakistan Telecommunication Company Ltd. (PTCL) is not under the control of Federal Government, it cannot be construed as a person in terms of Article 199(5) of the Constitution, even if it is assumed for a while that terms and conditions of the employees on their transfer to the Corporation in the first instance under Sub Section


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2 of Section 9 of the Pakistan Telecommunication Corporation Act, 1991 (hereinafter referred to as 'the Act of 1991') and then to the Company under Sections 35(2) and 36(2) of the Pakistan Telecommunication (Re-Organization) Act, 1996 (hereinafter referred to as 'the Act of 1996') are protected and guaranteed. The impugned judgment, the learned Sr. ASC maintained, is also liable to be reviewed when it is an outright departure from the dicta of this Court rendered in the cases of Principal Cadet College, Kohat Vs. Muhammad Shoaib Qureshi (PLD 1984 SC 170), Pakistan Red Crescent Society Vs. Syed Nazir Gillani (PLD 2005 SC 806), Pakistan International Airlines Corporation and others Vs. Tanveer-ur-Rehman and others (PLD 2010 SC 676), Executive Council Allama Iqbal Open University, Islamabad through Chairman and another Vs. Muhammad Tufail Hashmi (2010 SCMR 1484) and Pakistan Telecommunication Company Ltd. through Chairman Vs. Iqbal Nasir and others (PLD 2011 SC 132).

3. Mr. Abdul Rahim Bhatti, learned ASC appearing on behalf of the respondent (in CRP-247/2011) contended that where the terms and conditions of service of the employees on their transfer to the Corporation in the first instance under sub-Section 2 of Section 9 of the Act of 1991 and then to the Company under Sections 35 (2), 36(1) and (2) of the Act of 1996 are protected, they could not be changed to their disadvantage. The terms and conditions, the learned ASC maintained as defined in Section 3 of the Civil Servants Act, 1973 mean "the terms and conditions provided by the Civil Servants Act and the rules". Such terms and conditions, the learned ASC added, being statutory can be enforced through a petition under Article 199 of the Constitution of the Islamic Republic of

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Pakistan. The learned ASC to support his contention placed reliance on the cases of Oil and Gas Development Company and others Vs. Nazar Hussain and others (2010 SCMR 1060), Syed Tahir Abbas Shah Vs. OGDCL through M.D. Head Office, Islamabad and another (2011 SCMR 1912), Muhammad Tariq Badar and another Vs. National Bank of Pakistan and others (2013 SCMR 314), and Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others (2015 SCMR 1472).

4. Mr. Salman Akram Raja, learned ASC appearing on behalf of the respondent (in CRP-248/2011) contended that where the terms and conditions of service of the respondents on their transfer to the Corporation in the first instance and then to the Company were protected by virtue of Section 9(2) of the Act of 1991 and Sections 35(2) and 36 (1) and (2) of the Act of 1996, they could well be enforced in terms of the judgments rendered in the cases of Pakistan Telecommunication Corporation and another Vs. Riaz Ahmed and 6 others (PLD 1996 SC 222) and Divisional Engineer Phones, Phones Division, Sukkur and another Vs. Muhammad Shahid and others (1999 SCMR 1526). The learned ASC in the alternative argued that in case it is assumed that the employees of PTCL are not civil servants, the terms and conditions of their service being protected by the Acts mentioned above could still be enforced under Article 199 of the Constitution in view of the judgment rendered in the case of Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others (2015 SCMR 1472).

5. We have gone through the entire record carefully and considered the submissions of learned ASCs for the parties.

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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:-

"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 sub-section (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 sub-section (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 Company;
 - 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 sub-section (1) shall specify the employees of the Corporation who shall, as from the effective date of the order, be transferred to

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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 sub-section (1) in favour of the Company shall provide for --

a) the continuation by the Company 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 Company 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 sub-section (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 Company 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 Company on the effective date for the Company.

(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.

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(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 sub-section (1).

36. Terms and Conditions of service of employees.--

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

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 sub-section (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 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 Company, 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.

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(4) Subject to proviso to sub-section (1) of section 45 on transfer of a Transferred Employee under sub-section (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 Company, the Federal Government shall require the Company to assume the responsibility of Pensionary benefits of the telecommunication employees and the Company 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 Company 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 Corporation in the first instance and then the Company, 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. Though in the cases of Pakistan Telecommunication

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Corporation and another Vs. Riaz Ahmed and 6 others and Divisional Engineer Phones, Phones Division, Sukkur and another Vs. Muhammad Shahid and others (supra) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be the Civil Servants, but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under Section 9 of the Act of 1991 and then of the Company under Section 35 of the Act of 1996. Retention of their status as civil servants is thus not supported by the words used in the aforesaid provisions.

7. The argument of Mr. Khalid Anwar, learned Sr. ASC for the petitioners that where a three-Member Bench of this Court in the case of Pakistan Telecommunication Company Ltd. Vs. Iqbal Nasir and others (supra) held that the employees of PTCL being governed by the principle of master and servant could not invoke jurisdiction of the High Court under Article 199 of the Constitution, another Bench with equal number of Judges could not deviate therefrom, is based on misconception when the employees in the aforesaid case, were not those whose terms and conditions of service on their transfer to the Corporation and the Company were protected and guaranteed under Section 9 of the Act of 1991 and Sections 35(2) and 36(1) and (2) of the Act of 1996, but those who were employed on contract or on work-charge basis. We, therefore, do not feel inclined to agree therewith. The relevant paragraph of the judgment stating the difference between the two merits a look, which reads as under:-

"26. The argument of the learned counsel that the respondents were the employees of the PTCL from the date of appointment, regular after 183 days of service and entitled to same wages as were being paid to

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regular employees of the PTCL is untenable. It may be observed that as provided in clause (g) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, a contract worker is a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis, while clause (b) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, provides that a 'permanent' workman is a workman who has been engaged on work of permanent basis likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment, and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months. In this view of the matter, an aggrieved person falling within the definition of workman would be well within his rights to seek remedy at the appropriate forum as provided in Order 12 of the Schedule referred to above. However, as held in PIAC v. Sindh Labour Court No.5 (PLD 1980 SC 323), the respondents had been employed, not on permanent basis, but on contract and would be governed by the provisions of the contract of service. The nature of employment of the respondents can be easily understood from a perusal of a contract of service entered by Muhammad Idrees Khan, respondent No. 1 in C.A. No. 474 of 2010 with the Telecom Foundation, which, inter alia, provides as under: -

"TELECOM FOUNDATION

SHORT TERM CONTRACT

Mr. Muhammad Idrees Khan s/o Haji Chamnay Khan is hereby contracted in Telecom Foundation as Cable Guard with effect from _____ at the rate of Rs.153/- per day (Rs.4600/- per month). He is directed to report to A.E. O.F.C. (PTCL) Peshawar for further deployment as and

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where required by them on the following terms and conditions: -

1. PERIOD OF CONTRACT

Service shall be on contract for a period of Eighty Nine (89) days.

9. TERMINATION OF CONTRACT

This contract shall be liable to termination any time without notice even on account of _____ political activities, trade unions and due to misconduct and unsatisfactory service.

Manager (M&T)


Telecom Foundation

I, Muhammad Idrees Khan s/o Chamnay Khan resident of Village Bab-e-Jadeed P.O. TaruJabba Tehsil & District Nowshera, have carefully read the above instructions and agree to the terms and conditions for the employment as Cable Guard on contract basis."

All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract. Since they fall within the definition of workman, they would be entitled to one month's notice or salary in lieu thereof, as permissible to them under the rule of master and servant."

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:-

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22. 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 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.

23. It may also be added here that as rightly held by a learned Division Bench of the High Court of Sindh in the judgment impugned in C.A. No. 883 of 2010 that the Federal Government had first sold 12% shares through public subscription and then it sold 26% [all of B

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class shares] to the EIP and the remaining 62% shares of PTCL were still owned by the Federal Government and as long as the Government owned majority shares in said entity either in its own name, or whether wholly or partially in the name of any other organization or entity controlled by the Government, PTCL was and should continue to be amenable to the jurisdiction of the High Court under Article 199 of the Constitution. In this view of the matter, the argument that the PTCL was not a person within the meaning of Article 199(5) of the Constitution is not tenable.

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 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

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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 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'.

9. The same view was held in the case of Pakistan Telecommunication Company Limited through General Manager and another Vs. Muhammad Zahid and 29 others (2010 SCMR 253) which attained finality as review thereagainst was also dismissed. We, therefore, hold that the view taken in the impugned judgment is not a departure much less outright from

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the dicta of this Court laid down in the cases of Principal Cadet College, Kohat Vs. Muhammad Shoaib Qureshi, Pakistan Red Crescent Society Vs. Syed Nazir Gillani, Executive Council Allama Iqbal Open University, Islamabad through Chairman and another Vs. Muhammad Tufail Hashmi and Pakistan Telecommunication Company Ltd. through Chairman Vs. Iqbal Nasir and others, Pakistan International Airlines Corporation and others Vs. Tanveer-ur-Rehman and others, Oil and Gas Development Company and others Vs. Nazar Hussain and others, Syed Tahir Abbas Shah Vs. OGDCL through M.D. Head Office, Islamabad and another, Muhammad Tariq Badar and another Vs. National Bank of Pakistan and others, and Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others, Pakistan Telecommunication Corporation and another Vs. Riaz Ahmed and 6 others, and Divisional Engineer Phones, Phones Division, Sukkur and another Vs. Muhammad Shahid and others (supra).

10. Having thus considered, we do not think a case for review of the judgment of this Court dated 7.10.2011 is made out. These review petitions as well as Civil Petition No. 423 of 2011 being without merits are dismissed. These are the detailed reasons for our short order dated 19.02.2016.

Sd/- Anwar Zaheer Jamali, HCJ

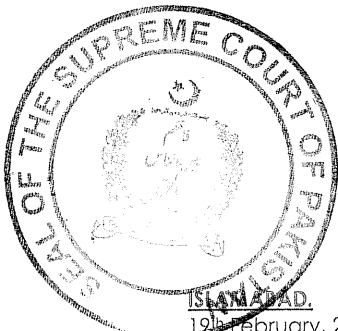
Sd/- Mian Saqib Nisar, J

Sd/- Amir Hani Muslim, J

Sd/- Ejaz Afzal Khan, J

Sd/- Mushir Alam, J

Certified to be True Copy



ISLAMABAD.
19th February, 2016.
M. Azhar Malik/*

Not approved for reporting

16.3.2016

16.3.16.
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