

**IN THE SUPREME COURT OF PAKISTAN**  
**(ORIGINAL JURISDICTION)**

**PRESENT:**

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ  
Mr. Justice Gulzar Ahmed  
Mr. Justice Sh. Azmat Saeed

**Constitution Petition No.53 of 2007 &**  
**Constitution Petition No.83 of 2012**

Sh. Riaz-ul-Haq, Advocate Supreme Court (in Const.P.53/07)  
M. Shabbir Ahmed Nasir, Advocate High Court (in Const.P.83/12)

**VERSUS**

Federation of Pakistan thr. Ministry of Law, etc. (in Const.P.53/12)

The President of Pakistan thr. his Principal Secretary,  
President's Secretariat & others (in Const.P.83/07)

For petitioners: Mr. M. Shoaib Shaheen, ASC  
(in Const.P.53/2007)

Nemo (in Const.P.83/12)

On Court's Notice: Attorney General for Pakistan (absent)

For Govt. of Balochistan: Mr. Muhammad Azam Khattak, Addl. A.G.

For Govt. of KPK: Syed Arshad Hussain Shah, Addl. A.G.

For Govt. of Punjab: Mr. Jawwad Hassan, Addl. A.G.

For Govt. of Sindh: Mr. Muhammad Qasim Mirjat, Addl. A.G.

For Law Commission: Raja Faisal Iftikhar, Deputy Secretary

Date of hearing: 09.01.2013

**JUDGMENT**

**Iftikhar Muhammad Chaudhry, CJ.**— Founder of Pakistan,  
Quad-e-Azam Muhammad Ali Jinnah while addressing the civil officers  
in Peshawar on 14.04.1948 advised them as follows: -

"The services are the backbone of the state. Governments are formed. Governments are defeated. Prime Ministers come and go, ministers come and go, but you stay on. Therefore, there is a very great responsibility placed on your shoulders. You should have no hand in supporting this political party or that political party, this political leader or that political leader. This is not your business.

Whichever government is formed according to the constitution, and who ever happens to be the prime minister or minister, coming into power in the ordinary course, your duty is only to serve that government loyally and morally but, at the same time, fearlessly, maintaining your high reputation, your prestige, your honour and the integrity of your service. If you start with that determination, you will make a great contribution to the building up of Pakistan of our conceptions and our dream- a glorious state and one of the greatest nations in the world.

While impressing this upon you, I wish also to take the opportunity of impressing upon our leaders and politicians in the same way, that if they ever try to interfere with you and bring political pressure to bear upon you, which leads to nothing but corruption, bribery and nepotism-which is a horrible disease and for which not only your province but others too are suffering-if they try to interfere with you in this way, I say they are doing nothing but disservice to Pakistan. ... .."

2. In recognition of the status of civil servants, and so that they may work fearlessly, maintaining their high reputation, prestige, honesty and the integrity of their service, as was the dream of our founding father, the Constitution of Islamic Republic of Pakistan, 1973 under Article 212(1)(a) provides for the establishment of Tribunals to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters by means of appropriate legislation. Said Article is reproduced hereinbelow: -

212. Administrative Courts and Tribunals.-(1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of –

- (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
- (b) .....
- (c) .....

As a consequence of above constitutional provision, following Federal and Provincial Service Tribunals Acts were promulgated to establish Service Tribunals respectively: -

- (1) The Service Tribunals Act, 1973 (STA, 1973) whereunder the Federal Service Tribunal (FST), was established;
- (2) The Sindh Service Tribunals Act, 1973 (SSTA, 1973) whereunder the Sindh Service Tribunal (SST) was established;
- (3) The Punjab Service Tribunals Act, 1974 (PSTA, 1974) whereunder the Punjab Service Tribunal (PST), was established;
- (4) The NWFP (KPK) Service Tribunals Act, 1974 (NSTA, 1974) whereunder the NWFP (KPK) Service Tribunal (NST) was established;
- (5) The Balochistan Service Tribunals Act, 1974 (BSTA, 1973) whereunder the Balochistan Service Tribunal (BST) was established.

For the sake of convenience, sections 3 of STA, 1973 (Federal), is reproduced hereinbelow: -

3. Tribunals. (1) The President may, by notification in the official Gazette, establish one or more Service Tribunals and, where there are established more than one Tribunal, the President shall specify in the notification the class or classes of civil servants in respect of whom, or the territorial limits within which, or the class or classes of cases in respect of which, each such Tribunal shall exercise jurisdiction under this Act.

(2) A Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, including disciplinary matters.

(3) A Tribunal shall consist of—

- (a) a Chairman, being a person who is, or has been, or is qualified to be Judge of a High Court ; and
- (b) such number of members not exceeding three, each of whom is a person who possesses such

qualifications as may be prescribed by rules, as the President may from time to time appoint.

(4) The Chairman and members of a Tribunal shall be appointed by the President on such terms and conditions as he may determine.

(5) The Chairman or a member of a Tribunal may resign his office by writing under his hand addressed to the President.

(6) The Chairman or a member of a Tribunal shall not hold any other office of profit in the service of Pakistan if his remuneration is thereby increased.

(7) Notwithstanding anything contained in sub-section (3), sub-section (4), sub-section (5) or sub-section (6), a Tribunal established to exercise jurisdiction in respect of a specified class or classes of cases may consist of one or more persons in the service of Pakistan to be appointed by the President.

Aforesaid section of STA, 1973 is *pari materia* with the provisions of the respective Provincial Service Tribunals Acts. Subsection (3)(b) of section 3 *ibid* specifies that the qualifications of a member of the Tribunal shall be prescribed by rules, as such, the Federal Government has framed rules namely the Service Tribunals (Qualification of Members) Rules, 1974, providing qualification for the appointment of Member of the Tribunal, which read as under: -

"2. A member of the Tribunal shall be a person who has for a period of or for periods aggregating not less than 20 years held an appointment or post in the Service of Pakistan, or in a Corporation or other body set up by Government or who, for the said period, has been an advocate or legal practitioner.

*Explanation:* In computing the period during which a person has held an appointment or post or has been an advocate or legal practitioner there shall be included any period during which he has held an appointment or post after he became an advocate or legal practitioner or, as the case may be, the period during which he has been an advocate or legal practitioner after having held the appointment or post."

In exercise of powers conferred by section 3(4) of STA, 1973, the terms & conditions of the Chairman and the Members of the Tribunals were prescribed by the President in the Federal Service Tribunal Chairman and Members Service Rules, 1983. Rules 1 (*ibid*) provides the tenure of the Chairman and the Members of the Tribunal in the following terms: -

"1. The Chairman and members shall hold office at the pleasure of the President, for such tenure, which may normally be for three years extendable by a further period not exceeding three years, as may be determined by the President."

Similarly, in terms of section 3(3)(b) of (PSTA, 1974) the Government of Punjab has framed the Punjab Service Tribunals (Qualifications of Members) Rules, 1978, which provides following qualification for the appointment of Member of the Tribunal: -

"A member of the Tribunal shall be a person who is not below the status of Secretary to Provincial Government and has at least 18 years service in Grade 17 or above."

The qualifications of Members of the Tribunal have been prescribed in section 3(3)(b) of provincial statutes of Sindh, NWFP (KPK) and Balochistan, therefore, rules were not required to be framed thereunder. For reference, same are reproduced hereinbelow: -

Sindh Service Tribunals Act, 1973:

3. Tribunals: (1) .....
- (2) .....
- (3) A Tribunal shall consist of—
  - (a) a Chairman, being a person who has been, or is qualified to be, Judge of a High Court ; and
  - (b) not more than two members each of whom is a person who has for a period of not less than seventeen years held a post in grade 16 or an equivalent or a higher post under the Federal Government or a Provincial Government.
- (4) .....

NWFP (KPK) Service Tribunals Act, 1974:

3. Tribunals: (1) .....
- (2) .....
- (3) A Tribunal shall consist of:
  - (a) a Chairman, being a person who has been, or is qualified to be, Judge of High Court ; and
  - (b) not less than two and not more than four members, each of whom is a person who has for a period of not less than fifteen years held a Class I or an equivalent post under the Federal Government or a Provincial Government.
- (4) .....

Balochistan Service Tribunals Act, 1974:

3. Tribunals: (1) .....
- (2) .....
- (3) A Tribunal shall consist of—
  - (a) a Chairman, being a person who has been, is a or qualified to be, a Judge of High Court ; and
  - (b) two members each of whom is a person who has for a period of not less than ten years held a Class I post under the Federal Government or a Provincial Government.
- (4) .....

3. Initially, the FST was under the administrative control of the Establishment Division. Subsequently, its administrative control was transferred to the Law and Justice Division. As such, it has been enjoying the status of attached department of the Federal Government. The position of Provincial Service Tribunals is also not different from FST.

4. Petitioner in Constitution Petition No.53 of 2007 has submitted that the respondents may be directed to fulfill the Constitutional Obligations to ensure independence of judiciary from the Executive by suitably amending the Service Tribunal Acts and Rules framed thereunder. He further prayed that the amended Acts and Rules should ensure as under: -

- (a) The appointment of Chairman and the Members of the Service Tribunals are made after meaningful consultation

with the Chief Justice of Pakistan or, as the case may be, the Chief Justice of the respective Province;

- (b) The Tribunal should not be under the administrative or financial control of the Executive. For this, on the analogy of the judges of the High Courts and Federal Shariat Court, the terms and conditions of the Chairman and Members may be independently determined so as to make them outside the Executive influence and to ensure uniformity.
- (c) Appropriate legal and judicial experience may be prescribed for appointment as Member. Practicing lawyers, who are qualified to be appointed as Judge of the High Court, be given preference for induction as Members of the Service Tribunals.

5. Mr. M. Shoiab Shaheen, learned ASC appearing for the petitioner formulated following prepositions for consideration: -

- “(1) Whether the Service Tribunals are judicial forums and are performing functions of a Court within the meaning of Article 175 of the Constitution of Islamic Republic of Pakistan, 1973;*
- (2) Whether section 3 of Service Tribunals Act, 1973 and the Service Tribunals (Qualification of Members) Rules, 1974 promulgated by the Federal Government including corresponding provisions applicable in the provinces relating to appointment of Chairman and Members of the tribunals are violative of Article 175 read with Articles 2A, 5, 8 & 25 of the Constitution; and*
- (3) Whether appointments of the Chairman and Members of the Service Tribunals should be made with the meaningful consultation with the Chief Justice of Pakistan and concerned Provincial High Court, as the case may be.”*

6. He argued that the Service Tribunals are the judicial forums having exclusive jurisdiction for redressal of grievances of civil

servants relating to terms and conditions of service, under which they are governed.

7. According to him, the Service Tribunals exercise judicial powers with a limited scope of challenge before this Court under Article 212(3) i.e. subject to satisfaction of the Court that the case involves a substantial question of law of public importance. Thus, the matters regarding appointment of the Chairman and Members of the Service Tribunals are as important as those of judges of the High Courts. Under these circumstances, the appointments of the Chairman and Members of the Service Tribunals must be made in consultation with the Honourable Chief Justice of Pakistan, or as the case may be, the Chief Justice of the respective High Courts. Reliance is placed on S. P. Sampath Kumar v. Union Of India (AIR 1987 Supreme Court 386).

8. In continuation of his above arguments he further submitted that appointment of serving or retired bureaucrats as Members with no legal and judicial background is against the principle of Independence of judiciary. Inasmuch, as the Federal Government had been appointing such persons as Chairman and Members, who are either retired judges or bureaucrats usually of 60 to 65 years.

9. He also submitted that the spirit of Service Tribunal (Procedure) Rules 1974 is against the fundamental principles as contained in the Code of Civil Procedure, 1908. The administrative control of the Federal Service Tribunal had earlier been with Establishment Division (Respondents No.2) and was then transferred to the Law and Justice Division (Respondents No.3). The matter regarding appointment of Chairman and Members of the Federal Service Tribunal are processed through Respondents No.2 & 3. The

other matters regarding terms & conditions of Chairman and Members (such as leave, allotment of cars, housing and telephone facilities etc.) are also dealt with by the administrative Ministry. Further, since its constitution, the Federal Service Tribunal has been working as an attached department of the Federal Ministries. The position of the Provincial Tribunals too is not different. Therefore, this state of affairs is clearly violates Article 175 of the Constitution.

10. Learned Attorney General for Pakistan, despite notice, is not in attendance.

11. The learned Deputy Attorney General, appearing on behalf of Federation of Pakistan, raised preliminary objections to the maintainability of the petitions on the ground that the petitioners have no cause of action to file the petition as the Chairman and the Members of Federal Service Tribunal are appointed in accordance with law. The matter is not of a great public importance and no Fundamental Right of the petitioner has been infringed as well.

12. He submitted that the Chairman/Members of the Tribunal are appointed in terms of section 3(4) of the STA, 1973 and the Service Tribunals (Qualifications of Members) Rules, 1974 and not in terms of Article 193 of the Constitution, which provides qualification for appointment of a Judge of the High Court, therefore, the role of these Tribunals in administration of justice is not equal to that of the High Court.

13. His next submission was that the Act and the rules do not provide consultation with respective Chief Justices as FST has been established to exercise jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, therefore, provision of

Article 175 of the Constitution is not applicable in the context of separation of Judiciary from Executive.

14. He further submitted that the appointment of Chairman/Members of FST is made by the President of Pakistan, therefore, do not fall directly under the control of Law Ministry and the Chairman/Members are independent in making decisions with regard to the matters brought before it in respect of terms and conditions of service. He contended that there could not be a single instance where Ministry of Law and Justice ever interfered with or exercised influence in the functioning of Service Tribunal.

15. According to him the High Courts are judicial forums and are established under the Constitution presided over by a serving Judge, whereas, the Tribunal does not function as a Court, it has only one subject to deal with i.e. matters relating to the terms and conditions of civil servants. The FST is an administrative Tribunal, as such it is not equal to a High Court, thus no consultation with the Chief Justice is necessary.

16. Mr. Jawwad Hassan, learned Additional Advocate General, Punjab has submitted that the Service Tribunals are administrative tribunals, meant to resolve disputes between the persons in the service of Pakistan and the State of Pakistan. These tribunals are protected as they function within the meaning of Article 175(3) read with Article 212 of the Constitution, and in Article 175, the word 'tribunal' has not been mentioned rather only term 'court' has been used. He further contended that the provisions of Service Tribunals Acts and rules made thereunder are not violative of any provision of the Constitution as held by Full Bench of the Lahore High Court in the

case of Muzaffar Hussain v. The Superintendent of Police [2002 PLC (CS) 442]; rather they have the backing of Article 212 of the Constitution. Additionally, the constitution of Anti-Terrorism Courts were upheld because these Courts had the backing of Article 175 but it had no concern with Article 212 of the Constitution, therefore, whatever has been decided in the case of Aurangzeb Shafi Burki v. Province of Punjab (PLD 2011 Lahore 198) does not apply *stricto sensu* in the instant case.

17. He contended that the PSTA, 1974 was enacted by the Provincial Assembly, Punjab whereby the Governor was empowered to establish one or more Service Tribunals; the rules have been framed under the authority of section 11 of PSTA, 1974 and the appointment of Chairman/Members of the Tribunal have been made strictly in accordance with law/rules. He further contended that neither the provisions of Article 212 of the Constitution nor the PSTA, 1974 or the rules framed thereunder envisage that the Chairman/Members of the Tribunal should be appointed after consultation with the Chief Justice. Therefore, such appointment made without consultation of Chief Justice cannot be construed as unconstitutional or impinging upon independence of judiciary. Reliance has been placed on the case of Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445), wherein it has been held that where the Constitution makers wanted to provide judicial forums other than what is envisaged by Article 175, 202 and 203, they expressly provided for the same in the Constitution in shape of Article 212 of the Constitution. He further contended that in absence of term 'consultation' appearing in Article 212, it cannot be read into or introduced in the said Article. Even the law made under the authority

of the said Article does not envisage any consultation with the concerned Chief Justice unlike the Indian approach where the same has been provided. He submitted that the judgments relied upon by the petitioner were rendered in the context of Articles 177 and 193 relating to the Supreme Court and the High Courts and not with reference to Article 212 of the Constitution.

18. He further contended that Articles 175, 202 and 203 of the Constitution provide the basic framework of the judiciary i.e. the Supreme Court, a High Court for each Province as well as Islamabad and such other Courts as may be established by law, i.e. the subordinate courts. However, Constitution also stipulates other specified courts/tribunals to share judicial powers with the courts mentioned in Article 175 of the Constitution, which include Federal Shariat Court, Administrative Courts and Tribunals established under Article 212 as well as Election Tribunals constituted in terms of Article 225 of the Constitution. According to him, the court or tribunal which is not founded by any of the Articles of the Constitution cannot lawfully share the judicial powers with the Courts referred to in Article 175 of the Constitution, however, the above referred tribunals including the Service Tribunals have been envisaged by the Constitution itself, therefore, sharing of judicial powers by them with the Court cannot be conceived as creating a parallel judicial system. He added that in discharge of judicial function, the Tribunal works subject to judicial supervision of the Supreme Court.

19. He further contended that the appointment of the Chairman and Members of Tribunal after superannuation cannot be termed as unconstitutional or in derogation of independence of

judiciary, *inter alia* because the Constitution nowhere prohibits appointment of a superannuated person whereas the PSTA, 1974 and the rules provide a specific provision to that effect. He submitted that the Tribunal and the High Courts are two separate entities performing assorted functions under separate dispensations and should not be construed as equal or comparable.

20. His last contention was that as per 1<sup>st</sup> Schedule to the Punjab Government Rules of Business, 2011, PST has not been shown as an attached department rather it is reflected as special institution associated for administrative linkages with Services & General Administration Department like Lahore High Court, Provincial Ombudsman and Punjab Public Service Commission. In fact PST has been assigned an independent and autonomous status.

21. He informed that the Chief Minister, Punjab has constituted a Cabinet Sub-Committee for review of Service Laws and following recommendations have been made: -

- (a) The existing Punjab Service Tribunal Act 1974 stipulates that the Chairman of the Punjab Service Tribunal shall be a person who is or has been qualified to be a Judge of the High Court. Thus, judicial experience is inbuilt in the existing provision and no further amendment was required.
- (b) The qualification for the members of Tribunal and method of recruitment may, however, be revised as under in the light of the observations of the Hon'ble court:
  - "(2) A member of the Tribunal shall be a person who has been serving as Secretary to the Government and has been performing quasi-judicial functions or functions relating to service matters.
  - (3) A member shall be appointed on the recommendations of the Selection Committee consisting of the Chief Secretary (Convener), Senior Member Board of

Revenue, Chairman P&D Board, Secretary Law and Secretary Services (S&GAD)."

It was further informed that the Cabinet has already approved the following recommendations: -

- (a) Serving civil servants shall not be appointed as members of the Tribunal;
- (b) The terms of office of a member and Chairman shall be fixed for a minimum period of 3 years or till attaining the age of 65 years, for the members and 67 years for the Chairman, whichever is earlier; and
- (c) The term of office of a member, including the Chairman shall not be extended and a sitting incumbent shall not be appointed for another term.

22. Mr. Muhammad Kassim Mir Jat, learned Additional Advocate General, Sindh has submitted that the concept of Administrative Tribunals was introduced by the framers of the Constitution which was regularized through Legislation at the Federal and the Provincial level. He stated that in the United States the Court systems exercise the power of judicial review. However, the adjudication of dispute is also done by Tribunals and Federal Agencies including the Security & Exchange Commission, the inter State Commerce Commission, the National Labour Relations Board, etc., with a large measure of independence from Executive. In Britain, Special Tribunals ensure that public agencies carry out the instructions of Parliament. In France, the Courts are forbidden to oversee the public agencies; this job is done by a council of State. The French system has been adopted by other countries including Belgium, Italy, Portugal, Greece, Egypt and Turkey. Germany has also Administrative Court System and a Federal Administrative Court acts as a Court of

Appeal. In Pakistan, separate Administrative Tribunals have been established under Article 212 of the Constitution which deals with the matter relating to terms & conditions of service. The Tribunals not only provide speedy remedy to the civil servants but also share the burden of Courts.

23. He further submitted that it is not a parallel judicial system as it has the backing of the Articles 175, 203 or 212 of the Constitution. As the appeal against the judgments of Tribunal lies before the Supreme Court under Article 212(3) of the Constitution, therefore, the Tribunals fall under the judicial hierarchy. He has relied upon the case of Muzaffar Hussain v. The Superintendent of Police [2002 PLC (CS) 442], which view was also endorsed by this Court in the cases of Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1455), Khan Asfandyar Wali v. The Federation of Pakistan (PLD 2001 SC 607) and Liaquat Hussain v. Federation of Pakistan(PLD 1999 SC 504).

24. Learned counsel also submitted that the cases referred from the Indian Jurisdiction are not applicable in our jurisdiction as the Indian Service Laws provided for consultation with the Chief Justice.

25. Syed Arshad Hussain, learned Additional Advocate General, KPK has submitted that Article 212 of the Constitution empowers the Provincial Legislature to establish as many Courts or Tribunal to exercise exclusive jurisdiction in respect of matters enumerating therein. The Provincial Service Tribunal, KPK has been established in terms of Article 212 of the Constitution read with NWFP (KPK) Service Tribunal Act, 1974 as such it cannot be equated with the High Court. He contended that the appointment of Chairman of the Tribunal in KPK has always been made in consultation with the Chief

Justice Peshawar High Court, whereas the Members of Tribunals are appointed from civil servants in terms of section 3(2)(b) of NSTA, 1974 by the Governor. He added that as per section 3(2)(b) of NSTA, 1974, there is no requirement of making the appointment of Members from amongst the lawyers/judicial officers as such there is no violation of the Constitution or the law in the appointments made till date. According to him, like Income Tax and Customs Appellate Tribunal, where a matter is heard and decided by a Judicial and Technical Member, it can be constituted to include a Judicial Member in the Tribunal. He further contended that a situation where difference of opinion takes place between the members of the Tribunal has been dealt with in section 6(4) of the NSTA, 1974 which provides that in case of difference of opinion between the Chairman and member or members, when the appeal is heard under sub-section (2) and no majority view can be formed, the appeal shall be referred to the other member, and the decision of the Tribunal shall be expressed in terms of the view of the majority. He lastly submitted that a special committee in the light of the directions of this Court has proposed the following amendments in NSTA, 1974: -

- (i) Section 3(3)(b) of the Act, 1974 may be substituted with the following:  
Such number of members to be determined by the Government from time to time of which equal number may consist of judicial members, having judicial or legal background of either being exercising the functions and powers of Additional District & Sessions Judge or is an Advocate qualified to be a Judge of High Court
- (ii) A proviso to be added at the end of subsection (3)(b) to section 3 of the Act, 1974:  
Provided that non judicial members maybe appointed from amongst the holders of the post in BS-20 or equivalent under provincial and Federal Government.

(iii) In subsection (4) of section 3 of the Act, 1974 following proviso to be added:

Provided that the Chairman and judicial members of the tribunal shall be appointed in consultation with the Chief Justice of the High Court.

26. Learned Additional Advocate General, Balochistan has stated that it remains the practice that appointment of Chairman of Service Tribunal has been made in consultation with the Chief Justice of High Court of Balochistan. He has contended that the incumbent Chairman/ Members are fully qualified to be appointed as such and no provision of Constitution or the law has been violated. Even in the past, the persons who were appointed as Chairman/Members were fully qualified.

27. We have heard the parties and have gone through the relevant provisions of law as well as the material placed before us.

28. It would be appropriate to first of all take up the question of maintainability of instant petition under Article 184(3) of the Constitution in view of the objections raised by the learned Deputy Attorney General. The petitioner's case is that he has approached this Court for the vindication of Fundamental Right to have access to justice enshrined in Articles 9 of the Constitution. It is to be noted that the right of "access to justice to all" is a well recognized inviolable right enshrined in Article 9 of the Constitution and is equally found in the doctrine of "due process of law". It includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial court or tribunal.

29. The scope of jurisdiction of this Court under Article 184(3) of the Constitution by now is fairly settled in a plethora of case-law. In

the case of Ms. Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) it has been held as under: -

"... .. After all the law is not a closed shop and, even in adversary procedure, it is permissible for the next friend to move the Court on behalf of a minor or a person under a disability. Why not then a person, if he were to act bona fide, activate the Court for several reasons. This is what public interest litigation seeks to achieve as it goes further to relax the rule on locus standi so as to include a person who bona fide makes an application for the violation of any constitutional right of a determined class of persons whose grievances go unnoticed and un-redressed. The initiation of the proceedings in this manner will be in aid of the meaningful protection of the rule of law given to the citizens by Article 4 of the Constitution, that is, "(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. ..." [the World Peace Through Law Conference at Lagos in 1961]"

In Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473), maintainability of petition under Article 184(3) was discussed and decided as under: -

"6. While construing Article 17 which guarantees fundamental right, our approach should not be narrow and pedantic but elastic enough to march with the changing times and guided by the object for which it was embodied in the Constitution as a fundamental right. Its full import and meaning must be gathered from other provisions such as preamble of the Constitution, principles of policy and the Objectives Resolution, which shed luster on the whole Constitution. Reference in this connection may be made to the observations made by Muhammad Haleem, C.J. (as he then was) in Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 at 489: --

"... .. while construing Article 184(3), the interpretative approach should not be ceremonious observance of the rules or usages of interpretation, but regard should be had to the object and the purpose for which this Article is enacted, that is, this interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution, namely, the Objectives Resolution (Article 2A), the Fundamental Rights and the directive principles of State policy so as to achieve democracy, tolerance; equality and social justice according to Islam."

In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) it has been held that whenever the Constitution is violated, every

citizen has a right to challenge the same. Relevant paras there from read as under: -

"12. Yet another objection raised was that the petitioner could not invoke Article 184(3) of the Constitution as he has not been able to show whether any one, of his fundamental rights was infringed. ... It is submitted by the petitioner that he is a practicing lawyer and has a very vital interest in the Judicial set-up which can function independently only when there is proper and total compliance of the Articles relating to the Judiciary and appointments are also made in accordance with the Constitutional scheme made there under. According to him, a lawyer cannot survive if the Judiciary is not independent. ... It appears that the remedies under Articles 199 and 184 (3) available in a High Court and the Supreme Court respectively are concurrent in nature and question of locus standi is relevant in a High Court, but not in the Supreme Court when the jurisdiction is invoked under Article 184(3) of the Constitution. According to the petitioner, he went to the High Court and his writ petition was dismissed without deciding the questions of controversy. He filed the petition for leave to appeal against the impugned judgment and also filed the direct petition under Article 184(3) of the, Constitution praying for examination of the Articles relating to the Judiciary and in that connection has called in question some appointments in the Superior Judiciary. ...

13. We are of the view that the petitioner has rightly invoked the jurisdiction of this Court under Article 184(3) of the Constitution and leave has rightly been granted in the other petition for the reason that in both the cases common question of interpretation of the Articles relating to the Judiciary are involved, which are of public importance. We are not impressed by the contention that interpretation of the Articles in these cases would be merely an exercise of academic nature. On the contrary, it can be said that this exercise has become very essential and necessary and would help a great deal in making the matters very clear by interpreting the relevant provisions of the Constitution relating to the Judiciary. It is held by this Court in the case of Fazlul Quader Chowdhry and others v. Muhammad Abdul Haque PLD 1963 SC 486 that the interpretation of the Constitution is the prerogative as well as the duty of the superior Courts as envisaged in the Constitution and this interpretative function cannot be a mere academic exercise without relation to concrete dispute, either between a subject and subject or between a subject and the State. ... This right to interpret the Constitution is not acquired de hors the Constitution but by virtue of the fact that it is a superior Court set up by the Constitution itself. It is not necessary for this purpose to

invoke any divine or super natural right but this judicial power is inherent in the court itself. It flows from the fact that it is a Constitutional Court and it can only be taken away by abolishing the Court itself."

In the matter of: Corruption in Hajj Arrangements in 2010 (PLD 2011 SC 963) it has been held as under: -

"20. The judiciary including the High Courts and the Supreme Court is bound to protect and preserve the Constitution as well as to enforce fundamental rights conferred by the Constitution either individually or collectively, in exercise of the jurisdiction conferred upon it either under Article 199 or 184(3) of the Constitution. We are fully cognizant of our jurisdiction, it is one of the functions of the judicial functionaries to decide the matters strictly in accordance with the Constitution and law. We are conscious of our jurisdiction, and exercise the same with judicial restraint. But such restraint cannot be exercised at the cost of rights of the citizens to deny justice to them. The scheme of the Constitution makes it obligatory on the part of superior Courts to interpret Constitution, law and enforce fundamental rights. There is no cavil with the proposition that ultimate arbiter is the Court which is the custodian of the Constitution, as it has been noted herein before and without repeating the same, this Court had initiated proceedings in the instant case as is evident from the detailed facts and circumstances noted hereinabove to ensure that corruption and corrupt practices by which the Hujjaj were looted and robbed has brought bad name to the country."

In the case of Munir Hussain Bhatti v. Federation of Pakistan (PLD 2011 SC 407) it has been held as under: -

"9. ... Article 184(3) ibid empowers this Court to exercise jurisdiction thereunder whenever the Court considers a matter to: (i) be of public importance and (ii) that it pertains to the enforcement of fundamental rights. The determination on both these counts is to be made by this Court itself, keeping the facts of the case in mind. That this case involves a question which relates to the "enforcement of fundamental rights" has not been seriously questioned. ...

10. Furthermore, in making this determination, the Court is not to be swayed by expressions of public sentiment nor is it to conduct an opinion poll to determine if the public has any interest in an issue being agitated before the Court under Article 184(3) of the Constitution. Instead, a whole range of factors need to be kept in mind, which have, over the years, been expounded in numerous precedents of this Court."

In the case of Muhammad Azhar Siddiqui v. Federation of Pakistan

(PLD 2012 SC 774)it has been held as under: -

"15. In the case at hand the Prime Minister stood convicted by the apex Court of the land for wilfully, deliberately and persistently defying a direction issued in Dr. Mobashir Hassan case, and such persistent defiance at the highest level was considered substantially detrimental to the administration of justice, and as tending not only to bring this Court, but also the entire judiciary of this country into ridicule. The ruling of the Speaker declaring that no question of disqualification of the respondent had arisen despite a concluded judgment of the apex Court defied the principles of independence of the judiciary and trichotomy of powers, and also constituted a violation of the due process clause under Article 10A of the Constitution. All this has made it a case suitable for invoking the original jurisdiction of this Court. Accordingly, we hold that the instant petitions raise a question of public importance with reference to the enforcement of Fundamental Rights enshrined in Articles 9, 10A, 14, 17 & 25 of the Constitution and meet the requirement of Article 184(3) of the Constitution, therefore, the same are held to be maintainable. The objection raised by the learned counsel for the respondents, being devoid of any merit, is overruled."

In the case of Bank of Punjab v. Haris Steel Industries (Pvt.) Ltd. (PLD 2010 SC 1109) it has been held as under: -

"25. A perusal of the above quoted provision would demonstrate that this Court was possessed of powers to make any order of the nature mentioned in Article 199 of the Constitution, if, in the opinion of this Court, a question of public importance relating to the enforcement of any of the Fundamental Rights was involved in the matter. As has been mentioned in the preceding parts of this order, what was at stake was not only a colossal amount of money/property belonging to at least one million depositors i.e. a large section of the public but what was reportedly at stake was also the very existence of the Bank of Punjab which could have sunk on account of the mega fraud in question and with which would have drowned not only the said one million depositors but even others dealing with the said Bank". And what had been sought from this Court was the protection and defence of the said-public property. It was thus not only the right of this Court but in fact its onerous obligation to intervene to defend the said assault on the said fundamental right to life and to property of the said public."

In Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012

SC 1089) it has been held that: -

80. The expression "public importance" has been interpreted in a number of cases including Manzoor Elahi v. Federation of Pakistan, (PLD 1975 SC 66), General Secretary, West Pakistan Salt Miners Labour Union (CBA), Khewra, Jhelum v. Director Industries and Mineral Development, Punjab, (1994 SCMR 2061) and Mrs. Shahida Zahir Abbasi v. President of Pakistan, (PLD 1996 SC 632). It is quite clear that the question as to whether a particular case involves the element of 'public importance' is to be determined by this Court with reference to the facts and circumstances of each case.

In the case of Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 923) it has been held that the right of access to justice and independent judiciary is also one of the most important rights of the citizens and if there is any threat to the independence of judiciary, it would be tantamount to denial of access to justice, which undoubtedly is a fundamental right under Article 9 of the Constitution. Whenever there is a violation of Articles 9 and 25 of the Constitution, it will involve a question of public importance with reference to enforcement of the Fundamental Rights of the citizens, who may approach the Court for the enforcement of these rights under Article 184(3) of the Constitution without having to discharge the burden of locus standi. The scheme of the Constitution makes it obligatory on the superior Courts to interpret the Constitution and the law and enforce the Fundamental Rights.

30. It is to be noted that the independence of judiciary is one of the salient features of our Constitution. The preamble to the Constitution provides that whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him

is a sacred trust; and whereas it is the will of the people of Pakistan to establish an order wherein the independence of the judiciary shall be fully secured. The Objectives Resolution, which is now a substantive part of the Constitution by means of Article 2A of the Constitution, also commands that independence of judiciary has to be fully secured. The superior Courts have elaborately interpreted the words 'fully' and 'secured' to elucidate the concept of 'independence of judiciary'. In the case of Chairman, NWFP Forest Development Corporation v. Khurshid Anwar Khan (1992 SCMR 1202) it has been held that our Constitutional setup preserves the independence of superior Courts, by a definite mandate including the command of the Objectives Resolution that independence of the judiciary has to be fully secured. In the case of Government of Balochistan v. Azizullah Memon (PLD 1993 SC 341) it has been held that the Constitution aims at an independent Judiciary which is an important organ of the State within the Constitutional sphere. The Constitution provides for progressive separation of the Judiciary and had fixed a time limit for such separation. The separation of the judiciary as contemplated in Article 175 of the Constitution and independence of the judiciary as envisaged in the Objectives Resolution (Article 2A) cannot be achieved without having independent annual budget for the judiciary. In the case of Government of Sindh v. Sharaf Faridi (PLD 1994 SC 105) it has been held as under: -

"The Constitution of the Islamic Republic of Pakistan, 1973 in its preamble (now made a substantive part thereof vide Article 2A) declares that "the independence of the judiciary shall be fully secured" therein.

Now, according to the consensus of the jurists, the independence of the judiciary means: -

- (a) that every Judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without improper influences, inducements or pressures, direct or indirect, from any quarter or for any reason; and
- (b) that the judiciary is independent of the Executive and Legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature."

In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) it has been held that our country has Federal system of Government which is based on trichotomy of power; each organ of the State is required to function within the bounds specified in the Constitution, though one can say that the Judiciary is the weakest limb as it does not have the resources or power which the Legislature or the Executive enjoy but it has been assigned very important and delicate role to play, namely, to ensure that none of the organs or the Government functionaries acts in violation of any provision of the Constitution or of any other law and because of the above nature of the work entrusted to the Judiciary, it was envisaged in the Constitution that the Judiciary shall be independent. In the case of Syed Zafar Ali Shah v. General Pervez Musharaf (PLD 2000 SC 869) it has been held that the Constitution of Pakistan is the supreme law of the land and its basic features i.e. independence of judiciary, federalism and parliamentary form of government, blended with Islamic Provision cannot be altered even by the Parliament. In the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) certain provisions of NRO were strike down being contrary to the principle of independence of judiciary in the following terms: -

"81. Thus, it would not be sustainable being contrary to the principle of independence of judiciary, as mentioned in Article 2A of the Constitution, which provides that independence of judiciary shall be fully secured read with Article 175 of the Constitution, which lays down a scheme

for the establishment of the courts, including the superior courts and such other courts as may be established by law. In the present case, except an appeal under section 32 of the National Accountability Ordinance, 1999 to the High Court of the Province, no other remedy is available to a convict against his conviction/sentence, to get it set aside."

In the case of Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 923) it has been held as under: -

"64. In the case of Chairman, N.W.F.P. Forest Development Corporation v. Khurshid Anwar Khan (1992 SCMR 1202), it was held that Court acting under rules framed by virtue of the Constitutional power was not bound to follow any other statutory dispensation, which came in conflict with the independence of judiciary. Supreme Court was not even bound by the provisions of Civil Procedure Code, 1908 or Criminal Procedure Code, 1898 in so far as regulation and control of practice and procedure of the Court itself was concerned. It was further held that Article 2A of the Constitution (Objectives Resolution) commands that independence of judiciary has to be fully secured. Words `fully' and `secured' are explicit enough not to leave any doubt that Constitutional set up of Pakistan preserves the independence of Supreme Court by a definite mandate."

31. Admittedly, civil servants being citizens of Pakistan have Fundamental Rights including the right of access to justice as envisaged under Article 9 of the Constitution. The enforcement of terms and conditions of service of these civil servants depends upon the impartial, independent and unbiased Tribunal. Further, in the words of our founding father, the services are the backbone of the state as the affairs of the Government are performed by the civil servants. Therefore, ultimately, the general public gets affected from the functioning of the service Tribunals; as such, the instant case involves a question of public importance.

32. It may be mentioned here that the instant petition falls in the category of public interest litigation, which is not adversarial but inquisitorial in nature. It is well settled that this Court has the

jurisdiction to adjudicate upon a case if it falls within the ambit of inquisitorial proceedings. Reference may be made to the cases of Watan Party v. Federation of Pakistan (PLD 2011 SC 997), All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2012 SC 1) and Workers' Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681). Thus, the instant petitions are maintainable and objection is overruled.

33. Now we would examine as to whether or not the Service Tribunals, Federal and Provincial, are judicial forums and are performing their functions within the meaning of Article 175 of the Constitution of Islamic Republic of Pakistan, 1973, which deals with the establishment and jurisdiction of courts as well as independence of judiciary through its separation from the Executive. Clause (1) of the said Article provides that there shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for the Islamabad Capital Territory and such other courts as may be established by law. Whereas, Clause (3) provides that the Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day.

34. Firstly, it is to be examined whether Service Tribunals established under Article 212(1)(a) of the Constitution read with Federal or Provincial Legislation, fall within the definition of a court, under Article 175 of the Constitution.

35. It is to be noted that the word 'Court' has not been defined in any legal instrument, therefore, we have to refer to its dictionary meanings, which are as under: -

Generally, a court is a body in the government to which the public administration of justice is delegated, being a tribunal officially assembled under authority of law, at the appropriate time and place, for the administration of justice, through which the State enforces its sovereign rights and powers, and consisting in its jurisdiction and functions and not its title or name.

The court exists as a forum to hear and resolve suits and controversies raised by parties who have invoked its authority.

The term 'court' may include a Judge and a jury, .....may include a Tribunal presided over by a police judge, or by a justice or justices of the peace, or various other tribunals.

Halsbury's Laws of England, 4<sup>th</sup> Edition Vol.10:

Originally the term 'Court' meant, among other things, the Sovereign's place. It has acquired the meanings of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the sovereign..... A Tribunal may be a court in the strict sense of the term even though the chief part of its duty is not judicial.

The Oxford Companion to Law by David M. Walker:

A court was originally the King's or a great lord's place or mansion.....A court is accordingly a person or group of persons having authority to hear and administer disputes in accordance with rules of law. Tribunals or adjudicators who exercise adjudicative functions by virtue of contract or of the voluntary submission of persons to their decisions.

Words and Phrases Legally Defined (1969 Edition, Vol. I, p. 367)

the terms 'Court' originally meant the sovereign's palace; it acquired the meaning of the place where justice is administered and has come to mean the person who exercises judicial functions.

The Major Law Lexicon, 4<sup>th</sup> Edition, 2010:

"Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. The "Court" means the person or persons before whom a legal proceeding is held or taken. "Court" means a civil, criminal or revenue Court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or *quasi-judicial* functions.

Black's Law Dictionary:

An organ of government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice.

Ballentine's Law Dictionary

Court is the organ of the Government, consisting of one person, or of several persons called upon and authorized to administer justice.

In Nasir Muhammad v. Murad Ali (PLD 1960 Lahore 757), a Division Bench, has held that "the expression 'Court' has not been defined either in the Limitation Act or the General Clauses Act and this can be said of almost all Acts in force in Pakistan. The expression, however, means according to the context in each case either the Presiding Officer or the whole Court including the Presiding Officer of the Court or the place where cases are heard." In the case of Rehman Khan v. Asadullah Khan (PLD 1983 Quetta 52) while dealing with the question as to whether or not the Tribunals established under Civil Procedure (Special Provisions) Ordinance, 1968 were the Court and was competent to hear suits under section 42 of the Specific Relief Act, 1877, the High Court held as under: -

"7. The Black's Law Dictionary defines the "Court" as "an organ of the Government belonging to the judicial Department, whose function is the application of the laws to controversies brought before it and the public administration of justice".

This definition finds support from White Country v. Gwin (136 Ind. 562=36 N E 237=22 L R A 402), Bta-dley v. Town of Bloomfield (85 N J Law 506=89 A 1009). With reference to some other case-law it further defines the "Court" as a "body in the Government to which the administration of justice is delegated". Proceeding further it also says that the word "Court" is often applied in circumstances otherwise than in technical sense and is applied to various tribunals not judicial in their character, and includes Jury as well in the definition of the "Court." This explanation amply clarifies that although in strict sense Courts are such bodies or organs of the Government which apply laws to controversies and administer justice by pressing into service the prescribed rules of procedure and Evidence, but at times this term is loosely applied to such

forums also which are not the Courts stricto sensu. So it does not mean that all forums responsible for the settlement of various kinds of disputes created from time to time under different laws are all Courts by dint of their function.

In Words and Phrases Legally Defined by Butterworths, Vol. 1, p. 3671 the word "Court" has been defined as a Department entrusted with the administration of justice and it also includes in its definition the Parliament. Parliament is included because it passed verdict in impeachment proceedings. Otherwise, parliament would not fall into the category of the Court. Similarly Jury is included in the term Court and Mr. Ansari on this premises argued that alike Jury a Tribunal could also be called Court. It is a fallacy to say so. Jury in the Anglo Saxon system is the Judge of facts but in the Tribunals under Ordinance I of 1968, it is only a recommendatory body and its verdict is in no way binding upon the Deputy Commissioner over and above this Deputy Commissioner is not a judicial Officer but an executive authority. That makes all the difference. The "Shorter Oxford English Dictionary" also defines the Court as a forum for the decision of causes and here also decision means decision in the fashion I have referred heretofore.

It is thus manifest that although the term "Court" is at times used for quasi judicial or administrative tribunals also but on this premises it cannot be inferred that such forums should be equated with the "Court" of law. Therefore, in our opinion "Courts" are such organs of the State which administer justice strictly in accordance with law, meaning thereby that while applying laws to the controversies, they follow certain rules with regard to procedures and evidence and are not left altogether unguided and uncontrolled to act on their whims and fancies as in the case of the Ordinance I of 1968, which although a procedural law, nullifies all laws and all doctrines hitherto universally considered necessary for the imparting of justice. The Tribunal under the Ordinance I of 1968 is one such forum which is not bound by any law of procedure or Evidence and like the Jirga under the erstwhile F. C. R., it may or may not even record evidence; and if recorded, the applicability or otherwise of the same has no criterions. It all depends on the whims of the tribunal to deny or allow any kind of evidence."

According to the Dictionary meanings, following three elements are essential for the conception of Court: -

- (1) Time when Judicial functions may be exercised.
- (2) A place for the exercise of Judicial functions.
- (3) A person or persons exercising Judicial functions.

Thus, the judicial functions are the common characteristic of each element. The term 'judicial function' has also not been clearly spelt out either in any Dictionary or in any other book. However, Griffith,

C.J. in Huddart Parker's case has defined the term as, "the words 'judicial power' as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subject, or between itself and its subjects, whether the rights relate to life, liberty, or property. The exercise of this power does not come into being until some tribunal which has power to give binding and authoritative decision (whether subject to appeal or not) is called upon to take action." The same definition has been quoted with approval in Shell Co. of Australia Limited v. Federal Commissioner of Taxation [(1930) All E R 671] and United Engineering Workers' Union v. Uevanayagam [(1976) 2 All E R 367]. From the detailed analysis of above case law it is clear that the exercise of Judicial power is considered to be an essential feature of a Court, and it distinguishes a Court from an administrative tribunal.

36. Under section 5(2) of the STA, 1973, the Tribunal is deemed to be a civil Court having all the powers which are vested in the civil Court as such it has the power to grant temporary injunction, mandatory or prohibitory, under Order XXXIX, Rules 1 & 2 CPC during the pendency of the appeal before it and has also the power of the appellate Court under Order XLI, Rule 5 to stay the execution/operation of the decree or order. In terms of section 5(1) *ibid*, the Tribunal can set aside, vary or modify the order in an appeal before it, of course, after full and final hearing of the appeal. Thus, the tribunal performs the judicial function. Reference may be made to the case of Imran Raza Zaidi v. Government of Punjab (1996 SCMR 645).

Relevant portion therefrom is reproduced hereinbelow: -

"12. ... .. Service Tribunal in the instant case is established under section 3 of the Punjab Service Tribunals

Act and appeal thereto is provided under section 4 while the powers conferred on it are reflected in section 5 ... .. Under subsection (2) of section 5, Service Tribunal is deemed to be a Civil Court having all the powers which are vested in the Civil Court under C.P.C. Such powers would include the jurisdiction of the Civil Court under Order XXXIX, rules 1 and 2, C.P.C. to grant temporary injunction and that of the appellate Court under Order 41, rule 5, C.P.C. to stay the execution/operation of the decree/order appealed from. ... Apart from this, law is fairly well settled that even in the absence of an express provision for the grant of interim relief, the appellate Court/Tribunal having the power to grant the main relief can also grant the interim relief by suspending wholly or partially, the operation of the order under appeal before it as such a power is reasonably incidental or ancillary to the main appellate jurisdiction. ... Needless to observe that under section 5(1) aforereferred, the Service Tribunal on an appeal filed before it can set aside, vary or modify the order appealed against, of course, after full and final hearing of the appeal. ... Thus, viewed from whatever angle, the Service Tribunal has the power to grant interim relief/temporary injunction during the pendency of the appeal."

In the case of Tariq Transport Company v. The Sargodha-Bhera Bus Service (PLD 1958 SC 437) while considering the question that as to whether an act is judicial, quasi-judicial or administrative, Justice Muhammad Munir, CJ has observed that the said question is clouded by a confusion which is extremely difficult to resolve and no clear cut distinction between these three functions can be discovered from the case law. In modern States where expertise is the dominating feature of Government more than one function is combined in administrative tribunals, and more often than not an administrative agency discharges not only legislative and administrative but also judicial functions. The true question in the case of such tribunals always is whether the act which is complained of is a judicial act and not whether the procedure adopted by the tribunal is judicial or quasi-judicial or whether the dominant or general aspect of the tribunal is that of a judicial, quasi-judicial or administrative body. A tribunal is not

always furnished with the trappings of a Court, nor will such trappings make its action judicial. The character of the action taken in a given case and the nature of the right on which it operates must determine whether that action is judicial, ministerial or legislative or whether it is simply the act of a public agent. A tribunal acts judicially in the full sense of the term if it has to determine a dispute; the dispute relates to a right or liability which, whatever its immediate aspect, is ultimately referable to some right or liability, recognised by the Constitution or statute or by custom or equity which by the domestic law is declared to be the rule of decision; since every right or liability depends upon facts, the tribunal is under an obligation to discover the relevant facts; the ascertainment of the facts is in the presence of the parties either of whom is entitled to produce evidence in support of its respective case and to question the truth of the evidence produced by his opponent; and after an investigation of the facts and hearing legal arguments the tribunal renders a judgment which so far as the tribunal is concerned terminates the dispute. In the case of an administrative tribunal, however, the emphasis is on policy, expediency and discretion to enable it to achieve the object with which it was set up. In the case of such a tribunal the, approach in determining the relevant facts is therefore often subjective and not objective, there being generally no lis before it in which the parties are arrayed against each other for the enforcement of a private right or liability and who for that purpose are entitled to produce evidence and adduce legal argument. The word 'quasi' as prefixed to the word 'judicial' may either indicate that the tribunal is not acting purely administratively or

that it is acting in a manner in which a judicial tribunal is expected to act.

37. In the case of Mohammad Hashim Khan v. Province of Balochistan (PLD 1976 Quetta 59) it has been held that the Tribunal under section 5 of the Service Tribunals Act is deemed to be civil Court for the purpose of deciding any appeal before it with all the powers under the Code of Civil Procedure. As any other civil Court, the Tribunal will have the jurisdiction to examine whether or not a law is void by reason of its conflict with the Fundamental Rights or is otherwise *ultra vires* or that the order made is *mala fide*. The conferment upon the Tribunal the exclusive jurisdiction to adjudicate upon these matters cannot be given any less effect even if it were to be assumed, though there is no warrant for such an assumption, that one or the other ground of challenge may not be available to the petitioners before the Tribunal. In the case of Iftikhar Ahmad v. Muslim Commercial Bank Ltd. (PLD 1984 Lahore 69) it has been observed that despite the collection of elaborate views above, it has been generally observed that the definitions so far attempted are not exhaustive of the term 'Court'. However, inspired by all that has been said so far, and without claiming that it will be exhaustive, in my humble view, 'judicial power' is the legal right, ability and authority to hear and decide, objectively and after allowing opportunity to produce evidence, a justifiable issue, dispute, or controversy, concerning the existing legal rights, duties or interests of persons or property, arising out of relations and dealings, between two or more parties, who bring the same for an authoritative decision, binding on them and may include the authority to execute or get executed its decision and

protect rights, prevent and redress wrongs and punish offences through legal process. Further, the judicial power must be conferred by the State under Constitution or law and not the mere consent of parties, on persons who are paid by the State and removable by it only. The authority or body in which this power is vested is generally called 'Court' and in performing its functions it declares, construes and applied law or custom or usage, having the force of law. The 'judicial power' is thus the instrument to be used by the Court.

38. In the case of Mehram Ali and others v. Federation of Pakistan,( PLD 1998 SC 1445) it has been held that Constitution recognizes only such specific Tribunals to share judicial powers with the Courts, established under Article 175 of the Constitution, which have been specifically provided by the Constitution itself, namely, Federal Shariat Court under Chapter 3A, Tribunals under Article 212, Election Tribunals under Article 255 of the Constitution. The same view was reiterated with approval by this Court in the case of Liaqat Hussain v. Federation of Pakistan.(PLD 1999 SC 504).

39. In the case of Messrs Ranyal Textiles v. Sindh Labour Court (PLD 2010 Karachi 27) it has been observed that under the judicial system as established by the Constitution of the Islamic Republic of Pakistan, there are Courts and there are Tribunals. However, the Tribunals are only limited to the Tribunals specified in the Constitution such as Election Tribunal [Article 225], Administrative Tribunal [Article 212] and Tribunal relating to military affairs [Article 199(5)]. Beside these Tribunals, whenever judicial power is vested in a forum, whatever be its designation, be it called a Court, be it called a

Tribunal or be it called a Commission, for all legal intends and purposes it is a Court and therefore has to be manned, controlled and regulated in accordance with the established judicial principles and the law relating to manning, regulation and control of Courts in Pakistan. Therefore, it was held that the Labour Appellate Tribunal, legally speaking, though denominated as a Tribunal, is a Court: nothing more, nothing less.

40. The perusal of above case law makes it abundantly clear that a tribunal is not always function as a 'Court', nor its action is always judicial; however, the determining factor is the nature of the dispute to be resolved by the Tribunal. If the Tribunal has to determine a dispute relating to a right or liability, recognised by the Constitution or law and is under an obligation to discover the relevant facts, in the presence of the parties, in the light of the evidence produced by them, it acts judicially. Besides, whenever judicial power is vested in a forum, be it called a Court or Tribunal, for all legal intends and purposes it is a Court. Further, such Tribunals have to be manned, controlled and regulated in accordance with the established judicial principles.

41. It is pertinent to mention here that as the service Tribunals are not only deemed to be a civil Court but also exercise judicial powers, therefore, they are included in the term 'Court' mentioned in Article 175 of the Constitution. As such, these Tribunals are to be manned, controlled and regulated in accordance with the law relating to management, regulation and control of Courts in Pakistan.

42. It is to be noted that independence of judiciary has been recognized as a universal human right. In terms of Article 10 of the

*Universal Declaration of Human Rights, G.A, 1948*, everyone is entitled to full equality to a fair and public hearing by an independent and impartial Tribunal. In Pakistan, the independence of judiciary is a basic principle of the constitutional system of governance. The Preamble and Article 2A state that "the independence of judiciary shall be fully secured". This Court while interpreting Article 175 has further strengthened the principle of the independence of judiciary, by emphasizing the separation of Judiciary from the Executive. The Constitution makes it the exclusive power/responsibility of the Judiciary to ensure the sustenance of the system of "separation of powers" based on checks and balances. This is a legal obligation assigned to the Judiciary. It is called upon to enforce the Constitution and safeguard the Fundamental Rights and freedom of individuals. To do so, the Judiciary has to be properly organized and effective and efficient enough to quickly address and resolve public claims and grievances; and also has to be strong and independent enough to dispense justice fairly and impartially. [see Zafar Ali Shah v. Pervez Musharraf (PLD 2000 SC 869)]. Our Constitution is based on separation of powers whereby Parliament makes the laws and the judiciary interprets them. However, it remains the duty of the Judiciary to examine vires of legislation at the touchstone of the Constitution. Reference may be made to the case of Shahid Nabi Malik v. Chief Election Commissioner(PLD 1997 SC 32).

43. In the case of Chenab Cement Products v. Banking Tribunal (PLD 1996 Lahore 672) various provisions of the Banking Tribunals Ordinance, 1984 were challenged on the plea that the same were violative of the Article 25(1) and the theory of independence and

separation of judiciary enshrined in the Constitution. A full Bench of the Court declared the sections 4, 6(6) [as amended by Act VII of 1990] and first proviso to section 9 of the Banking Tribunals Ordinance, 1984 to be unconstitutional as those eroded the independence of judiciary and were hit by Article 175 read with Articles 2A, 4, 8 and Article 25 of the Constitution and further held that the notifications appointing Presiding Officers of the Banking Tribunals, issued under the said Ordinance, were too unconstitutional and without lawful authority and were quashed.

44. In *Kilbourn v. Thompsons* [103 US 168; 26 L ED 377], it has been held that *because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void. The house of representatives has the power under the Constitution to imprison for contempt; but the power is limited to cases expressly provided for by the Constitution, or to cases where the power is necessarily implied from those constitutional functions and duties, to the proper performance of which it is essential.*

45. The Principle of separation and independence of judiciary as envisaged in Article 175 of the Constitution is also applicable to the lower judiciary as it is the part of the judicial hierarchy. Thus, its separation and independence has to be secured and preserved as that of superior judiciary. In terms of Article 175 read with Article 203 of

the Constitution, the lower judiciary should be separated from the Executive and the High Court shall supervise and control all courts subordinate to it. Reference may be made to the case of Government of Sindh v. Sharaf Faridi (PLD 1994 SC 105). In the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) it has been held that the Legislature is competent to legislate but such legislation would not be sustainable if it is contrary to the principle of independence of judiciary as mentioned in Article 2A of the Constitution, which provides that independence of judiciary shall be fully secured read with Article 175 of the Constitution, which lays down a scheme for the establishment of the Courts, including the superior Courts and such other Courts as may be established by law. As it has been held that Service Tribunal discharges judicial functions, thus falls within the definition of a "Court" in view of the above discussion, therefore, the Tribunals have to be separated from Executive following the principle of independence of judiciary in view of Article 175(3) of the Constitution.

46. In the light of the finding given hereinabove to the extent that the Service Tribunals are included in the term 'Court' mentioned in Article 175(3) of the Constitution and are to be managed, controlled and regulated in accordance with the law relating to the Courts in Pakistan, the question arises as to whether Service Tribunal enjoys independence even in the appointment of its Chairman and the Members. Although the Act and the rules do not provide consultation with the respective Chief Justice, yet having been declared that the Tribunals established under Article 212 fall within contemplation of Article 175(3) of the Constitution, the requirements of said provision

has to be adhered to while making appointment to the Chairman/Members of the Tribunal. We are in agreement with the learned counsel for the petitioner that the Service Tribunals exercise judicial powers with remedy of appeal before this Court under Article 212(3), if the case involves a substantial question of law of public importance, as such, the matters regarding appointment of the Chairman and Members of the Service Tribunals are as important as those of judges of the High Courts. Thus, we are in agreement with the learned counsel for the petitioner that the Tribunal should not be under the administrative or financial control of the Executive. On the analogy of the judges of the High Courts and Federal Shariat Court, the terms and conditions of the Chairman and Members of the Tribunal may be independently determined so as to make them outside the Executive influence and to ensure uniformity.

47. In this context, it is to be noted that in the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), it has been held that the Constitution provided that the appointment of Judges of the superior Courts is to be made by the President after consultation with the consultees mentioned therein. Such 'consultation' cannot be treated lightly as a mere formality, rather supposed to be effective, meaningful, purposive, consensus oriented, leaving no room for complaint of arbitrariness or unfair play. The Chief Justice of the High Court and the Chief Justice of Pakistan normally know advocates who appear in their Courts regularly and would nominate or recommend names of such advocates who are capable and fit to be Judges of the High Court and their opinion, which is expert opinion in a way, cannot and should not be ignored, but, must be given due

weight. Their opinion, as to the fitness and suitability of a candidate for judgeship, is entitled to be accepted in the absence of very sound reasons to be recorded in writing by the President/Executive.

48. In the case of Imran v. Presiding Officer, Punjab Special Court (PLD 1996 Lahore 542), constitution of Special Courts under the Suppression of Terrorists Activities (Special Courts) Act, 1975 and the Offences in Respect of Banks (Special Courts) Ordinance, 1984 were challenged, on ground that the said courts were established and managed at the will of Executive as the Presiding Officers are appointed by the Government and work at its pleasure without having security of office. The Court held that *it stands recognized that even if the power of appointment or of establishment of a Court vests in the Government/Executive, the appointments cannot be made arbitrarily, and the said power of appointment is to be exercised through meaningful consultation of the judiciary or its head (Chief Justice), and judicial power cannot be invested by the Executive by appointing persons on its own, providing any procedures or imposing any sentence or conviction so as to control free and fair exercise of judicial power.* It was further held as under: -

"20. The principles deductible from the survey of the Constitutional provisions and the case-law are that in order to comply with the mandate of independence and separation of Judiciary, the Courts howsoever designated as 'Special Court' or 'Tribunal' are to be established and constituted by making appointment with meaningful consultation of the Chief Justice of the High Court and by providing security of tenure for a period which will not act as a disincentive, such a tenure should then be secured by making necessary provision in the Statute itself. The concept of consultation with the Chief Justice/the High Court is not a new concept introduced by the Supreme Court in its recent judgment. The consultation with the High Court is provided by the Civil Courts Ordinance, 1962, for making appointments of District Judges under section

5, for Additional District Judges under section 6 and for Civil Judges under section 8 of the Ordinance. ... .. Even the Executive Magistrates who desire -to be absorbed in the Judiciary on option are to be accepted by the High Court provided they fulfil the requisite qualifications prescribed by the relevant Service Rules. The appointments made to the judicial posts/tribunals as such by any contrary method is thus violative of the theory of independence of judiciary. In addition to these features, the power to transfer cases from one Tribunal to the other is not to be left to the discretion of the Executive and financial independence is also to be secured."

The matter of appointment of the judges of the special Courts was examined by this Court in the case of Mehram Ali and others v. Federation of Pakistan (PLD 1998 SC 1445) wherein it was held as under: -

"35. The appointment of the Judges of the Special Courts are required, by subsection (2) of section 14 of the Act, to be made by the Government after consultation with the Chief Justice of the High Court. The Executive does not have a free hand in the making of such appointments. As to the meaning of consultation we can do no better than to rely on the recent judgments of the Supreme Court in the cases of Al-Jehad Trust through Raeesul Mujahideen Habib Al-Wahabul Khairi, and others v. Federation of Pakistan PLD 1996 SC 324 and Al-Jehad Trust through Raees-ul-Mujahidin Habib-Al-Wahabul Khairi, Advocate Supreme Court and another (PLD 1997 SC 84). The Federal Government is bound to accept the recommendations of the Honourable Chief Justice of the High Court except for valid reasons justifying a departure. We were informed by the learned Attorney General for Pakistan and the learned Advocate-General, Punjab, that no Presiding Officer of the Special Court shall be removable except with the consent/concurrence or recommendation by the Honourable Chief Justice of the High Court. Even otherwise, the power of removal is basically an adjunct to the power of appointment. We, however, notice that the security of tenure for a certain period is also required to be provided by making necessary provisions in the statute itself as held by a Full Bench of this Court in the case of Imran v. Presiding Officer, Punjab Special Court No.VI, Multan and 2 others (PLD 1996 Lahore 542). In the precedent case, provisions of Suppression of Terrorist Activities (Special Courts) Act, 1975 and the Offences in Respect of Banks (Special Courts) Ordinance, 1980, were examined threadbare. We allow two months' time of making necessary amendments in the law."

49. In the case of Hazrat Baz v. Political Agent/District Magistrate Khyber Agency (PLD 2010 Peshawar 7) it has been held that if it is required to establish Special Courts and then to appoint a Sessions Judge or an Additional Sessions Judge as a Judge Special Court, same should be done after consultation with the Chief Justice of the High Court. In the case of Messrs Ranyal Textiles v. Sindh Labour Court (PLD 2010 Karachi 27) it has been held that in the appointment of Chairman of Labour Appellate Tribunal, the consultation with the Chief Justice of the High Court is an essential prerequisite and a condition precedent. It was further held that all judicial appointments must be subordinate to the High Court and it is only High Court which can and should exercise exclusive administrative and supervisory control over subordinate judiciary. Such supervisory and administrative control cannot exist if a credible and pivotal role is denied to the High Court in appointment of such persons. It will be axiomatic to say that a Court is subordinate to High Court but its Presiding Officers is to be appointed by the Provincial Government without consulting High Court. Reliance can also be placed on S. P. Sampath Kumar v. Union Of India (AIR 1987 Supreme Court 386).

50. From the above case law, it is manifest that whenever the appointment of a 'judicial officer' or the Chairman/Member of a Tribunal performing 'judicial functions' is made, the consultation with the concerned Chief Justice is prerequisite. Thus, the appointments of the Chairman/Member of the Service Tribunal, Federal or Provincial, must be made in consultation with the Chief Justice of Pakistan or the Chief Justice of concerned High Court, as the case may be and all appointments made without such consultation are void.

51. Learned counsel for the petitioner has emphasized that there must be requirement of possessing legal and judicial experience for a Member of the Tribunal, to be able to deal with the judicial questions arising in a particular case and in this behalf, appropriate experience should be prescribed. According to him, practicing lawyers, who are qualified to be appointed as Judge of the High Court, be given preference for induction as Members of the Service Tribunals. In this regard it is to be noted that the law prescribes that the Chairman of the Tribunal must be a person who is or has been qualified to be a Judge of the High Court, which has an inbuilt mechanism of having legal/judicial experience, however, there is no requirement of having legal or judicial experience for the Members of the Tribunal. Whereas, according to law a Bench can be constituted comprising two members and Chairman or two members. Thus, the Bench, comprising the members only, could decide a particular case. If the Members who belong to the executive constitute a Bench, there is likelihood that they may not be able to decide the judicial question in appropriate manner, having no judicial experience and if the case is against the orders of the President/Governor or senior officers they may not be able to act fairly, justly and independently being under pressure, thereby eroding the concept of fair administration of justice. Keeping in view such situation, a full Bench of Lahore High Court in the case of Muzaffar Hussain v. The Superintendent of Police [2002 PLC (CS) 442], considered the possibility of appointment of Judicial Members in the Service Tribunal in line with the provisions of (Indian) Administrative Tribunals Act, 1985 and observed that the Tribunal should also have equal number of judicial members from amongst the

persons qualified to be Judge of the High Court and to be appointed after meaningful consultation with the Chief Justice of and every Bench should be headed by at least one Judicial Member so as to eliminate any misgiving or apprehension of an aggrieved person as regards independent working of the Tribunal. Relevant portion from the said judgment is reproduced hereinbelow: -

"62. ... We are of the view that in line with the provisions of (Indian) Administrative Tribunals Act, 1985 the Tribunal should also have equal number of judicial members from amongst the persons qualified to be Judge of this Court and to be appointed after meaningful consultation with the Chief Justice of this Court and every Bench should be headed by at least one Judicial Member so as to eliminate any misgiving or apprehension of an aggrieved person as regards independent working of the Tribunal. This observation is not to be construed as a direction of this Court to legislate because we are conscious of our limitations but to improve the quality of justice by the Tribunal we very strongly feel that it is required to be done."

52. As it has already been held that the Service Tribunals act as a Court and perform judicial functions, therefore, it is necessary that not only the Chairman but also the Members of the Tribunal must have legal/judicial experience. For that purpose, the person who is or has been qualified to be a District Judge, may be appointed as Member of the Tribunal.

53. It is to be noted that in the neighbouring country corresponding provision to Article 212 of our Constitution is Article 323A of the Constitution of India. In pursuance of said provision of Indian Constitution, Administrative Tribunal Act (Act No.13) of 1985 has been promulgated, section 28 whereof has excluded the jurisdiction of the High Court in relation to recruitment and matters concerning recruitment to any service or post or service matters

concerning members of any service or persons appointed to any service, or post. A challenge was thrown to the said Act in the case of S.P. Sampath Kumar v. Union of India (AIR 1987 SC 386), mainly to question the abolition of the jurisdiction of the High Court in respect of specific service disputes. In this judgment, the Indian Supreme Court without declaring the provision of section 28 of the Act, 1985 unconstitutional, as it has taken away the jurisdiction of the High Court, issued certain directions for making amendments in the Act, 1985, emphasizing that as the Administrative Tribunal has been made a substitute of the High Court, therefore, constitutionally and legally it must exercise its jurisdiction as a replacement of the High Court providing confidence to the litigants and the public that the statutory body is capable to administer efficaciously the powers of the judicial review. Relevant paras there from are reproduced herein below: -

“3. Here, in the present case, the impugned Act has been enacted by Parliament in exercise of the power conferred by clause (1) of Article 323A which was introduced in the Constitution by Constitution (42nd Amendment) Act, 1976. Clause (2) (d) of this Article provides that a law made by Parliament under clause (1) may exclude the jurisdiction of courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1). The exclusion of the jurisdiction of the High Court under Articles 226 and 227 by any law made by Parliament under clause (1) of Article 323A is, therefore, specifically authorised by the constitutional amendment enacted in clause (2) (d) of that Article. It is dear from the discussion in the preceding paragraph that this constitutional amendment authorising exclusion of the jurisdiction of the High Court under Articles 226 and 227 postulates for its validity that the law made under clause (1) of Article 323A excluding the jurisdiction of the High Court under Articles 226 and 227 must provide for an effective alternative institutional mechanism or authority for judicial review. If this constitutional amendment were to permit a law made under clause (1) of Article 323A to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative 444 institutional mechanism or arrangement for judicial review, it would be violative of the basic structure doctrine and hence outside the constituent power of Parliament. It must, therefore, be read as implicit in this constitutional amendment that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it. Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit

and coverage of clause (2) (d) of Article 323A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matter is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious in exercising the power or judicial review as the High Court acting under Articles 226 and 227 of the Constitution.

4. It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every bench of the Administrative Tribunal should consist of one judicial member and one administrative member and there should be no preponderance of administrative members on any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court. Now section 6 provides that the Chairman of the Administrative Tribunal should be or should have been a Judge of the High Court or he should have for at least two years held office of Vice-Chairman or he should have for at least two years held the post of 445 Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India. I entirely agree with Ranganath Misra, J. that the Chairman of the Administrative Tribunal should be or should have been a Judge of a High Court or he should have for at least two years held office as Vice-Chairman. If he has held office as Vice-Chairman for a period of at least two years he would have gathered sufficient experience and also within such period of two years, acquired reasonable familiarity with the constitutional and legal questions involved in service matters, But substituting the Chief Justice of a High Court by a Chairman of the Administrative Tribunal who has merely held the post of a Secretary to the Government and who has no legal or judicial experience would not only fail to inspire confidence in the public mind but would also render the Administrative Tribunal a much less effective and efficacious mechanism than the High Court. We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must make it clear that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience. I am, therefore, of the view, in agreement with Ranganath Misra, J. that clause (c) of section 6 (1) must be struck down as invalid.

6. That takes me to another serious infirmity in the provisions of the impugned Act in regard to the mode of appointment of the Chairman, Vice Chairman and members of the Administrative Tribunal. So far as the appointment of judicial members of the Administrative Tribunal is concerned, there is a provision introduced in the impugned Act by way of amendment that the judicial members shall be appointed by the Government concerned in consultation with the Chief Justice of India. Obviously no exception can be taken to this provision, because even so far as Judges of the High Court are concerned, their appointment is required to be made by the President inter alia in consultation with the Chief Justice of India. But so far as the appointment of Chairman, Vice-Chairmen and administrative members is concerned, the sole and exclusive power to make such appointment is conferred on the Government under the impugned Act. There is no obligation cast on the Government to consult the Chief Justice of India or to follow any particular selection procedure in this behalf. The result is that it is left to the absolute unfettered discretion of the Government to appoint such person or persons as it likes as Chairman, Vice-Chairman and administrative members of the Administrative Tribunal. Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal would be against the Government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairmen and administrative members, if a judicial member or an administrative member is looking forward to promotion as Vice Chairman or Chairman, he would have to depend on the goodwill and favourable stance of the executive and that would be likely to affect the independence and impartiality of the members of the Tribunal. The same would be the position vis-a-vis promotion to the office of Chairman of the Administrative Tribunal. The administrative members would also be likely to carry a sense of obligation to the executive for having been appointed members of the Administrative Tribunal and that would have a tendency to impair the independence and objectivity of the members of the Tribunal. There can be no doubt that the power of appointment and promotion vested in the executive can have prejudicial effect on the independence of the Chairman, Vice-Chairmen and members of the Administrative Tribunal, if such power is absolute and unfettered. If the members have to look to the executive for advancement, it may tend, directly or indirectly, to influence their decision-making process particularly since the Government would be a litigant in most of the cases coming before the Administrative Tribunal and it is the action of the Government which would be challenged in such cases. That is the reason why in case of appointment of High Court Judges, the power of appointment vested in the executive is not an absolute unfettered power but it is hedged in by a wholesome check and safeguard and the President cannot make an appointment of a High Court Judge without consultation with the Chief Justice of the High Court and the Chief Justice of India and a healthy convention has grown up that no appointment would be made by the Government which is not approved by the Chief Justice of India. This check or safeguard is totally absent in the case of appointment of the Chairman, Vice-Chairmen and administrative members of the Administrative Tribunal and the possibility cannot be ruled out indeed the litigating public would certainly carry a feeling that the decision making process of the Chairman, Vice-Chairmen and members of the Administrative Tribunal might be likely to be affected by reason of dependence on the executive for appointment and promotion. It can no longer be disputed that total insulation of the judiciary from all forms of interference from the coordinate branches of Government is a basic essential feature of the Constitution. The Constitution makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence. Obviously, therefore if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is

taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairmen and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairmen and administrative members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. There is also another alternative which may be adopted by the Government for making appointments of Chairman, Vice Chairmen and members and that may be by setting up a High Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of 448 India. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323-A. I would, however hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairmen or administrative members are to be made hereafter, the same shall be made by the Government in accordance with either of the aforesaid two modes of appointment.

7. I may also add that if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is not sufficient work, then a Circuit Bench of the Administrative Tribunal at every place where there is a seat of the High Court. I would, therefore, direct the Government to set up a permanent bench and if that is not feasible having regard to the volume of work, then at least a Circuit Bench of the Administrative Tribunal wherever there is a seat of the High Court, on or before 31st March, 1987. That would be necessary if the provisions of the impugned Act are to be sustained. So far as rest of the points dealt with in the judgment of Ranganath Misra, J. are concerned, I express my entire agreement with the view taken by him."

54. As far as Article 212(1) of the Constitution is concerned, it has also excluded the jurisdiction of the High Court to the extent of some of the terms & conditions of the civil servants. Reference in this behalf may be made to the case of Syed Arshad Ali v. Pakistan Telecommunication Company Ltd. (2008 SCMR 314), wherein it has been held that jurisdiction of High Court was barred under Article 212 of the Constitution, as specific forum was provided for redressal of

grievance of employees, even if order proposed to be challenged might have been passed in whatsoever circumstances viz. mala fide, *coram non judge* or without jurisdiction. Whereas, jurisdiction of this Court is also confined to fulfillment of the conditions mentioned in Article 212(1) of the Constitution, in view of the observations made in S.P. Sampath Kumar's case (supra), reproduced hereinabove from the added note of Bhagwati, CJ, who had agreed with other members of the Bench, but in view of the importance of the case had added his independent note as well.

55. In the above background, this Court has also to examine the vires of section 3 of the STA, 1973 along with corresponding provisions of the Provincial Service Tribunal Acts, reproduced hereinabove, to make it possible that a Service Tribunal, having backing of the Legislation as well as the Constitution, is capable to maintain the principle of independence of judiciary as well as to ensure enforcement of Fundamental Rights enshrined in Article 9 of the Constitution, namely, access to justice. At this juncture, it may be noted that under this Article, right to 'access to justice' has been recognized to be one of the Fundamental Rights. Reference in this behalf may be made to the case of Ms. Benazir Bhutto's case (PLD 1989 SC 416) wherein it has been held as under: -

"In this milieu, I am of the view that the adversary procedure, where a person wronged is the main actor if it is rigidly followed, as contended by the learned Attorney General, for enforcing the Fundamental Rights, would become self-defeating as it will not then be available to provide "access to justice to all" as this right is not only an internationally recognized human right but has also assumed constitutional importance as it provides a broadbased remedy against the violation of human rights and also serves to promote socio-economic justice which is pivotal in advancing the national hopes and aspirations of the people permeating the Constitution and the basic

values incorporated therein, one of which is social solidarity, i.e. , national integration and social cohesion by creating an egalitarian society through a new legal order.

In Sharaf Faridi v Islamic Republic of Pakistan (PLD 1989 Karachi 404)

after referring to Ms. Benazir Bhutto's case (supra) it was observed as under: -

The right of 'access to justice to all' is a well-recognised inviolable right enshrined in Article 9 of the Constitution. This right is equally found in the doctrine of 'due process of law'. The right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. This conclusion finds support from the observation of Willoughby in Constitution of United States, Second Edition, Vol. II at page 1709 where the term 'due process of law' has been summarised as follows: -

- (1) He shall have due notice of proceedings which affect his rights.
- (2) He shall be given reasonable opportunity to defend.
- (3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality, and
- (4) That it is a Court of competent jurisdiction. "

It therefore follows that in terms of Article 9 of the Constitution a person is entitled to have an impartial Court and tribunal. Unless an impartial and independent Court is established the right to have a fair trial according to law cannot be achieved. Therefore justice can only be done if there is an independent judiciary which should be separate from executive and not at its mercy or dependent on it.

In the case of Government of Balochistan through Additional Chief Secretary v Azizullah Memmon (PLD 1993 SC 341), it was held as

under: -

13. The above extract indicates what are the basic requirements of the doctrine "due process of law", which is enshrined inter alia in Article 4 of our Constitution. It is intrinsically linked with the right to have access to justice, which this Court has held inter alia in the above report as a fundamental right. This right inter alia includes the right to have a fair and proper trial and a right to have an impartial

Court or Tribunal. A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him. In the instant case the Returning Officer was seized of the question, whether respondent No.1 was qualified to be a candidate for the office of the President. His decision that respondent No.1 was not qualified to be elected as a member of the Parliament would have entailed his non-seating as a member of the Senate, which was a question of the nature, which could not have been adjudicated upon in a summary inquiry under Rule 5(3)(a) of the rules, particularly when the correctness of the contents of the interview was not admitted by respondent No.1.

In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) after referring the Sharaf Faridi's case (supra) it was observed that the right to have access to justice through an independent Judiciary is a Fundamental Right; without having an independent Judiciary, the Fundamental Rights enshrined in the Constitution will be meaningless and will have efficacy or beneficial value to the public at large. The same view has been reiterated in the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84), Muhammad Nadeem Arif v. Inspector General of Police, Punjab (2011 SCMR 408) and All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2012 SC 1).

56. On having discussed hereinabove and before identifying void parts of certain provisions of the Federal and the Provincial Service Tribunal Acts, it is observed that under Article 8 of the Constitution, any law, inconsistent with the rights conferred by the said Chapter, shall, to the extent of such inconsistency, be void.

57. This Court in exercise of judicial review, time and again has maintained that violation of Article 8 casts a duty/obligation upon this Court to declare any such law to be void. In the case of Baz

Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 923) it has been held as under: -

"14. The apprehensions expressed by the learned counsel for the Federation are unfounded. Pakistan has a written Constitution and all the organs of the State, namely, legislature, executive and the judiciary are functioning within their respective domains. The judiciary has never claimed supremacy over other organs of the State. However, it has a duty to interpret the Constitution and law as well as to examine the constitutionality of any law if it is concluded that it has been promulgated in derogation of the Fundamental Rights as envisaged by Article 8 of the Constitution, or where any of the provision of any law is found contrary to the Constitution. It is also one of the recognized principles of jurisprudence that person specific laws cannot be promulgated because such exercise instead of promoting the administration of justice causes injustice in the society amongst the citizens who are being governed under the Constitution, particularly, in a matter relating to implementation of Court orders following the directions of the Court. The Courts have always made efforts to avoid enforcement of their orders by taking extreme steps of punishing the delinquents for disobeying the orders/judgments. However, if an act of contempt of Court persists and no prompt action is taken, the court loses its authority and all its decisions and the judgments will be considered mere paper decrees, therefore, to maintain its dignity and respect and to restore the confidence of the citizens in the supremacy of the Constitution and the rule of law, as a last resort, proceedings for contempt of Court are initiated."

Reference may also be made to the cases of Mrs. Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 66), Government of Balochistan v. Azizullah Memon (PLD 1993 SC 341), Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602), Wattan Party v. Federation of Pakistan (PLD 2006 SC 697) and Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265).

58. On having discussed the cases supra it is concluded that Service Tribunals (Federal and Provincial) falling in the category of Court capable to exercise judicial powers are bound to follow the principal of independence judiciary for the purpose of ensuring enforcement of fundamental rights of access to justice under Article 9 of the Constitution, thus, are required to be separated from the

Executive under Article 175(3) of the Constitution. These listed constitutional objects ought to have been redressed by the Legislature in making suitable amendments in the law governing the Tribunals and the rules framed thereunder to the extent as noted hereinabove, any of the provisions of the law contrary to the fundamental and constitutional provisions if any.

59. To make the Chairman and the Members of the Service Tribunal independent, it is necessary to make their appointment with the meaningful consultation of the Chief Justice i.e. for the purpose of Federal Service Tribunal, with the Chief Justice of Pakistan and for Provincial Service Tribunals, with the Chief Justice of the respective High Court. It is to be noted that compliance of such condition seems to be necessary, because if the Chairman has to be appointed amongst the sitting Judges of a High Court, without consent of the Chief Justice, judicially and administratively, no Judge of the High Court can relinquish the post of Judge of High Court without the approval of the concerned Chief Justice as he has to discharge his function as a Judge of High Court under the administrative control of the Chief Justice. Similarly, a person qualified to be the Judge of High Court, either a District Judge or an advocate, has to be appointed with the meaningful consultation of the Chief Justice of the High Court because the District Judge, if is allowed to hold the charge of Provincial Service Tribunal, can only be released, if permission is granted by the Chief Justice. As far as the appointment of an advocate who is qualified to be the Chairman of a Tribunal or the Member is concerned, his performance or capability can only be evaluated during the period when he had been practicing law because a person who had obtained enrollment but

had never appeared before the High Court or Supreme Court cannot claim to have legal experience.

60. As far as a sitting Judge of the High Court acting as Chairman of the tribunal is concerned, there is no difficulty in determining the tenure during which he shall hold the charge in addition to his own functions, simultaneously performing as a Judge of the High Court and the Chairman of the Tribunal. Preferably, it would be appropriate and in the interest of institution if a sitting Judge is not asked to perform his duties as Chairman of a Federal or Provincial Service Tribunals. However, appointments for the position of Chairman can conveniently be made from amongst the Judges who had been a Judge of the High Court. If a retired Judge of the High Court is to be appointed as Chairman of the Tribunal, selection should be made in consultation with the Chief Justice of the High Court in the case of a Provincial Service Tribunal and in consultation with the Chief Justice of Pakistan in the case of Federal Service Tribunal, who may nominate a retired Judge. The tenure of such incumbent should not be for a period of more than three years for one time only. By adopting these measures, the object of ensuring the principle of independence of judiciary and also enforcement of the right of access to justice could be achieved, otherwise such Hon'ble retired Judges would try their best to continue to hold such post for an indefinite period against the principle of independence of judiciary, which also speaks about the tenure of such post. Reference in this behalf may also be made to the notification No. F.38(1)/2012-A.II, dated 03.09.2012, whereby the incumbent Chairman of Federal Service Tribunal, Mr. Justice (R) Abdul Ghani Shaikh, was appointed contrary to the rules, for an indefinite

period, as a Chairman, whereas, the Federal Service Tribunal Chairman and Members Service Rules, 1983, provide that a Chairman shall not continue to hold office for a period over three years at a time. However, when the petitioner and his counsel objected on issuance of such a notification by filing a Civil Miscellanies Application, then the same was rectified and a fresh notification has been issued on 22.09.2012. It may not be out of context to point out that the incumbent Chairman had been holding the same position earlier for the period of three years from 05.06.2009 to 04.06.2012. Prior to it, he had remained as Chairman, Sindh Service Tribunal w.e.f. 11.11.2000. Had the Chief Justice of Province or the Chief Justice of Pakistan been consulted, they would have advised to nominate someone else for the purpose of said appointment. Therefore, the Executive cannot be allowed to interfere in the process of appointment of such important functionaries of Tribunals i.e. Chairman, who is required to be appointed independently because while discharging its functions the tribunal does not act as an executive body rather performs judicial functions. If such a body/tribunal is not in a position to enforce Fundamental Rights, including the right to have access to justice because of the reason that when the appointments have to be made, they remain at the mercy of the executive, which is itself a litigant party in most of the cases before the Tribunal, and no hope can be pinned on such a tribunal to discharge its functions independently.

61. As far as the Members of the Tribunal are concerned, except in few cases i.e. in the Province of Balochistan where at least one Member is appointed from the Judiciary (District Judge), the practice is going on to appoint members from the bureaucracy. For

reference the detail of Chairman/Members of present composition of Service Tribunals is given herein below: -

<b>Sr.No.</b>	<b>Name of the Tribunal</b>	<b>Chairman</b>	<b>Members</b>
1.	Federal Service Tribunal	Retired Judge of the High Court	<ul style="list-style-type: none"><li>• Four retired government servants;</li><li>• Two Advocates and</li><li>• Two retired District Judges.</li></ul>
2.	Punjab Service Tribunal	Retired Judge of the High Court	All the six Members are retired government servants
3.	Sindh Service Tribunal	Retired Judge of the High Court	<ul style="list-style-type: none"><li>• One retired government servants; and</li><li>• One retired Addl. District Judges.</li></ul>
4.	KPK Service Tribunal	Serving District Judge	All the four Members are Serving government servants
5.	Balochistan Service Tribunal	Advocate	<ul style="list-style-type: none"><li>• One retired government servants; and</li><li>• One District Judge.</li></ul>

62. The above table shows that in the case of Sindh, Punjab and KPK, retired government officers have been appointed as Members of the Tribunals because there is no restriction in the law for the appointment of any person notwithstanding whether he has reached the age of superannuation as a government servant or not, therefore, efforts are made at the Federal and the provincial level to accommodate retired officers including civil servants or the servants belonging to disciplinary forces like police department etc. The record, if collected, would reveal no dearth persons who were appointed as Members of the Tribunal with no judicial experience.

63. We are conscious of the fact that there are civil servants who are quite capable of performing their functions independently without being influenced by any of their seniors amongst the Executive, however, the selection of Members has to be made in consultation with the Chief Justice, on having gone through the credentials of nominees and by also giving preference to those, who have a legal background and had not reached the age of superannuation with their tenure, which is to be restricted to a one time tenure not more than a period of three years or till the date of superannuation, whichever is earlier.

64. In the Province of Balochistan it is evident from the material placed on record that the incumbent Chairman has been appointed from amongst the Advocates, whereas, one of the Members is District Judge while the other is civil servant. The Chairman of Provincial Service Tribunal, KPK is a District Judge, whereas, the members are from government service. In Punjab and Sindh, the Chairman is a retired Judge of the High Court, whereas, the all the Members are retired government servants.

65. It is to be observed that the Chairman would also be facilitated by the presence of a combination of judicial officers i.e. District Judge/Advocate and the civil servants to constitute the Bench. In such a situation, with reference to the disputes of civil servants, both can give their input on the judicial and executive sides, which would improve the quality of the decision making and the judgments pronounced and strengthen the independence of judiciary in its role of enforcing the Fundamental Right of access to justice.

66. It is also to be observed that where District Judges or incumbent civil servants are not available for appointment, the Executive with the consultation of the respective Chief Justice may appoint Advocates qualified for appointment as a Judge of the High Court, either as a Member or the Chairman, as the case may be. Reference in this behalf has already been made to the incumbent Chairman of the Balochistan Service Tribunal, who was an Advocate, qualified to be appointed as a Judge of the High Court. Similarly, the KPK Service Tribunal is presently headed by a sitting District & Sessions Judge.

67. It has already been discussed hereinabove that the Service Tribunal performs 'judicial functions' in exercise of 'judicial powers' conferred upon it by the Legislature and therefore, enjoys status of a 'Court' and is required to be separated from the Executive in terms of Article 175(3) of the Constitution; however, no steps have been taken in this behalf by making suitable amendments in the Service Tribunals Acts, because existing provisions of the law relating to the appointment of Chairman and Members of the Service Tribunals do not provide for consultation of the Chief Justice and ensure that they (Chairman and the Members) should act independently following the principle of independence of judiciary, especially since their role is in substitution of the highest constitutional body i.e. High Court. And the Tribunal, as judicial fora, must enforce the Fundamental Right of access to justice and they should also enjoy financial autonomy as has been given to the High Courts and the Supreme Court. Reference in this behalf may be made the case of Government of Sindh v. Sharaf

Faridi (PLD 1994 SC 105), relevant Para therefrom is reproduced hereinbelow: -

"In our opinion, financial independence of the judiciary can be secured if the funds allocated to the Supreme Court and High Courts (by the Parliament and the Provincial Assemblies in their respective annual budgets) are allowed to be disbursed within the limits of the sanctioned budget by the respective Chief Justices of these Courts without any interference by the Executive (in practical terms without reference and seeking the approval of the Ministry of Finance/the Provincial Finance Department). Thus, the Chief Justice would be competent to make reappropriation of the amounts from one head to another, create new posts, abolish old posts or change their nomenclature and to upgrade or downgrade etc. as per requirements of their respective Courts and this should be possible, as has been observed earlier, without being obliged to seek the approval of the Ministry of Finance or the Provincial Finance Departments as the case may be, provided of course the expenditure that is incurred by them falls within the limits of the budget allocation for their Courts. To ensure financial discipline, an Accounts Officer of the Accountant General may sit in all Courts for pre-audit and issue of cheques. In this way, the control of the executive over the judiciary in this important sphere will be eliminated and the judiciary enabled to function independently."

68. In view of the above discussion, the following provisions of STA, 1973; PSTA, 1974; SSTA, 1973; NSTA, 1974 and BSTA, 1974, to the extent reproduced hereinbelow, are void and unconstitutional being in derogation of Article 2A and 9 read with Article 175 of the Constitution: -

**Service Tribunals Act, 1973 (Federal)**

**Section 3(1):**

The President may, by notification in the official Gazette, establish one or more Service Tribunals and, where there are established more than one Tribunal, the President shall specify in the notification the class or classes of civil servants in respect of whom, or the territorial limits within which, or the class or classes of cases in respect of which, each such Tribunal shall exercise jurisdiction under this Act.

**Section 3(3):**

A Tribunal shall consist of—

(a) a Chairman, being a person who is, or has been, or is qualified to be Judge of a High Court.

**Section 3(3)(b):**

Such number of members not exceeding three, each of whom is a person who possesses such qualifications as may be prescribed by rules, as the President may from time to time appoint.

**Section 3(4):**

The Chairman and members of a Tribunal shall be appointed by the President on such terms and conditions as he may determine.

**Section 3(7):**

Notwithstanding anything contained in sub-section (3), sub-section (4), sub-section (5) or sub-section (6), a Tribunal established to exercise jurisdiction in respect of a specified class or classes of cases may consist of one or more persons in the service of Pakistan to be appointed by the President.

**Service Tribunals (Qualifications of Members) Rules, 1974**

**Rule 2:**

A member of the Tribunal shall be a person who has for a period of or for periods aggregating not less than 20 years held an appointment or post in the Service of Pakistan, or in a Corporation or other body set up by Government or who, for the said period, has been an advocate or legal practitioner.

**Federal Service Tribunal Chairman and Members Service Rules, 1983**

**Rule 1:**

The Chairman and members shall hold office at the pleasure of the President, for such tenure, which may normally be for three years extendable by a further period not exceeding three years, as may be determined by the President.

Similarly, Section 3(3)(b) of the Sindh Service Tribunals Act, 1973, Section 3(3)(b) of the KPK Service Tribunals Act, 1974 and Section

3(3)(b) of the Balochistan Service Tribunals Act, 1974 are also declared to be *ultra vires* to the Constitution of the Islamic Republic of Pakistan, 1973.

69. It is to be noted that while constituting a Bench, the Chairman shall preferably constitute each bench comprising one Judicial/legal Member and one Member from civil service. However, where a single Member Bench is to be constituted, preference should be given to the Judicial Member to hold the hearing.

70. The Service Tribunals Acts do not contain any specific provision providing for the financial autonomy of the Tribunals. Thus, on this score as well, the Service Tribunals cannot discharge their functions independently. The Tribunals must be duly empowered to disburse their annual funds, allocated by the Parliament and the Provincial Assemblies, in their respective annual budgets, within the prescribed limit by the Chairman of the respective Tribunals, without the need to seek approval of the Finance Ministry or provincial Finance Department.

71. The Service Tribunals both Federal and Provincial perform vital judicial functions by adjudicating upon issues pertaining to the terms and conditions of Civil Servants, therefore, it is imperative that appropriate legislative action be taken post-haste. Consequently, to avoid denial of access to justice to them, the Federal and the Provincial Governments through their respective Law Secretaries are hereby allowed 30 days' time to give effect to the above conclusions/findings and implement this judgment forthwith by making fresh appointments of Chairmen/Members of the Tribunals, following the observations made hereinabove. If no steps are taken within the stipulated time,

either through temporary or permanent legislation, the provisions of the legislation which have been declared void under Article 8 of the Constitution shall cease to have effect. As a consequence whereof, the incumbent Chairman/Members of the Tribunals, whose cases are not covered under the above-said proposed provisions, shall also cease to hold said positions, as the case may be. Similarly, independent budgetary allocation for annual expenditures of the Service Tribunals shall be provided for in accordance with the Constitution, enabling the Tribunals to function independently.

72. The petitions are disposed of in the above terms. No order as to costs.

Chief Justice

Judge

Judge

Announced in Open Court on \_\_\_\_\_ at Islamabad

Chief Justice