SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.278 of 2017
(PLA filed on 21.09.2017)

1. Chairman Azad Jammu & Kashmir Council (Prime Minister of Pakistan/Authority) through Secretary AJ&K Council, Sector F-5/2, Islamabad.
2. Secretary, Azad Jammu & Kashmir Council, Sector F-5/2, Islamabad.
3. Secretary Azad Jammu and Kashmir Council/Chairman Azad Jammu and Kashmir Council Board of Revenue, Sector F-5/2, Islamabad.

……APPELLANTS

VERSUS

1. Muhammad Munir Raja (Ex-Additional Commissioner Inland Revenue, Azad Jammu & Kashmir Council), r/o House No.B/3, Street No.21, Chakala Scheme-III, Rawalpindi.

…RESPONDENT

2. Minister Incharge, Kashmir Affairs & Northern Areas (KANA), Sector F-5/2, Islamabad.

…… PROFORMA RESPONDENT

[On appeal from the judgment of the Azad Jammu and Kashmir Council Service Tribunal dated 31.07.2017 in service appeal No.01/2016]

FOR THE APPELLANTS: Mr. Abdul Rashid Abbasi, Advocate.

FOR RESPONDENT NO.1: In person.

Date of hearing: 02.11.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeal by leave of the Court has arisen out of the judgment of the AJ&K Council Service Tribunal *(hereinafter to be referred as Service Tribunal)* dated 31.07.2017, whereby the appeal filed by the respondent, Muhammad Munir Raja, has been accepted.

2. The case history as depicted from the record is that the respondent was serving as Commissioner Income Tax Appeals in the Income Tax/Excise & Taxation Department of Azad Jammu & Kashmir Council, Mirpur. The authority vide

notification dated 08.11.2004 placed him under suspension and issued a show cause-cause notice on 06.12.2004. The proceedings under section 5 of the AJ&K Council Removal from Service (Special Powers) Act, 2000 were initiated through notification dated 21.12.2004 and one Malik Abdul Rasheed (Judicial Member/Chairman Income Tax Appellate Tribunal) was appointed as inquiry officer. The inquiry officer submitted his report on 01.02.2005 which was not acceded to by the authority. Thereafter, the authority initiated for second inquiry while constituting the inquiry committee vide order dated 15.03.2005. On submission of report by the inquiry committee, vide notification dated 22.07.2005, the major penalty of compulsory retirement from service was imposed upon the respondent. The respondent filed an appeal before the Service Tribunal on 31.10.2005 which was finally disposed of after a period of 8 years through judgment dated 27.08.2013. It is worth mentioning that during these eight years despite direction of this Court mostly the Service

Tribunal remained non-functional and the authority did not bother to make the same functional. The Service Tribunal while deciding the appeal formulated the following five points:-

> "i. Whether the action taken by Secy. AJK Council against the appellant was within his jurisdiction? Who was the competent authority in his case, he being a holder of Grade B-20 post?
>
> ii. Whether Secy. AJK Council could order a de novo inquiry on the same set of charges after the amendment carried out in Special Power Act in 2001 which clearly provides that the Authority shall appoint "an" inquiry officer or committee.
>
> iii. Whether the inquiry proceedings were conducted strictly in accordance with the stipulated procedure as laid down in the relevant rules and whether the non-observance of prescribed procedure vitiates the inquiry proceedings altogether?
>
> iv. Whether any additional allegation could be added and inquired into after the charge sheet was framed and conveyed to the accused officer?
>
> v. Whether the charges as outlined in charge sheet were proved against the appellant? What is the effect of discrepancies in the findings of two inquiry officers as contained in their respective reports?

Although, the first point was decided against the appellants, herein, but despite this the Service Tribunal attended all other formulated points, specially, point No.V relating to the proof of charges. After taking into consideration all the

evidence, record and facts, the learned Service Tribunal recorded a very speaking, detailed, well reasoned and authoritative judgment and drawn the following conclusion:-

> "….In view of the facts as detailed above we are of the firm view that the enquiry proceedings were tainted with malafide intentions on the part of the respondents and are hence declared irregular.
>
> Now finally taking up the crucial point whether the charges contained in the charge sheet stand proved against the petitioner or not. In this regard it may be noted that the appellant was charged to be guilty of inefficiency, corruption and misconduct. We would like to take up each allegation separately. Taking up the charge of inefficiency first, it has been observed that the collection of tax during his tenure as CIT and Collector S.T. far exceeded his given targets. He collected income Tax amounting to Rs.2428.178 million against the given target of 2420 million and provincial tax/duties amounting to Rs.651.386 million against the revised Target of Rs.629 million fixed for the year 2003-04. This performance on the part of the appellant was formally acknowledged by the Council Secretariat /AJK Council Baord of Revenue, through appreciation vide letter bearing #DO NO.F-II-5/7/99-AJKC dated 02.08.2004. It is surprising to note that almost at the same time when the appellant was being prosecuted on the charge of inefficiency, the Joint Secretary of the Council who also happens to be a member of AJKC Board of Revenue, was conveying appreciation of the Council and Council Board of Revenue through a formal D.O letter addressed to the appellant. The charge of inefficiency is automatically, nullified in the face of this appreciation letter which pertains to almost the same period. In addition to that it has also been observed that the charge of inefficiency was neither proved in the first enquiry nor even in the second enquiry

conducted by Mr. Nisar Hussain Shah. We were shown during the arguments a number of appreciation letters earned by the appellant during his service by dint of his exceptional performance and achievement of revenue targets given to him from time to time. Thus in our considered view, the charge of inefficiency is not proved against the appellant.

As regards the charge of alleged corruption on the part of the petitioner, we have noted that this charge was not substantiated against him during the first enquiry conducted by Malik Abdul Rashid wherein the appellant was exonerated of all charges including this charge of corruption. The enquiry officer specially concluded at page 17 and 18 of his report that the charge of corruption is not proved against the petitioner. Even during the second enquiry conducted by Mr. Nisar Hussain Shah the charge of corruption was not established against the appellant. The enquiry officer has admitted in concluding para at page 33 of the enquiry report that the charge of corruption or taking illegal gratification by the accused officer from any firm in lieu of the grant of relief or exemption certificate regarding Income Tax or Sales Tax is not proved. Similarly he also held that no corruption was proved in the registration of vehicles against the appellant.

Thus in our considered opinion the charge of corruption, is not proved against the appellant.

As far as the charge of misconduct is concerned, it was not proved against the accused officer during the first enquiry. However, during the second enquiry the enquiry committee concluded that the charge of misconduct stood proved against him on the basis of following cases:

1. That while posted as M.R.A. Kotli he registered the vehicles by ignoring the direction issued by the Head of Department under No.754-59 dated 19.02.96.

2. That he gave relief/exemption in Sales Tax to Raja Auto Cars purportedly under

Govt. notification dated 08.02.95 which was not according to law.

3. That he issued exemption certificates under Section 148 of the Income Tax Ordinance in favour of M/s Dura Industries, M/s Metro Felx and Nobel Foam Industries Mirpur in violation of relevant provision of law and Rules of Income Tax Ordinance 2001 and consequently caused huge loss to the Govt. exchequer.

As far as the charge of registering certain vehicles by ignoring the direction issued by the Head of Deptt during his posting as M.R.A Kotli is concerned which is said to have been proved against him in the second enquiry, the appellant during the hearing of the case submitted that original certificate bearing No.Tax/CIR/6274 dated 16.05.12 duly signed by Sheikh Siraj Munir admin officer from the Registration Head Office stating that no such letter No.754-59 dated 19.02.96 is available in this office record. Similarly he also produced an original letter of Inland Revenue Officer Circle -03 Kotli AJK stating that as per report and record of this office, the letter No.754-59 dated 19.02.96 alleged to have been received under No.696, dated 26.02.96 does not coincide in this office record. It was therefore, asserted by the appellant that even the enquiry committee itself has admitted that no irregularity in registration of vehicles was committed by the accused officer prior to the issuance/receipt of the above mentioned letter from the Head Office.

The petitioner's contention is convincing that in the presence of these two original letters, one from the issuing office at Muzaffarabad that no such letter was ever issued and the other from the receiving office at Kotli stating that no such letter seems to have been received in the said office, the charge becomes frivolous and the petitioner cannot be held guilty of ignoring the directive issued by the Head of

Deptt. In addition to this, the appellant submitted that during personal hearing of the appellant before Secy. AJKC he raised the issue of additional complaint for registration of vehicles on bogus documents being made a part of the enquiry report which was not initially a part of enquiry order. This legal issue was considered favourably and list of vehicles registered on bogus documents which was not part of the original enquiry order was not considered as part of the proceedings of this enquiry by the Secy. AJKC. This contention of appellant was compared with orders of Secy. AJKC dated 22.07.2005 and it was found that the contention of the appellant stands corroborated by Secy. AJKC's above mentioned order contained in the last sentence of para 9. Thus in our opinion, this charge cannot be read against the appellant and as such he is absolved of this charge.

Now coming to the question at II above regarding the issuance of exemption certificate in Sales Tax to Raja Autos, it has been noted that the Sale Tax is the subject of Govt. of AJK and AJK Council has no jurisdiction in this regard. This Tax is levied and regulated by the AJK Central Board of Revenue headed by Chief Secy. AJK. The appellant while giving his views/arguments had submitted that his action in this regard was justified and was covered by the notification dated 08.2.95. The decision of the Supreme Court dated 04.8.98 pertained to Novelty Enterprises, and this decision is not relevant in the present case. He had contended that it was a new setup for which installation certificate had already been issued by Ch. Muhammad Bashir Asstt. Collector Central Excise and Sales Tax Deptt Mirpur AJK dated 26.2.2004. He further stated that his predecessor Sardar Muhammad Rafiq Collector Sales Tax vide his letter dated 11.04.02 informed that the Company is exempt from Sales Tax for 5-years. Again he confirmed to the Company vide letter dated 03.05.02 about the exemption of Sales Tax. After obtaining these assurances the Company decided to manufacture

HAWK Motor Cycles and accordingly they installed new plant, new machinery and recruited new manpower for this purpose. To be on safe side and for further confirmation, the Company submitted application to the Prime Minister AJK for exemption of Sales Tax under the notification dated 08.2.95. The Prime Minister AJK marked this application to the Chief Secretary with the clear direction as under:

"مشمولہ نوٹیفکیشن مجریہ 8.2.95 کی روشنی میں استفادہ دیئے جانے کی کاروائی کی جائے"

Chief Secy. Who is also Chairman AJK Central Board of Revenue forwarded these instruction/orders of the Prime Minister AJK to the Secretary Finance for taking further action. Finally Secy. Finance marked it to the appellant for necessary action.

The petitioner had further elaborated that after necessary enquiry by him which resulted in satisfactory reply, he issued conditional exemption letter dated 06.5.04. According to the letter issued by him, exemption of Sales Tax would be allowed on the start of Commercial production and after receiving an undertaking on judicial paper from the Chairman Raja Auto Cars that Company will not claim refund already paid by Raja Auto Cars on account of Sales Tax. He further stated that company started its commercial production on 01.9.2004 and duly intimated to the Sales Tax Deptt on 14.9.04 when D.R. Mr. Asif Abbasi himself was the Collector Sales Tax and not the appellant as he was already transferred w.e.f 11.8.04. According to him during his tenure, no loss whatsoever was caused to the Govt. exchequer because exemption was to take place from the date of Commercial production and commercial production started from 01.9.04 when D.R Mr. Asif Abbasi was incharge of the whole affairs being Collector of Sales Tax in his place. Appellant further stressed that if Mr. Abbasi was convinced that the exemption letter issued by him dated 06.05.04 is not proper and no covered by the Sales Tax Rules, immediately he should have stopped action upon the letter because under Section 36 of Sales Tax Act, he was fully empowered to do that. But it seems that Mr. Asif

Abbasi failed to perform his duty. Interestingly he neither objected to his exemption nor stopped the Company from availing this exemption till January, 2005.

In such circumstances it is evident that the appellant had committed no wrong while issuing exemption letter and apparently he performed his duty in good faith according to the notification dated 08.2.95. "presumption of regularity and good faith is always attached to all official acts and onus was entirely on person alleging malafide to prove the same in order to rebut such presumption of law". Ch. Muhammad Afzal vs. Govt. of AJK 1991 PLC (CS) 194 High Court AJK refers. Additionally, the appellant did not issue this exemption letter entirely at his own in haste; rather a proper request was made by the Company to the Prime Minister for seeking exemption as per AJK Govt. notification dated 08.2.95 issued by the AJK Finance Deptt. Prime Minister passed proper orders upon this request of the Company and marked it to the Chief Secy. AJK Govt. for compliance as he was the Chairman of AJK Board of Revenue. Then Chief Secy. Forwarded and marked this case to the Finance Secy. Who is also very senior and important member of AJK board of Revenue. Secy. Finance also did not raise any observation/objection upon it and forwarded it to the appellant for taking necessary action.

On receipt of this application bearing clear orders from the Prime Minister of AJK, endorsement from the Chief Secy. And instructions from Secy. Finance to the appellant, all of whom were responsible officers of the AJK Govt. having direct relevance to the tax matters, the appellant whose predecessor Sardar Muhammad Rafiq, Collector Sale Tax had already assured Raja Auto Cars through his two letters that their case is covered for exemption under this notification of 08.2.95, and after necessary investigation issued this conditional exemption letter dated 06.5.2004.

It will not be out of pale to mention here that in the first enquiry conducted by Malik Abdul Rashid, Chairman ITAT it was held that this charge is not proved against the

accused/appellant. Even second enquiry committee has given in their findings that no proof of any corruption or illegal gratification on the part of the appellant in the issuance of this exemption letter was established.

In view of facts as mentioned above it would not be fair to penalize the appellant for this action particularly when both enquiry reports have confirmed that the charge of any corruption, bribery or illegal gratification has not been proved against him. We therefore, hold that the prosecution has failed to establish this charge against the appellant beyond reasonable doubt. Hence he is absolved of this charge.

Referring to the point listed at iii above regarding giving undue relief/exemption under section 148 of the Income Tax Ordinance to M/s Dura Foam, Metro Flex and Nobel Foam Industries Mirpur allegedly in violation of the provisions of law and rules, it has been observed that these Companies were not specifically included in the original charge sheet served on the appellant. In the original charge sheet the names of M/s Diamond Foam, Master Foam, Falcon Foam and Walton Tobacco company were mentioned. During the first inquiry report the appellant has been exonerated from the charge of giving any undue relief to the said firms under section 148 of Income Tax ordinance 2001. However during second enquiry, the enquiry committee in their conclusion/recommendations at page 33 of the report surprisingly left all the four firms mentioned in the original charge sheet and opted to take up the cases of M/s Dura Foam, Metro Flex and Nobel Foam Industries which were extraneous to the original charge sheet. Since these three industries were incorporated in the list of allegations at the last stage of the inquiry proceedings, the petitioner objected to their inclusion in the list of allegations during the course of inquiry without any prior notice to him. This fact is admitted by the inquiry committee as reflected at page 22,23 of their report where it has been clearly reported that when the cases of these firms i.e. M/s Dura Foam, Metro Flex and Nobel Foam Industries were produced by the Departmental Representative Mr. Asif Abbasi the petitioner was

taken by surprise and raised the objection that this charge was not specifically mentioned in the list of charges. We are therefore of the view that the inquiry committee went beyond the scope of inquiry by including the cases of those Companies which were not originally incorporated in the charge sheet. We are in agreement with the judgment of AJK Service Tribunal reported at NLR 1984, TD 101, Appeal No.172 decided on 10.06.83, titled Sardar Said Hassan Khan vs. AJK Government, as the same is very relevant in the context of this case. This judgment clearly and unequivocally pronounces that the Inquiry Officer is bound to confine scope of his inquiry to the allegations made against the appellant in the charge sheet and has no authority to travel beyond the ambit of such allegations and hold the appellant guilty of the charges not communicated to him in the charge sheet. In the light of these facts and circumstances of this case and by placing our reliance on the citation quoted above, we hold that the appellant cannot be held guilty for allegations not originally included in the charge sheet i.e. the extraneous material pertaining to M/s Dura Foam, Metro Flex and Nobel Foam Industries. This charge therefore cannot be arraigned against the appellant.

The upshot of the above discussion is that after taking into consideration all facts and law points involved in this case and after carefully hearing arguments advanced by both parties we are of the considered opinion and hold that in these circumstances the appellant cannot be held guilty for any of charges/allegations levelled against him. The appeal is therefore accepted, the impugned order dated 22.07.2005 passed by Secretary AJK Council against the present appellant is declared to have been passed by an incompetent authority and is accordingly set aside. The petitioner is ordered to be reinstated in service w.e.f 22.07.2005, when he was compulsorily retired from service with all consequential benefits admissible under the rules. The period of suspension from 8/11/2004 to 22/07/2005, again being outcome of an irregular process of law without observing proper procedure required under the rules is also

> hereby regularized and ordered to be treated as on duty."

The above judgment of the Service Tribunal was assailed through an appeal by leave before this Court. In the appeal the appellants mostly stressed on the point of competency of authority to initiate the proceeding. In the light of the arguments of the parties, this Court considered the following crucial points:-

> "(1) Whether Secretary AJ&K Council being an officer in grade B-20 was competent authority to initiate the proceedings against respondent No.1 and pass the order of compulsory retirement, and
>
> (2) whether second inquiry through Inquiry Committee was permissible under section 5 of Act, 2000 after conclusion of the proceedings conducted by the Inquiry officer appointed under the provisions of section 5 of Act, 2000.
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> (i) Before proceeding further, it may be observed that the decision on point No.2 is subject to the decision on the point No.1.
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> (ii) If the appellants are succeeded to cross the hurdle whether the Secretary AJ&K Council was competent to proceed against the respondent then the resolution on the other point will be made."

As the appellants failed to cross the hurdle relating to first point, thus, according to sub-point (ii) of point 2 no necessity was felt for resolution of

second point. After taking into consideration all the aspects of the matter the appeal was finally disposed of by this Court vide judgment dated 06.05.2014 with the following command:-

> "The result of the above discussion is that the judgment of the Council Service Tribunal dated 27.08.2013 is based on solid reasons and supported by statutory provisions and the Tribunal has attended all the legal and factual questions in detail, therefore, finding no force this appeal is dismissed with no order as to costs."

Consequently, the judgment of Service Tribunal dated 27.08.2013 was maintained and upheld with full force on all legal and factual grounds resulting into the acquittal of the respondent from the alleged charges.

3. Feeling aggrieved from the judgment of this Court dated 06.05.2014, the appellants, herein, requested for review only on the ground that the points regarding jurisdiction of Service Tribunal and the notification issued in relation to delegation of executive authority of AJ&K Council, have not been taken into consideration. The appellants, herein, did

not challenge the final dictum of this Court regarding upholding of the judgment of Service Tribunal dated 27.08.2013 on all legal and factual propositions. The review petition was dismissed through judgment dated 11.02.2015.

4. During the pendency of said review petition, the authority despite clear and final judgment of this Court dated 06.05.2014 opted for holding de-novo inquiry under the provisions of Government Servants (Efficiency and Discipline) Rules, 1973 through order dated 29.08.2014, which reads as follows:-

> "Azad Jammu and Kashmir Council Secretariat
> ORDER:
>
> Subject: Disciplinary Action against Mr. Muhammad Munir Raja, Additional Commissioner, Department of Inland Revenue, AJ&K Council.
>
> WHEREAS the Chairman, Azad Jammu and Kashmir Council / Prime Minister of Pakistan, on due consideration of the facts of the case, has decided under Rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, as adapted by the AJ&K Council, read with Schedule V, items 26 & 28 of the Rules of Business, 1983 to order a De novo inquiry to proceed against Mr. Muhammad Munir Raja, Additional Commissioner (under suspension), Department of Inland Revenue, AJ&K Council in the interest of justice.

2. NOW THEREFORE an Inquiry Committee comprising the following is hereby appointed to conduct a De novo inquiry into the charges as set forth in the enclosed charge-sheet to be served on the accused civil servant:-

i) Mr. Tahir Hussain, Joint Secretary AJK Council Secretariat, Chairman
ii) Mr. Mahr Zafar Hayat, Accountant General, AJ&K Council Secretariat, Member
iii) Mr. Syed Munawar Shah, Chief (Planning) AJ&K Council, Secretariat Member

Encl: As above

(Shahid Ullah Baig)
Secretary"

The respondent feeling aggrieved from this order challenged the same before the High Court by filing writ petition No.1842/2014 on 13.09.2014 along with application for interim relief. The learned High Court admitted the writ petition for regular hearing on 18.03.2015 and declined to suspend the operation of order impugned while observing that the writ petition is liable to be decided within a short span. However, unluckily despite passage of months the writ petition could not be decided. Meanwhile, the authority kept the proceeding continued and vide notification dated 01.09.2015 once again imposed the major penalty of compulsory retirement from service upon the

respondent. The respondent challenged the said notification through appeal before the Service Tribunal on 15.01.2016, which was accepted through judgment dated 27.03.2017. However, on appeal filed by the appellants, herein, in fourth round of litigation this Court vide judgment dated 21.06.2017 along with some other appeals remanded the case to the Service Tribunal on technical ground. After remand, the learned Service Tribunal disposed of the appeal through impugned judgment dated 31.07.2017. The conclusion of the Service Tribunal has been summarized in paragraphs 24 to 28 of the impugned judgment, which read as follows:-

> "24. Respondents filed appeal against above judgment before the Hon'able Supreme Court of Azad Jammu and Kashmir. The apex Court after due process of law dismissed the appeal through judgment dated 06.05.2014 and upheld the judgment of Service Tribunal dated 27.08.2013 in Toto. The apex Court further declared that the judgment of the Service Tribunal is based on solid reasons. The operating part of the judgment is reproduced hereunder:-
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> > "The result of the above discussion is that the judgment of the Council Service Tribunal dated 27.08.2013 is based on solid reasons and supported by statutory provisions and the Tribunal has attended all the legal and factual questions in detail,

> therefore, finding no force this appeal is dismissed with no order as to costs."

25. Respondents filed review petition before the apex Court the apex Court dismissed the review petition. The operational part of the judgment passed in review petition of the apex Court is reproduced as under:

> "In the light of what has been discussed above, we are not inclined to review our judgment which has been passed after attending all the questions involved in the case. The learned counsel for the petitioners failed to point out any error/mistake apparent on the face of the judgment. Resultantly, finding no force in this review petition is hereby dismissed. No order as to costs."

26. In the light of above judgment, we are of the view that respondent cannot order the fresh de-novo inquiry.

27. It is pertinent to mention here that apex Court did not direct the competent authority for fresh inquiry, therefore, respondents have no authority to reopen the case. We are of the view that the order of de-novo inquiry issued by the respondent is with mala fide intention, which cannot be permitted to do so. Respondents have no option except to reinstate the appellant.

28. The nutshell of the above discussion is that the order of de-novo inquiry dated 29.08.2014 along with findings of the competent authority (Chairman Azad Jammu and Kashmir Council) dated 01.09.2015 is against the law and judgments of the apex Court and is hereby set aside."

Now, the appellants by leave of the Court have assailed the proprietary of this judgment of the Service Tribunal.

5. Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for the appellants argued the case at length. After brief narration of the case history, he submitted that the learned Service Tribunal has fell in error of law while disposing of the appeal on the sole ground that the previous judgment of the apex Court has attained the finality, whereas, it is not the correct appreciation. In the previous judgment, this Court only resolved the proposition of competency of the authority and all the other points regarding the merits of the case and proof of the charges remained unattended. In this state of affairs, when the appeal was only decided on the technical ground of incompetency of the authority the competent authority is not barred to hold de novo inquiry. As alternate, he argued that as the Court itself has drawn the final conclusion that all the proceedings initiated by an incompetent authority (from holding the inquiry till imposition of the punishment) are coram-non-judice, thus, same shall be deemed to be non-existent in the eyes of law, hence, there is no bar for holding the de-novo

inquiry. To substantiate his argument, he submitted that this Court while deciding the appeal through judgment dated 06.05.2014 formulated only two points and clearly held that in case of crossing the hurdle of first point the other point will be attended to and resolved. As the appeal was decided only on the strength of first point meaning thereby that the other point was not attended to and resolved. So far as the operative part of the judgment is concerned, it has to be read in juxtaposition with the body of the judgment. The Court has clearly observed that the Secretary AJ&K Council has wrongly exercised the powers, hence, we did not intend to discuss the other points raised and agitated on behalf of the parties. It clearly leads to the conclusion that all other points remained unresolved, unattended and undecided. The Service Tribunal has fell in error of law while accepting the appeal on technical ground, therefore, by accepting this appeal the case be remanded for decision on merits. He referred to the cases reported as *Kh. Bashir Ahmed vs. AJ&K Govt. & others* [1994 PLC

(C.S.) 56], *Secretary Works vs. Sardar Muhammad Ashraf Khan & another* [2006 SCR 107], *Khawaja Ahmed Din vs. Muhammad Shabir Khan* [1994 SCR 142] and *Basharat Ali vs. Govt. of Punjab & others* [2003 SCMR 1718].

6. Conversely, the respondent personally argued his case. He submitted that he has also filed the detailed concise statement along with the relevant documents and reference of case law, which may be treated as his arguments. He also raised the preliminary objection that the appeal filed before this Court on behalf of appellant No.1 is incompetent as he has neither executed the power of attorney nor authorized any other person on his behalf. He further argued that he is facing the litigation since long and more than half of his service has been spoiled in running from pillar to post. He has faced such punishment and loss which is irreparable. He further argued that now he is at the verge of the retirement, therefore, the appeal be dismissed with cost.

7. After hearing the arguments, in view of clear constitutional provisions and final judgment of

this Court, in our considered view, as no detailed deliberation was required for drawing the final conclusion, hence, following short order was passed:-

> "Arguments heard. The details reasons shall be followed, however, the appeal is disposed of through this short order in the terms indicated hereinafter.
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> 2. It is fourth round of litigation before this Court relating to the controversy which arisen on issuance of notification dated 22.07.2005 whereby respondent No.1, herein, was awarded major penalty of compulsory retirement from service. An appeal against the said notification was filed before the AJ&K Council Service Tribunal which was accepted vide judgment dated 27.08.2013. The relevant operative part of the judgment reads as follows:-
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> > "….after carefully hearing arguments advanced by both parties we are of the considered opinion and hold that in these circumstances the appellant cannot be held guilty for any of charges/allegations leveled against him."
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> These findings of the Service Tribunal were upheld by this Court through judgment dated 06.05.2014 with the following final conclusion:-
>
> > "The result of the above discussion is that the judgment of the Council Service Tribunal dated 27.08.2013 is based on solid reasons and supported by statutory provisions and the Tribunal has attended all the legal and factual questions in detail, therefore, finding no force this appeal is dismissed with no order as to costs."
>
> The appellants, herein, filed a review petition against the said judgment which was decided on 11.02.2015 as follows:-

> "In the light of what has been discussed above, we are not inclined to review our judgment which has been passed after attending all the questions involved in the case. The learned counsel for the petitioners failed to point out any error/mistake apparent on the face of the judgment. Resultantly, finding no force in this review petition is hereby dismissed. No order as to costs."

Thus, the conclusion which can logically be drawn is that the judgment of the Service Tribunal dated 27.08.2013 on all legal and factual points has attained finality. According to celebrated principle of law, once a matter is finally resolved by the apex Court no authority is competent to reopen the same. It amounts to frustrate the final judgment of the constitutional Court, thus, the impugned judgment of the Service Tribunal dated 31.07.2017 on all legal points is quite consistent with the principle of law and justice calling for no interference. In this state of affairs, this appeal having no substance stands dismissed with costs.

3. In view of the above drawn conclusion, prima facie, it appears that after final judgment of this Court reopening of the same matter by the departmental / executive authority amounts to offend the judgment of the Court as well as constitutional provisions. Prima facie, such act requires initiation of contempt of Court proceeding for upholding the supremacy of law and dignity of Court. Therefore, notice shall be issued to the Secretary AJ&K Council to explain that why the contempt of Court proceeding may not be initiated against the concerned. The explanation shall be submitted within a period of two weeks….."

8. The detailed reasons for disposal of appeal through the above short order are as follows.

9. In the light of the arguments advanced at bar we have gone through the record of the case.

The only vital proposition requiring consideration in this case is; whether after final judgment of this Court dated 06.05.2014, the exercise of the powers by the authority for initiating the de-novo inquiry is permissible under law or not. The obvious conclusion in the light of the constitutional provisions is that no such power is available to any authority/party.

10. In the background of hereinabove stated long case history, there is no ambiguity regarding the finality of the judgment of this Court dated 06.05.2014. The operative part of the judgment, as reproduced hereinabove, clearly states that the judgment of the Service Tribunal has been upheld on all legal and factual grounds.

11. We would like to refer here the constitutional provisions of sections 42-A and 42-B, being directly related to the sole proposition involved in this case. The same are reproduced as under:-

> "[42-A. *Issue and execution of processes of Supreme Court .-* (1) The Supreme Court shall

have power to issue such directions, orders or decrees and as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Azad Jammu and Kashmir as if it has been issued by the High Court.

(3) All executive and judicial authorities throughout Azad Jammu and Kashmir shall act in aid of the Supreme Court.

(4) Subject to this Act and law, the Supreme Court may, in consultation with the Council, make rules regulating the practice and procedure of the Court;

Provided that till the new rules are framed, the rules framed by the Judicial Board shall, so far as they are not inconsistent with this Act and any other law, be deemed to have been made by the Supreme Court until altered or amended and references to the Judicial Board in these rules shall be construed to be referred to the Supreme Court.

42-B. *Decisions of Supreme Court binding on other Courts.*- Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Azad Jammu and Kashmir."

These constitutional provisions are paramateria to the Articles 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973.

12. The main argument of the learned counsel for the appellants is that the authority is competent to hold de-novo inquiry as according to the body of

the judgment dated 06.05.2014 this Court has only decided the appeal on the point of competency of authority, thus, it shall be deemed confined only to this extent and on merit it shall be deemed that the appeal has not been decided and the proceedings conducted by the incompetent authority including the inquiry are non-existent. To substantiate his arguments, he has referred to some judgments but amazingly the referred judgments according to their spirit are not supportive to the stand taken by the appellants. In all the referred judgments, the Courts have directed for de-novo inquiry or left the matter open to the discretion of the authority to hold de-novo inquiry if deemed necessary. The matter which is brought before the Court is infact taken out of the hands of the authority and the authority is left with no option to exercise the powers as the same is subject to the decision of the Court. Despite repeated queries to the learned counsel for the appellants that whether he can assist the Court by referring to a legal precedent where after final judgment of the apex Court, the

holding of de-novo inquiry without direction/permission of the Court relating to the same matter has been declared valid or legal; he failed and insisted that as in the referred judgments the Courts have directed for holding the de-novo inquiry, thus, it can be derived that the authority can exercise this power. He has placed reliance on some legal precedents. It appears that perhaps the learned counsel has not minutely studied the same. Even the referred judgments negate the concept of holding the fresh inquiry in the case which has been decided by the Court without permission of the Court. In the referred case reported as *Kh. Bashir Ahmed vs. AJ&K Govt. & others* [1994 PLC (C.S.) 56], the civil servant-appellant raised the proposition that the authorized officer failed to make proper order for holding the second inquiry under Rule 6(2) Azad Jammu and Kashmir Civil Servants (Efficiency and Discipline Rules), 1977. The plea of the civil servant was not accepted by the Service Tribunal, thus, even according to the spirit of the referred judgment the concept of

second inquiry is not established. In fact, the legal objection was raised regarding the statutory rule that the authorized officer after receipt of the direction from the authority was required to make the written request to the authority for holding inquiry. It was not a matter of second inquiry but the observance of the procedure by the authorized officer. The relied and referred paragraph of the judgment reads as follows:-

> "8. It is further argued on behalf of the appellant that the Authroised Officer has failed to make proper order for holding second inquiry within the period of three days provided by Rule 6, sub-rule (2) of Efficiency and Discipline Rules. It may be noted that the order of second inquiry was made by the Authority himself on the basis of the report of Authorised Officer, and therefore, he had not to make any second order for holding fresh inquiry in the present case. Hence the Authroised Officer has not committed any error in following the relevant rule of procedure. It may be further noted that a detailed charge-sheet was supplied to the appellant for his reply and for that reason the statement of allegations was hardly necessary to be supplied to him. A show-cause notice is not provided in the Efficiency and Discipline Rules especially in those cases where major penalty is imposed upon an accused civil servant. The appellant was afforded an opportunity of personal hearing by the Authority and hence the requirement of the rule of law was fulfilled. Similarly the supply of a copy of the inquiry report to an accused civil servant is not provided in Efficiency and Discipline Rules and the Authority has not departed from following the rule of procedure."

In the case reported as *Secretary Works and another vs. Sardar Muhammad Ashraf Khan & another* [2006 SCR 107] it has been observed by this Court that:-

> "…I have considered the respective arguments of the learned counsel for the parties and gone through the record of the case. No doubt there is no bar for fresh proceedings as is argued by the learned Advocate-General when the provisions of E&D Rules are not followed strictly and the decision is not given by the Tribunal on merits. Fresh proceedings in such circumstances can be initiated. It may be observed that if the order under challenge is based on such proceedings which are against the provisions of E&D Rules then the Courts of law have no alternative but to set aside such order which has adversely affected the terms and conditions of service of accused civil servant. In the present case the mandatory provisions of E&D Rules were not followed, e.g. it is the right of accused civil servant to have a copy of inquiry report but in the present case despite application moved by respondent he was not provided a copy of inquiry report. Even though an opinion to that effect was sought and given by the Law Department of AJ&K Government to Authorised Officer. In the same way before awarding major punishment by the competent authority such authority is bound under rule 8 of E&D Rules to provide an opportunity of hearing to accused civil servant but in this case this opportunity was denied to the respondent. In the same way the conduct of inquiry officer is not beyond doubt. The Service Tribunal has held that the proceedings conducted by the Inquiry Officer were in violation of rules 5 to 8 of E&D Rules. No record has been brought on the file of this Court to rebut this finding of the Service Tribunal which shows that the findings recorded by the Tribunal are correct. In these circumstances the Service Tribunal was justified to set aside the notification dated 28.08.2001 to the extent of respondent No.1."

This Court despite findings of the Service Tribunal on technical ground did not allow for fresh proceeding, whereas, in this case, as already observed, the Tribunal has decided the appeal on merit, thus, the referred citation is not applicable to the case of the appellants. In the other case reported as *Khawaja Ahmed Din vs. Muhammad Shabir Khan* [1994 SCR 142], this Court while setting-aside the findings of the Tribunal directed the authority to hold fresh inquiry. It was observed as under:-

> "The upshot of the above discussion is that the appeals are partly accepted in terms that the findings of the Service Tribunal to the effect that the inquiry against the accused-respondent was actuated by malice is hereby set aside and it is directed that fresh inquiry may be held against the accused-respondent in the light of above observations."

Thus, it clearly leads to the conclusion that fresh inquiry can only be held if the Court directs so or deems it necessary. In the case reported as *Basharat Ali vs. Govt. of Punjab & others* [2003 SCMR 1718], the apex Court remanded the matter to the department concerned for fresh proceedings according to law. Thus, in all

the referred cases the apex Court while setting-aside the judgments of the lower Tribunals has directed the authority to hold fresh inquiry or proceed according to law, thus, it is settled that the matter which has been finally decided by the apex Court the option does not lies with the authority to initiate de-novo inquiry or re-open the matter unless the Court directs so. If for the sake of argument the theory advanced by the learned counsel is accepted, then there was no need for issuance of such direction. Even this argument is self contradictory. There is no doubt in the mind of a prudent person that such powers can only be exercised subject to the direction of the Court, therefore, the argument that despite final judgment of the apex Court the authority can exercise powers, has no nexus with the jurisprudence and the principle of administration of justice in the light of the principle of law enunciated by the superior Courts in a number of cases (which are going to be referred and discussed hereinafter), hence, stand repelled.

13. The other argument that this Court has only decided the appeal on technical ground, thus, on merits the matter shall be deemed left upon the discretion of the authority, also appears to be misconceived and contrary to the record. As discussed hereinabove, this Court formulated two legal points and clearly observed that the decision on point No.2 is subject to decision of point No.1. In view of the conclusion drawn on first point, there was no requirement of resolving the second point. So far as the merits of the case are concerned, this Court fully concurred with the findings recorded in the judgment of the Service Tribunal. The concluding paragraph of judgment dated 06.05.2014 is unambiguous and speaking one, which for proper appreciation is reproduced once again as follows:-

> "The result of the above discussion is that the judgment of the Council Service Tribunal dated 27.08.2013 is based on solid reasons and supported by statutory provisions and the Tribunal has attended all the legal and factual questions in detail, therefore, finding no force

> this appeal is dismissed with no order as to costs."

It means that the judgment of the Service Tribunal was upheld and maintained in toto. In this state of affairs, the executive authorities are left with no option to exercise their powers. If at all, there was any such eventuality they should have approached the Court as laid down in the case reported as *AJ&K Government & others vs. Ch. Muhammad Saeed & others* [2002 SCR 378] the relevant part of which reads as follows:-

> "7. …….. The matter was taken to the Service Tribunal and the Service Tribunal set aside the notification on the ground that upgradation of posts from NPS-11 to NPS-16 was approved by the Chief Justice of the High Court, therefore, the Finance Department was not justified to pass derogatory notification by upgrading such employees from NPS-11 to NPS-12. The Finance Department was directed that the posts of Judgment-Writers and Readers in the High Court shall be upgraded to NPS-16. In the said case it may be mentioned here that the recommendations made by the Chief Justice of the High Court in favour of Readers were not binding upon the Finance Department. Even then the recommendations were upheld by the Service Tribunal whereas in the instant case in the light of the provisions contained in section 42-A of the Constitution Act, 1974 the rules made thereunder for exercising the authority of this Court, the executive authorities cannot exercise their authority in such a manner which may amount to infringe, impair or curtail any of the right granted by the Judges of this Court. Any executive authority having any doubt about

> any direction or decision taken by this Court could get the same resolved by submitting a review petition. It cannot bypass a direction or order of this Cur which may attract the invocation of section 45 of the Constitution Act. The learned Judge in the High Court was justified in setting aside the notification issued by the Law Department on the basis of meeting held by the Registrar of Supreme Court with the appellants as the same was contrary to the direction of the Council of Judges."

The same principle has been laid down in the case reported as *Umair Khan vs. AJ&K Govt. & others* [2017 SCR 980].

14. Although, the appellants, herein, filed the review petition against the judgmetn dated 06.05.2014 but they have not challenged the above reproduced final authoritative part of the judgment rather they only raised objection regarding the conclusion relating to the competency of the authority and the jurisdiction of the Service Tribunal. Even from the conduct of the appellants it appears that on merits they did not feel advised to raise objection in review petition, thus, the findings recorded by the Service Tribunal merged into the final judgment of this Court and attained the finality. In view of the hereinabove reproduced

findings of the Service Tribunal in the judgment dated 27.08.2013 the authority failed to prove the alleged allegations against the respondent, thus, the holding of de-novo inquiry on the basis of same list of allegations of which the respondent had already been acquitted is against law and amounts to nullify and neutralize the judgment of apex Court.

15. Here we deem it necessary to clarify that a clear, unambiguous and binding judgment of this Court has to be operated and if any of the concerned deems that according to his version there is any ambiguity or clarification is required, he has to approach the Court for the interpretation of the judgment. According to the scheme of the Constitution interpretation of law is the exclusive domain of the judiciary and no one else has got any jurisdiction or authority in this regard. Same like, no one can be allowed to flout the judgment on the ground that it is against law or Constitution. It is suffice to refer here the principle of law enunciated by the apex Court of Pakistan in *Suo Motu case*

No.4 of 2010 [PLD 2012 SC 553], wherein it has been held that:-

> "63. ……. The respondent's stand amounts to saying that the order of this Court is non-implementable, as he believes that the same is not in accord with the Constitution of Pakistan and International Law. The argument, if accepted, would set a dangerous precedent and anyone would then successfully flout the orders of the Courts by pleading that according to his interpretation they are not in accord with the law. A judgment debtor would then be allowed to plead before the executing Court that the decree against him was inconsistent with the established law. No finality would then be attached to the judgments and orders of the Courts, even those by the apex Court of the Country. One may refer to the oft quoted aphorism of Robert Houghwout Jackson, J. about finality of the judgments of the Supreme Court of United States, "there is no doubt that if there were a super Supreme Court, a substantial proportion of our reversals of the State Courts would be reversed. We are not final because we are infallible, but we are infallible because we are final." The executive authority may question a Court's decision through the judicial process provided for in the Constitution and the law but is not entitled to flout it because it believes it to be inconsistent with the law or the Constitution. Interpretation of the law is the exclusive domain of the judiciary."

If the practice of interpretation of judgment by any authority or party is allowed then there will be no finality to the judgment of apex Court and every authority/party will interpret it according to its own point of view and such practice will be disastrous and dangerous according to its

far-reaching effects. Neither such like practice can be allowed nor is consistent with the spirit of the Constitution and law. It does not require any rocket science or philosophy that once the matter is finalized by the apex Court that cannot be re-opened by the departmental authority. If anyone thinks otherwise, his thought has nothing to do with law. The acceptance of such like interpretation will give rise to unending series in which after nullification of incompetent proceeding upto the apex Court the proceeding in the same matter will again be conducted on the pretext that now the same is being conducted by a competent authority. It will amount to legalize and perpetuate illegalities. In case any person has unauthorizedly exercised the powers and conducted the proceeding it is glaring misconduct calling for action against him but it does not mean that such a person should be prized and a petty victim of such unauthorized proceedings should be once again put on the mercy of the executive or departmental authority. This, in fact, amounts to total negation of the concept of

the administration of justice. The proposition involved in this case is such clear and obvious that even a common man having a little sense of law can draw no other conclusion except that after final judgment of this Court re-opening of matter by any authority/party finds no place in the system of administration of justice rather it amounts to negation and frustration of justice.

16. In this case, there is another tragic aspect of the matter that the respondent-civil servant kept running from pillar to post since last 13 years and if according to appellants' version the case is remanded to the Service Tribunal it will take another couple of years and in that case the apex Court will become hostage of the executive authorities and their follies leaving the victim on the mercy of such authorities for decades period. Ordinarily, thirteen years are almost half of total period of service of a civil servant and this situation clearly speaks of the failure of the whole system. If the institutions, which are burdened with the duty of administration of justice, fail to provide justice to

a civil servant in 13 years' period how he can be once again left to fell prey of such injustice, whereas, according to the universally accepted standard of principle of administration of justice, specially, the International Covenant on Civil and Political Rights, 1966 (reproduced hereinafter) to be tried without undue delay is the universally guaranteed right of every person. In this case, this principle has also been badly violated which amounts to miscarriage of justice as laid down in the case reported as *Tahir Javaid vs. Deputy Custodian & others* [2017 SCR 293].

17. As we have observed hereinabove, that according to the constitutional provisions after final judgment of this Court, the law does not authorize any authority to deal with the matter against the spirit of the judgment. Our this view finds support from the principle of law enunciated in the case reported as *Peer Mukarram-ul-Haq vs. Federation of Pakistan and others* [2014 SCMR 1457]. According to facts of that case the apex Court of Pakistan decided a service matter but subsequently while

accepting the review of the civil servant the President of Pakistan ordered for his reinstatement on ground of hardships under section 23 of the Civil Servants Act, 1973. The Court held that such act of the President nullifies the findings of the Supreme Court and is against the spirit of the Constitution. The relevant part of the judgment is reproduced as under:-

> "13. It appears that after the judgment of this Court attained finality, the appellant preferred second Appeal/Review invoking the provisions of section 23 of the Civil Servants Act, 1973, to the Competent Authority (The President). Initially the Appeal/Review of the appellant was turned down by the Competent Authority whereafter the Prime Minister advised the President to reconsider the Appeal/Review of the appellant. The Competent Authority (President) on advice of the Prime Minister had allowed the Appeal/Review of the appellant and ordered his reinstatement which order per se is violative of the judgment dated 15.10.2003, of this Court given under Article 212(3) whereby the penalty of dismissal from service was maintained. Such an order of the Competent Authority offends Article 190 of the Constitution which mandates that all the executive and judicial authorities shall act in aid of the Supreme Court.
>
> 14. We have examined the provisions of section 2 of the Act and have noticed that the appellant has already availed right of Appeal against his dismissal from service, in terms of Rule 5 of the Civil Servants (Appeal) Rules, 1977, which provides 30 days to prefer Appeal against the order of the department. The appellant having exhausted this remedy of appeal in the original proceedings could not, in

> law, file a second Appeal and or Review under section 2 of the Act, such an appeal of the appellant offends the provisions of Article 21 of the Constitution. The findings recorded by this Court against the appellant cannot be appealed against by resorting to section 23 of the Act before the President. The Article 190 of the Constitution confers an obligation upon the executive and the judicial authorities throughout Pakistan to act in aid of this Court. The Prime Minster or the President are under constitutional obligation to ensure that the judgments of this Court are implemented in its letter and spirit, whereas in the case in hand the President Competent Authority) had nullified the findings of this Court against the appellant.
>
> 15. We may further observe that scope of section 23 is very limited. This section empowers the Competent Authority (President) to deal with the case of a Civil Servant in such a manner as may appear to him to be 'just' and 'equitable' but such powers are not unbridled. In the case in hand, the appellant could not have preferred the Appeal/Review in terms of section 23 of the Act, as he, was not a Civil Servant on 20-3-2008 when he filed such Appeal/Review. Section 23 contemplates that the Competent Authority (President) can deal with the case of a 'civil Servant', it does not empower him to pass orders of reinstatement of the appellant who was dismissed from service, pursuant to the findings recorded by this Court which have attained finality."

18. Almost identical proposition came under consideration of this Court in the case reported as *Abdul Qadir vs. Abdul Kareem & others* [2000 SCR 97]. The background of that case has been discussed in the judgment which reads as follows:-

> "….Thereupon the respondent filed appeal before the Service Tribunal in which he challenged both

the adverse orders passed by the Advocate-General on 31st December, 1991 and 1st February, 1992. Amongst the various grounds he raised in support of his appeal, the respondent pleaded that order of his compulsory retirement had been passed in total disregard of the provisions of the Civil Servants Act and that it had been passed without any charge-sheet or opportunity of hearing. On behalf of the Advocate-General it was averred before the Service Tribunal that order of retirement was passed by the Advocate-General on the request of the said respondent who personally obtained the Advocate-General's signature on the retirement order. It was further averred that in fact it was not intended to impose any penalty on Abdul Karim but the purpose was to give him monetary benefit as requested by him and that the words 'public interest' were used to give him the benefit of pension. These averments were supported by an affidavit of the learned Advocate-General. The Service Tribunal dismissed the appeal filed by the respondent on the short ground that he did not file departmental appeal against the order of his retirement before the designated appellate authority but filed appeal before an officer who was not the appellate authority. The Service Tribunal held that since he did not avail the departmental remedy his appeal to the Service Tribunal was not maintainable. The Service Tribunal was also of the view that the reinstatement order passed by the Advocate-General was illegal because the Advocate-General had no power to review his order of 31st December, 1991 because an appeal could be filed against it. It was further observed that Abdul Karim had practiced fraud upon the Advocate-General while mischievously obtaining the orders of his reinstatement. The respondent then filed appeal, by leave of the Court, to this Court but his appeal was dismissed on 20th of October, 1993. The view taken by the Service Tribunal was upheld by Court that the respondent had filed appeal before an officer who was not the authority and he could not file appeal before the Service Tribunal. While dismissing the appeal some other observations

were also recorded to which we will be adverting to when the proper stage is reached.

The dismissal of his appeal did not deter the respondent. A few days later he moved an application before the Prime Minister of Azad Jammu and Kashmir in which he stated that he had filed his appeal in a wrong forum and due to technical reason his appeal before the Service Tribunal had been dismissed and that the Supreme Court had also upheld the judgment of the Service Tribunal. He prayed that delay may be condoned so that he could file a fresh appeal before the appellate authority. On 20th November 1993 the Prime Minister was pleased to record on the application that: "Appeal may be filed". From some documents forming part of the High Court file it appears that thereafter the Prime Minister Secretariat processed the case of the respondent. The record shows that comments of the Advocate-General were invited and subsequently some queries were made in the first half of year 1995 but there is nothing on the record to show that any further progress was made."

In this background, after judgment of the apex Court the concerned civil servant filed an application before the Prime Minister which was accepted with the order to reinstate him but the order was not implemented upon which the said civil servant approached the High Court in writ petition. The writ was issued in his favour. When the matter came under consideration of this Court, all the acts taken after final judgment of apex Court

were declared nullified and the judgment of the High Court was recalled.

19. On this proposition there is consensus of Courts. Even the nullification of Courts' judgments through legislation has been declared against the spirit of the Constitution as held in *Contempt Preceding against Chief Secretary, Sindh and others* [2013 SCMR 1752] that:-

> "172. The contention of the learned Advocate-General that the Provincial Assembly has absolute powers to promulgate law which may nullify the effect of a judgment is misconceived, as a general rule the legislature cannot destroy, annul, set aside, vacate, reverse, modify or impair a final judgment of a court of competent jurisdiction, nor fundamental rights guaranteed under the Constitution can be abridged by the legislature. The legislature is not only prohibited from reopening cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment through a piece of legislation as has been done in the case in hand."

Same view has been adopted by this Court in the case reported as *Abdul Rasheed & others vs. Board of Trustees & others* [2008 SCR 417].

20. This appeal is also incompetent from another point of view. It has already been observed hereinabove that the acquittal order of the

respondent passed by the Service Tribunal on 27.08.2013, finally upheld by this Court, is holding the field. On the same allegations, the initiation of proceedings for fresh inquiry amounts to double jeopardy. This Court has held in a number of cases that once a civil servant is punished or acquitted by the Court or even the departmental authority, holding of fresh inquiry on the same set of allegations amounts to vexed twice, whereas, according to the settled principle of law no one can be vexed twice. This principle has been enunciated in the latest judgment reported as *Superintendent of Police Reserve vs. Khalid Mehmood* [2014 SCR 967]. According to the facts of this case, against the order of removal from service the appellate authority while accepting the appeal of the civil servant exonerated him of the charges but subsequently issued the order for inquiry relating to the period of absence during the inquiry. When the matter came up before this Court, it was held that:-

> "….From the above, it is clear that the appellate authority, i.e., Deputy Inspector General of Police, Reserve has exonerated both the

> respondents from the allegations levelled against them. However, the Superintendent of Police was directed to probe into the matter regarding the period of absence and the period consumed during the inquiry whether the same can be treated as leave on pay or without pay. It may be observed that once a civil servant is exonerated from the allegations, the said allegations cannot be made foundation for any adverse action against an accused civil servant. If, a civil servant is again charge-sheeted on the allegations from which he has already been exonerated then it may amount to vexed twice the civil servant, which is not permissible under law…."

Same like, the case reported as *Habibullah vs. DIG Police & others* [2004 SCR 378] according to nature of facts is fully applicable to be case in hand. In this case, the authority incompetently initiated the proceeding. The Chairman Service Tribunal dismissed the appeal of the civil servant, whereas, the Member accepted the same. On appeal, this Court in paragraph 9 of the judgment observed as follows:-

> "9. In the instant case under the provisions of the Efficiency and Discipline Rules, 1992, only the SP is competent to award punishment and no provision has been provided that if a person is not promoted to the rank of SP but is working as SP on officiating basis, he for the purpose of Efficiency and Discipline Rules shall be presumed to be the SP and competent to award any punishment. In *Muhammad Arif's* case, referred to above, the punishment was awarded by the DIG. Under normal law an appellate Court or authority has got all the powers available which are vested in the lower

> Court or authority but the Service Tribunal Peshawar found 'the order of DIG in excess of his jurisdictional competence on the ground that the same was in violation of the relevant law. In our opinion, this is the correct proposition of law because as we have expressed ourselves in the preceding part of this judgment that when a particular method of performance of an act is prescribed under an Act or rule then such act much be strictly performed according to that mode or not at all. This view was expressed by this Court as early as in 1978. *In reference No.1 of* 1977 *by President, Azad Jammu and Kashmir* [PLD 1978 SC AJ&K 37]. In light of view the order passed by the ASP as officiating SP was bad in law for being in excess of his jurisdictional competence.

Despite this the Court has not allowed for initiation of fresh inquiry on the ground that proceedings were initiated by an incompetent authority. Even the Court has also taken into consideration that the same civil servant in the previous inquiry was awarded minor punishment and in second inquiry major punishment was imposed. The Court deemed it as twice vexation and held that:-

> "10. Even on facts the impugned orders are not sustainable. It was alleged by the appellant that he was deputed to take parcel to Rawalpindi. When he came back, he took his ailing son to Rawalakot for medical treatment. The excuse for being absent from duty disclosed by him was supported by two other witnesses who also belong to the police force. In these circumstances, in our view, there was no justification to award him major punishment. In the case relied upon by the learned counsel for

> the appellant a probationer ASI submitted a wrong explanation for his absence that his mother had died, as such, he could not return to his duty in time. The Service Tribunal observed that even though the excuse was not a true fact but mere absence from duty should not entail such drastic action as was taken against the said appellant. In the present case, as said earlier, the explanation tendered by the appellant was not untrue, therefore, he should have not been awarded major punishment of removal from service. The past service record of the appellant is not before us, however, the impression which we have gathered is that he was found guilty of certain acts and was awarded minor punishments. Those acts were not so serious as such he was awarded minor punishments. It is a celebrated principle of law that nobody can be vexed twice. The appellant was awarded minor punishments in past, therefore, he cannot be punished again for his past lapses while performing official functions."

21. It is now universally recognized principle that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. We would like to refer here the Article 14 of the International Covenant on Civil and Political Rights, 1966, which reads as follows:-

> "Article 14
>
> 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and

the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the

same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

(Underlining is ours)

The principle is embodied in Article 13 of the Constitution of Islamic Republic of Pakistan, 1973. Section 403 of Code of Criminal Procedure is also based upon this principle. In the full Court judgment reported as *Muhammad Shafique Mughal*

vs. Accountant General & another [1996 SCR 127] while determining the nature of proceedings imposing the punishment upon a civil servant it has been held that:-

> "…. It is significant that while referring to civil servant who is being proceeded against under the Government Servants (Efficiency and Discipline) Rules the word "accused" has been used which indicates that the proceedings conducted by the inquiry officer are akin to a criminal trial."

There is unanimity in the opinion of the Courts that once a civil servant is punished or acquitted of the charges, he cannot be again inquired into or tried on the same set of allegations. In this regard the reference may be made to the cases reported as *Bashir Ahmed vs. Superintendent of Police and another* [1988 PLC (C.S) 199], *Muhammad Ishfaq vs. Superintendent of Police and others* [1988 PLC (C.S.) 211] wherein while dealing with the principle of double jeopardy it has been held that no one can be vexed twice for one and the same cause. In *Bashir Ahmed's* case (supra) it is observed that the word "offence" has been given wider scope and meaning to cover all types of

penalties. Thus, the word "offence" includes the penalty imposed upon a civil servant. Same principle has been laid down in the cases reported as *Muhammad Khalique vs. Board of Intermediate and Secondary Education & another* [2000 PLC (C.S) 1373], *Tauqeer Elahi vs. Director General MDA & others* [2004 PLC (C.S.) 1517] and *Muhammad Feroz Khan vs. Muhammad Riaz & others* [2003 SCR 3]. In this case, when in the first inquiry the accused-respondent was exonerated of the charges the authority while disagreeing with the inquiry report constituted second inquiry committee which ultimately culminated into the acquittal by the Service Tribunal and finally upheld by this Court. Thereafter, on the same set of allegations the initiation of fresh inquiry is against law and the principle of administration of justice.

22. There is also another aspect of the matter that the order of fresh inquiry has been issued during pendency of the review petition before this Court. It also speaks of the dictatorial mind of the appellants. If at all they were of the opinion that

there is any necessity of conducting fresh inquiry, they should have approached the Court for seeking such direction. The review petition was filed on 17.05.2014 (decided on 11.02.2015) and the appellants without waiting for its final decision ordered for de-novo inquiry on 29.08.2014 which amounts to interference in Court's domain. In this context, it is appropriate to refer here the case reported as *Zaib-un-Nisa vs. Tahira Khanum* [2015 SCR 860], wherein it has been observed that:-

> "6. Another very legal proposition, which in our opinion is of public importance has also been over sighted by the Service Tribunal. The transfer notification dated 07.05.2014 has been issued during the pendency of the appeal of the appellant before the Service Tribunal and in presence of interim injunction. Leaving aside the other merits of the case, this sole ground for setting at naught the transfer notification dated 07.05.2014 was sufficient to the extent of the appellant. According to the celebrated principle of administration of justice and spirit of law, the administrative authority cannot be allowed to interfere in the matters which are subjudice before the judicial forum. Otherwise, it will amount to interference in the domain of the judicial forum and create hardships which may result into violation of law and the principle of administration of justice. If during the pendency of any lis before judicial forum, any of the party, due to subsequent events, require to take some actions he must approach to the concerned legal forum for seeking permission of the same but without permission of the judicial forum taking such actions which directly or indirectly amounts to interference in the subject matter of the case

> subjudcie before the judicial forum, is totally against the law and principle of administration of justice.

23. In this case, another important proposition is involved that the authority initiated the proceedings against the respondent under the provisions of AJ&K Council Removal from Service (Special Powers) Act, 2000. During the pendency of appeal before this Court the said Act was repealed vide Azad Jammu and Kashmir Council Removal from Service (Special Powers) (Repeal) Act, 2013 (Act I of 2013 effective from 04.02.2013). However, section 2(2) of this repealing Act provides that:-

> "(2) All proceedings, under the repealed Act or the rules made thereunder immediately before the commencement of this Act, against any person in the service of Azad Jammu and Kashmir Council shall continue under the repealed Act or the rules made thereunder."

The appellants issued the notification dated 29.08.2014 (bearing No.FII-3/2/88-AJKC) through which the respondent was reinstated in service. The notification speaks that:-

> "2. AND WHEREAS, the Chairman, Azad Jammu and Kashmir Council/Prime

> Minister of Pakistan, on the consideration of the facts of the case, has been pleased to observe that Mr. Muhammad Munir Raja, Additional Commissioner Inland Revenue (under suspension), Department of Inland Revenue, AJ&K Council has not been exonerated on the charges against him and because of the procedural flaw he has been ordered to be reinstated.
>
> 3. NOW THEREFORE, in pursuance of the aforesaid Judgment, the Chairman, Azad Jammu and Kashmir Council/Prime Minister of Pakistan is pleased to reinstate Muhammad Munir Raja, Additional Commissioner, Department of Inland Revenue, AJ&K Council in service with immediate effect and the question of payment or otherwise of financial benefits will be settled in the light of the outcome of final orders to be passed in a De novo inquiry being initiated vide order of even number and date in his case. The Officer shall remain under suspension for a period of three months."

The above reproduced text of the notification clearly speaks that the de-novo inquiry has been ordered in continuation of the already initiated proceedings, thus, hereinabove reproduced provisions of the repealing Act are fully attracted and the appellants are not legally authorized to initiate the proceedings of de-novo inquiry under the provisions of Government Servants (Efficiency

and Discipline) Rules, 1973. This act of the appellants is bad in law and without lawful authority.

24. Yet there is another aspect of the matter that whether under the provisions of AJ&K Kashmir Council Removal from Service (Special Powers) Act, 2000, on submission of an inquiry report the authority is competent to disagree with such report and proceed for second inquiry or not. There is no express provision authorizing the authority to exercise such powers. Under the provisions of section 8 of the Act, the authority can only pass the order in accordance with the provisions of the Act and not beyond that. However, as this point has not been specifically raised and argued, therefore, it is left open to be determined in any other appropriate case.

25. It is also a sad history of the case that the appellants are vested with the powers to establish the Service Tribunal but for a quite long period from 09.08.2005 to 21.12.2011 the Service Tribunal remained non-established and non-functional as the required appointments of Chairman and Members

could not be made despite directions issued by the High Court and this Court in some cases. Due to this failure the decision of appeal took almost eight years. This aspect also calls for serious consideration of the concerned so that in future no one may fall prey of such injustice.

26. So far as the preliminary objection raised by the respondent regarding the competency of appeal is concerned, in the light of notification dated 26.11.1992 (Annexure "PK") read with the constitutional provisions, it is not of worth consideration hence stands repelled.

This appeal stands disposed of in the light of short order dated 02.11.2017.

CHIEF JUSTICE JUDGE (J-I) JUDGE (J-II)

Muzaffarabad,

Date of announcement: 14.11.2017