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**Judgment Sheet**

**IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

Case No: W.P. 26696/2014

Nadeem Asghar Nadeem, **Versus** Province of the Punjab, etc.  
etc.

**JUDGMENT**

Date of hearing	06.05.2015
Petitioners by:	M/s. Muhammad Aslam Rizvi, Mushtaq Ahmed Mohal, Advocates. M/s. Azhar Iqbal, Muzammal Akhtar Shabbir, Muqtedir Akhtar and Ch. Muhammad Shahid Iqbal, Advocates for the petitioners in connected writ petitions.
Respondents by:	Mr. Shan Gul, Additional Advocate General, Punjab. Barrister Qasim Ali Chowhan, Assistant Advocate General, Punjab.
Amicus Curiae:	Mr. Junaid Jabbar Khan, Advocate.
Assisted by:	M/s. Qaisar Abbas and Mohsin Mumtaz, Research Associates & Civil Judges, Lahore High Court Research Centre (LHCRC).

**Syed Mansoor Ali Shah, J:-** Petitioners have challenged the constitutionality of Section 10 (1)(i) of the Punjab Civil Servants Act, 1974 (“Act”) as being *ultra vires* Articles 10A of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”).

2. Brief facts leading to the above challenge are that petitioners were appointed as Civil Judges-cum-Judicial Magistrates vide Notification dated 23.06.2010 and posted as

Civil Judges-cum-Judicial Magistrates against existing vacancies vide Notification dated 30.06.2010. The appointment of the petitioners was subject to confirmation in terms of Rule 7A of the Punjab Judicial Service Rules, 1994 (“**Judicial Rules**”) which required that the candidates complete initial or extended period of probation satisfactorily on the basis of (a) Performance Evaluation made by the Departmental Confirmation Committee; (b) attend and successfully qualify such Course and Training as may be determined by the High Court and (c) pass Departmental Examination under the Punjab Civil Judges Departmental Examination Rules, 1991.

3. It is submitted that the petitioners successfully completed the Course & Training and passed the Departmental Examination, however, just a day before the expiry of the probationary period of four years, the services of the petitioners were terminated, without notice and without furnishing any reason, under section 10(1)(i) of the Act, vide Notification dated 04.07.2014.

4. Petitioners, through the instant petition, have laid challenge to the constitutionality of section 10 (1) (i) of the Act, which deprives the petitioners of an opportunity of prior notice and reason for the termination of their services. It has been argued that the impugned section is *ultra vires* the Constitution as it deprives the petitioners their right to due process and fair trial under Articles 4 and 10A of the Constitution besides being discriminatory and as such violative of Article 25. They submit that if section 10(1)(i) of the Act is declared unconstitutional they will have an opportunity to approach the Lahore High Court on the administrative side for the reconsideration of their case, hence the instant challenge is not an academic exercise, as

future remedies of the petitioners, are dependent on the fate of this petition. Petitioners, have reiterated that they are not challenging the Notification, where under their services have been terminated by the Lahore High Court, as they are aware that writ is not maintainable against the High Court in the light of *Asif Saeed v. Registrar, Lahore High Court and others* (PLD 1999 Lahore 350) and *Muhammad Iqbal and others v. Lahore High Court through Registrar and others* (2010 SCMR 632). They submit that they will pursue the same administratively once the fate of section 10 (1)(i) of the Act is determined.

5. It is argued that the petitioners were appointed as Civil Judges-cum-Judicial Magistrates against substantive vacant posts, however, their appointment was subject to *probation*. They, therefore, do not have a vested right to be appointed to the post, but have the vested right to be appointed to the post, if they successfully complete the period of probation. They further argued that the petitioners were entitled to know the reasons behind the opinion formed against them during the period of probation and in case the opinion was adverse, they had the right to be put to notice, so that they could explain and defend themselves, before they be deprived of their confirmation to a substantive vacant post. It is submitted that there has been no adverse comment against the petitioners, as none has been communicated to them during the course of their service, therefore, they are doubly curious regarding the reasons for their termination. They are, therefore, aggrieved of section 10 (1) (i) of the Act, which provides that the services of civil servant may be terminated without notice, during the period of his probation.

6. It is emphasized that, as far as petitioner No.2 is concerned, Certification of Appreciation dated 18.11.2013 has

been issued by the District & Sessions Judge, Sahiwal which states as follows:-

“I have the honour to submit that Miss Bushra Farid, learned Civil Judge was posted at Sahiwal on 17.07.2013. At present she is exclusively dealing with cases of family nature and performing upto the level of satisfaction without any complaint with regard to her integrity.

7. It is submitted that the petitioners served as Civil Judges-cum-Judicial Magistrates for a period of almost four years (extended period of probation) therefore their services could not be terminated without notice. They submitted that Section 10(1)(i) of the Act deprives the petitioner of the right to notice, hearing and reasons and therefore offends Article 10A of the Constitution. Reliance is placed on *Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others* (PLD 2006 SC 697), *Pakistan Peoples Party v. Government of Punjab and others* (PLD 2014 Lahore 330), *Muhammad Ashraf Tiwana and others v. Pakistan and others* (2013 SCMR 1159), *National Bank of Pakistan and 117 others v. SAF Textile Mills Ltd. and another* (PLD 2014 SC 283), *Messrs Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others* (2012 PTD 1815), *Bilal Akbar Bhatti v. Election Tribunal, Multan and 15 others* (PLD 2015 Lahore 272), *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others* (PLD 1996 SC 324), *Imtiaz Ahmad Kaifi v. Government of Punjab and others* (PLD 2013 Lahore 598), *Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences Jamshoro and others* (2014 SCMR 1236), *State of M.P. v. Rakesh Kohli and*

another (2013 SCMR 34), Arshad Mehmood v. Commissioner/Delimitation Authority, Gujranwala and others (PLD 2014 Lahore 221) and Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another (2012 SCMR 1235).

8. Learned Additional Advocate General, Punjab alongwith Assistant Advocate General, Punjab, who are also on notice under Order 27-A of CPC, submit that Articles 4 and 10-A of the Constitution are not attracted to this case, as the petitioners, being probationers, do not have any right to be appointed to the post. In support of his contention learned Additional Advocate General placed reliance on Federation of Pakistan v. Riaz Ali Khan (PLD 1958 (W.P.) Lahore 22) and Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 S.C. 393). He also submitted that the petitioners were fully aware at the time of their appointment regarding Section 10 of the Act but they did not challenge the same at that time and have challenged the same after their termination, therefore, the petitioners are blowing hot and cold, which is not permitted under the law. Learned Law Officer placed reliance on Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and others v. Federation of Pakistan and another (PLD 2010 S.C. 483) to submit that the petitioners have no vested right to a notice or hearing during the period of probation. He further placed reliance on Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others (2000 SCMR 907), Ch. Muhammad Hussain Naqshbandi v. Government of the Punjab and others (2003 PLC (CS) 1421) and Liaqat Ali Shahid, Ex-Civil Judge, Bhalwal v. Government of the Punjab through Chief Secretary, Punjab, Lahore (1999 PLC (CS) 334).

Lastly, he submits that the petitioners have no *locus standi* to challenge their termination or the constitutionality of the law.

9. I have heard the parties at length, have gone through the record and examined the case law cited by the parties. The opinion of the court is as follows:

### **OPINION OF THE COURT**

#### *Facts*

10. The petitioners were appointed as Civil Judges-Cum-Judicial Magistrates on 23.06.2010 subject to *probation*. During probation, they were posted against existing vacancies vide Notification dated 30.06.2010. Petitioners passed the Departmental Examination and successfully attended and qualified the Course and Training prescribed by the High Court during the initial few months of their service. Thereafter, the petitioners, served the District Judiciary for a period of four years and a day before the completion of the extended period of probation, the services of the petitioners were terminated, *without notice and without disclosing the reasons for their termination*, under section 10(1)(i) of the Act, vide Notification dated 04.07.2014.

11. The terms and conditions of a judicial officer, including appointment, probation, confirmation and termination are governed under the Punjab Civil Servants Act, 1974 (“**Act**”), read with the Punjab Judicial Service Rules, 1994 (“**Judicial Rules**”) and where the Judicial Rules are deficient or lacking,<sup>1</sup> by Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (“**Rules**”).

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<sup>1</sup> Rule 11 of the Judicial Rules.

12. Initial appointment of a civil servant to a substantive post is subject to *probation* under section 5 of the Act. Section 5 of the Act describes the scope and nature of the term *probation* in the following manner:-

“5. **Probation:** (1) **An initial appointment to a service or post** referred to in Section 4, **not being an ad hoc appointment, shall be on such probation** and for such period of probation as may be prescribed.

(2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on such probation and for such period of probation as may be prescribed.

(3) **Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training,** a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete the course or the training shall, except as may be prescribed otherwise-

(a) **if he was appointed to such service or post by initial recruitment, be discharged;** or

(b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged.” (*emphasis supplied*)

A probationer is ‘eligible’ for confirmation in service on the satisfactory completion of his probation under section 6 of the Act which states as under:

**6. Confirmation.—**

(1) A person appointed on probation shall, **on satisfactory completion of his probation, be eligible for confirmation in a service or a post as may be prescribed.**

(2) A civil servant promoted to a post 2(or grade) on probation shall, on satisfactory completion of his probation, be confirmed in such post as may be prescribed.

(3) A civil servant promoted to a post 2(or grade) on regular basis shall be confirmed after rendering satisfactory service for such period as may be prescribed.

(4) **There shall be no confirmation against any temporary post.**

(5) A civil servant who, during the period of his service, was eligible for confirmation in any service or against any post, retires from service before confirmation shall not, merely by reason of such retirement, be refused confirmation in such service or against such post or any benefits accruing there-from.

(6) Confirmation of a civil servant in a service or against a post shall take effect from the date of the occurrence of a permanent vacancy in such service or against such post or from the date of continuous officiation, in such service or against such post, whichever is later. (*emphasis supplied*)

Rule 7A of the Judicial Rules provides as under:-

“7A. **Confirmation of Civil Judge-cum-Magistrate:-** A Civil Judge-cum-Magistrate shall not be confirmed in service unless:

- (a) He completes initial or extended period of probation satisfactorily on the basis of performance evaluation made by Departmental Confirmation Committee;



- (b) He undergoes, attends and successfully qualifies such course and training as may be determined by the High Court; and
- (c) He has passed the departmental examination under the Punjab Civil Judges Departmental Examination Rules, 1991.”

Rule 8<sup>2</sup> of the Judicial Rules provides as under:-

“8. (1) A person appointed to a post in a grade against a substantive vacancy shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed otherwise; provided that the appointing authority may extend the period of probation by a further period not exceeding two years in all.

Explanation – Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If no orders have been made by the day following the completion of the initial probationary period, the period of probation shall be deemed to have been extended.

(3) A Civil Judge-cum-Magistrate or an Additional District and Sessions Judge appointed through initial recruitment, who has been confirmed under rule 7A or rule 7B, the confirmation shall take effect from the date of initial appointment in the service.” (*emphasis supplied*)

The above shows that a judicial officer is appointed as a Civil Judge-cum-Judicial Magistrate against a substantive vacant post. The appointment is subject to confirmation after successful completion of the probation period. The confirmation requires that (i) the probationer completes the period of probation satisfactorily on the basis of the

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<sup>2</sup> Similar to Rule 7 of Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974

Performance Evaluation made by the Departmental Confirmation Committee. (ii) Qualifies such Course and Training as prescribed and (iii) passes the Departmental Examination. Under Rule 8, confirmation of a probationer takes effect from the date of initial appointment in service. Conditions prescribed in Rule 7A are in addition to the passing of a departmental examination and successful completion of training as envisaged under section 5 of the Act. Evaluation under Rule 7A (a) is free to place reliance on extraneous evidence procured from other sources (e.g. Police, Special Branch, etc) to gauge the eligibility and fitness of the civil servant/judicial officer. The evidence collected can be adverse to the interest of the civil servant/judicial officer, which would ordinarily necessitate the dismissal or removal of the civil servant from service on the grounds of inefficiency, misconduct, corruption or being involved in any other subversive activity. Termination from service during probation on these grounds is punitive and penal in nature.

13. Section 10 (1) (i) of the Act provides as under:

**10. Termination of service.—**

(1) **The service of a civil servant may be terminated without notice –**

(i) **during the initial or extended period of his probation:**

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred and promoted on probation from one service cadre or post to another service, cadre or post his service shall not be terminated so long as he holds a lien against his former post, service or cadre, and he shall be reverted to his former service, or as the case may be, cadre or post;

(ii) If the appointment is made on ad hoc basis liable to termination on the appointment of a person on the

recommendation of the selection authority, on the appointment of such person.

- (2) In the event of a post being abolished or number of posts in a cadre or service being reduced the services of the most junior person in such cadre or service shall be terminated.
- (3) Notwithstanding the provisions of sub-section (1) but subject to the provisions of sub-section (2), the service of a civil servant in temporary employment or appointed on ad hoc basis shall be liable to termination on thirty days notice or pay in lieu thereof.

Section 10(1)(i) states that if the services of a probationer are terminated during the period of probation he is not entitled to any notice. Section 5(6) of the Act employs the term “discharged” for a person who fails the departmental test or the training course. This is also echoed in Rule 4(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. The collective reading of sections 5 and 10 of the Act, envisage two distinct species of terminations. One where the probationer fails to pass the departmental examination or the training course prescribed by the authority. There is no allegation leveled against the probationer. The termination is, therefore, not punitive or penal. It simply results in the discharge of the probationer, which does not in any manner mar the future employment prospects of the probationer. Such like termination has come to be known as *termination simpliciter*.

14. The other specie of termination is where specific allegation is leveled against the officer on the basis of adverse information or evidence collected by the competent authority. Such a termination is akin to dismissal or removal from service and is punitive in nature. It also taints the service record of the probationer and impairs his future employment prospects.

15. A probationer under Rule 7A can fall in either of the two categories of terminations, but section 10(1)(i) does not make

any such distinction and disallows the issuance of notice in both sets of terminations. This aspect, without reference to section 10(1)(i) of the Act, has earlier come up before the superior courts. The jurisprudence evolved over the years on the requirement of notice prior to terminating the services of the probationer is that the services of a probationer can be terminated without notice, in case of *termination simpliciter* but where there are allegations of misconduct or inefficiency leveled against the probationer, in such an eventuality, it is mandatory that the officer is put on notice. Reliance with advantage is placed on *Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan* (PLD 1974 S.C. 393), *Muhammad Amjad v. The Chief Engineer, WAPDA and another* (1998 PSC 337), *Ch. Muhammad Hussain Naqshbandi v. Government of the Punjab and others* (2004 SCMR 44), *Muhammad Iqbal Khan Niazi v. Lahore High Court, Lahore thorough Registrar* (2003 PLC (C.S) 285) and *Rehan Saeed Khan and others v. Federation of Pakistan & Others* (2001 PLC (CS) 1275).

16. The essence of our pre-18<sup>th</sup> constitutional amendment jurisprudence, to a large extent, can be captured and constitutionalized in the shape of the new fundamental right of fair trial under Article 10A of the Constitution. This has since been so judicially recognized. Reference can be made to *Warid Telecom (Pvt.) Ltd. and 4 others v. Pakistan Telecommunication Authority through Chairman* (2015 SCMR 338), *Suo Motu acting regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process* (PLD 2012 SC 664), *Babar Hussain Shah and another v. Mujeed Ahmed Khan and another* (2012 SCMR 1235), *Suo Motu Case No.4 of 2010*

(PLD 2012 SC 553), *Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others* (PLD 2013 Lahore 413) and *Shabbir Ahmed v. Kiran Khursheed and 8 others* (2012 CLC 1236).

17. Article 10A provides as under:

“**10A. Right to fair trial.**--- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”  
(*emphasis supplied*)

It is now a fundamental right that determination of *civil rights* and *obligations* of a person shall be through *fair trial* and *due process*. *Civil rights*<sup>3</sup> are the rights guaranteed by the Constitution and the legislation. *Obligations* may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness or morality.<sup>4</sup> “Anything that an individual is required to do because of a promise, vow, oath, contract, or law. It refers to a legal or moral duty that an individual can be forced to perform or penalized for neglecting to perform.”<sup>5</sup> Right of one person is an obligation of the other and vice versa. This mutually corresponding and symbiotic relationship between *civil rights* and *obligations*, expands the proportions and broadens the amplitude of Article 10A and places it as one of the most robust, dynamic and an evergreen fundamental right that is not frozen in time or moored to serve only the age old vested rights. Article 10A, is a constitutional right, hence it is open and all embracing and is there to include

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<sup>3</sup> The most common legal application of the term *civil rights* involves the rights guaranteed to U.S. citizens and residents by legislation and by the Constitution. Free Dictionary. URL:www.thefreedictionary.com

<sup>4</sup> Black’s Law Dictionary. 9<sup>th</sup> Ed. p.1179

<sup>5</sup> Free Dictionary. URL:www.thefreedictionary.com

all kinds of rights and obligations that emerge from the Constitution, legislation, “law, contract, promise, social relations, courtesy, kindness or morality.” Article 10A cannot be put in shackles and infact goes beyond vested rights. The words of Hamoodur Rehman, CJ in *Fazal Din’s case*<sup>6</sup> resonate so audibly even today: “It is clear from the above that the right considered sufficient for maintaining a proceeding of this nature [writ jurisdiction] is not necessarily a right in the strict juristic sense but it is enough if the applicant discloses that he had a personal interest in the performance of the legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty of franchise.” Article 10A, therefore, is all embracing and deals with rights and duties, which if violated can “result in loss of some personal benefit or advantage or curtail a privilege or liberty or franchise.”

18. In the present case sections 4, 5 and 6 of the Act, confer a right to confirmation, once the judicial officer successfully completes his period of probation. It also confers an obligation on the authority to confirm the appointment of the officer if the probationer successfully completes the period of probation. Viewed differently, probationer is also under an obligation to meet the requirements of Rule 7A and has a corresponding right to confirmation subject to his fulfilling these obligations. A probationer, in effect, already stands appointed but has to undergo the process of confirmation. Therefore, the *right* of confirmation of a probationer or the *obligation* of the authority to confirm the probationer, if he successfully completes the

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<sup>6</sup> Mian Fazal Din vs. Lahore Improvement Trust, Lahore, etc (PLD 1969 SC 223) at p.231.

period of probation, or vice versa, are covered under Article 10A and these rights and obligations have to be determined through a fair trial and due process. The objection of the learned Addl. A.G that the petitioners being probationers have no right to the post and, therefore, have no right to invoke Article 10A is hopelessly misplaced and is hereby rejected.

19. In this background the questions before this Court, in the context of section 10(1)(i) of the Act are: (i) Whether, in case where termination order is punitive in nature i.e., on the grounds of misconduct, corruption and inefficiency leveled against a judicial officer, section 10 (1) (i) of the Act by not allowing notice to be issued to the probationer before termination offends Article 10A of the Constitution ? (ii) Whether Articles, 4, 9, 10A 14 and 19A of the Constitution read with section 24A of the General Clauses Act, 1897 mandate, that termination order of a probationer, including *termination simpliciter*, must always disclose reason(s) or ground(s) for termination?

20. It is now well settled, that if there are allegations of inefficiency, misconduct or corruption, a probationer is required to be served with a notice. Rationale being that any termination in the nature of dismissal or removal carries a stigma, hence the civil servant be granted an opportunity to defend and wash away any slur and taint alleged against him. Reference has already been made to the relevant case law above. One of the requirements for confirmation after the period of probation is given under Rule 7A(a) of the Judicial Rules, which reads as under:

- (a) He completes initial or extended period of probation satisfactorily on the basis of performance evaluation made by Departmental Confirmation Committee;

Performance Evaluation is subjective and relies on sources other than the result of the Departmental Examination and the Course & Training scorecard. If the information or evidence collected is adverse to the interest of the judicial officer, natural justice and the strength of the settled jurisprudence (above) requires that the judicial officer be put on notice and be heard after an adequate disclosure of the adverse material and information is made to the judicial officer. This well established principle stands constitutionalized as a fundamental right under Article 10A. Fair trial and due process requires that adequate disclosure is made and the probationer is put on notice. Even otherwise, right to life which includes right to livelihood and right to dignity of a person under Article 14 of the Constitution also stand behind Article 10A. Section 10(1)(i), therefore, offends Article 10A of the Constitution in this respect. There are, however, other dimensions to section 10(1)(i) of the Act which need to be considered before finalizing this opinion.

21. The first dimension deals with situations covered under Rule 7A(b) & (c), which are as under:

- (a) He undergoes, attends and successfully qualifies such course and training as may be determined by the High Court; and
- (b) He has passed the departmental examination under the Punjab Civil Judges Departmental Examination Rules, 1991.

This brings us to the concept of termination simpliciter as opposed to a termination carrying a stigma. Termination



simpliciter means termination without any ceremony or termination in a summary manner.<sup>7</sup> Such a termination from service is when a probationer fails to meet the eligibility requirements of the post set by the employer like a departmental examination or in service training or if the appointment is *adhoc* and dependent on certain conditions or if the post itself is abolished. Such like termination is not punitive or penalizing in nature. More importantly, it does not cast any allegation or affect the professional reputation of the officer or the future prospects of employment of the probationer. It is for this reason that section 5 of the Act and Rule 4(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 refer to it as a “discharge” from service. The probationer therefore need not be put on notice if the termination is actually a *discharge* from service or is *termination simpliciter*. No useful purpose can be served by issuing any such notice as the authority has already granted the probationer an opportunity of appearing before the authority in the departmental examination and also in the course and training conducted by the authority. A parallel can be drawn with candidates applying for admission or employment, subject to an entrance test. In case the candidate fails to pass the entrance test, is he to be put on notice first? The answer is NO. Therefore, in such a case the competent authority is under no obligation to issue notice before termination of service. Section 10(1)(i) of the Act is applicable in such a case. It is important to note that the probationer under Article 10A is, however, free to challenge the legality of the termination order or the merits of the departmental examination or the transparency of the departmental training in a court of competent jurisdiction, if he

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<sup>7</sup> *ibid*

so desires, on grounds other than the ground of failure to issue notice.

22. The next dimension of section 10(1)(i) of the Act is where there are allegations of misconduct or inefficiency against a judicial officer and the same have weighed on the mind of the authority but instead of leveling any allegations of misconduct and inefficiency against the probationer, the employer, in order to take advantage of section 10(1)(i) of the Act and to avoid the process of notice takes an easy course by opting for *discharge of services* or *termination simpliciter*. Can the benefit of section 10(1)(i) be availed in such like circumstances?

23. Where termination carries allegations of misconduct, inefficiency and corruption, the civil servant is entitled to a notice to defend himself and also to an adequate disclosure of the evidence against him. If the adverse information and material has weighed on the mind of the authority and has been the dominant reason behind the order of termination, withholding of any such allegation or avoiding to disclose any reason for termination, in order to bypass the requirement of notice by opting for *termination simpliciter* is offensive to Article 10A of the Constitution. Reliance is placed on *Mrs. Abida Parveen Channar v. High Court of Sindh (2011 PLC (CS) 836)*. *Termination simpliciter* is an option available with the authority only when the termination, according to the service record of the civil servant, is not based on any allegations of misconduct, inefficiency or corruption against a civil servant. Interestingly, in the present case the petitioners have passed the departmental examination and the successfully completed the training in the initial few months of their

appointment. Therefore, there termination is purely on the basis of Rule 7A(a).

24. Every termination order must carry reasons. This is equally applicable to the case of *termination simpliciter*. There is no plausible explanation why a public authority must shy away from giving reasons for termination. To withhold reasons for termination of a civil servant generates a host of adverse assumptions against the character of a civil servant which has a bearing on his reputation and good will. The failure of disclosing or intentional withholding of reasons is, therefore, below the dignity of any white collared officer and offends Article 14 of the Constitution.

25. While section 10(1)(i) of the Act is unconstitutional in some situations, it is constitutionally permissible in others. In such a situation, the constitutionality of the said section can be saved, if section 10(1)(i) of the Act is *read down*, instead of being struck down.

26. The way ahead through this legislative impasse can either be to independently judge the constitutionality of section 10(1)(i) of the Act and strike it down as being unconstitutional or then try to save the provision by using purposive interpretation of the Act and using the interpretative tool of “reading down” or “recasting the statute.” It is settled law that where literal construction or plain meaning causes hardship, futility, absurdity or uncertainty, the purposive or contextual construction is preferred to arrive at a more just, reasonable and sensible result. “Every law is designed to further the ends of justice and not to frustrate it on mere technicalities. Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to

resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute. The statutes must be interpreted to advance the cause of statute and not to defeat it<sup>8</sup>.”

Justice Ajmal Mian J in *Elahi Cotton Mills Ltd. v. Federation of Pakistan* (PLD 1997 SC 582) held:

“That theory of reading down is a rule of interpretation which is resorted to by the courts when they find a provision read literally seems to offend a fundamental right or falls outside the competence of the particular Legislature.”

In *Indus Jute Mills Ltd. v. Federation of Pakistan* (2009 PTD 1473), Sh. Azmat Saeed J. (as he then was) speaking for this Court held:

“37. In view of the above, this court is confronted with two possible options; either is to strike down impugned section 235 Income Tax Ordinance, 2001 being ultra vires the Constitution and fundamental rights of the citizens or in the alternate, to resort to the time honoured rule of interpretation of employing the theory of reading down and looking beyond the literal meaning of the provision...”

27. If certain provision of law construed in one way would make them consistent with the constitution and another interpretation would render them unconstitutional the court would lean in favour of the former construction. Dr. Avtar Singh in Introduction to Interpretation of Statues (Reprint Edition 2007) writes:-

“Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear as to be in defiance of the Constitution. These interpretations spring out because of the concern of courts to always let a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. The principle of reading down, however, will not be available, where the plain and literal meaning from

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<sup>8</sup> Reliance is placed on Interpretation of Taxing Statutes by Mittal

a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power.”

28. In Maharao Saheb Shri Bhim Singhji and others v. Union of India and others (AIR 1981 SC 234) V.R. Krishna Iyer J. held: “...reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule... Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: ‘A judge should not be a servant of the words used. He should not be a mere mechanic in the power house of semantics’...” Reliance is also placed on Muhammad Umer Rathore v. Federation of Pakistan (PLD 2009 Lahore 268), Federal Steam Navigation Co Ltd and another v. Department of Trade and Industry (1974) 2 All E R 97), Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others (AIR 1991 SC 101), Sunil Batra v. Delhi Administration and others etc. (AIR 1978 SC 1675) and Jagdish Pandey v. The Chancellor, University of Bihar and others (AIR 1968 SC 353).

29. For the above reasons it is held as follows:-

**A. In the light of Article 10A read with Articles 4, 9, 14 and 25 of the Constitution, section 10(1)(i) of the Punjab Civil Servants Act, 1974 is read down, to the extent, that in cases where termination of a probationer is on the grounds of misconduct, inefficiency, corruption, etc prior notice is mandatory and is required to be issued to the probationer.**

**B. Where the probationer has failed to meet the eligibility requirements of a departmental examination or in service training course, the probationer can be terminated without notice, but any such termination order must carry reasons for termination.**

**C. In case the probationer has passed the eligibility criteria and has been found liable for misconduct, inefficiency or corruption, the competent authority does not have a choice to opt for *termination simpliciter* by withholding the real reason for termination and must issue a reasoned termination order.**

**D. It is clarified that this judgment does not examine or attend to the order of termination of services of the petitioners vide notification dated 04.07.2015 issued by the Lahore High Court, Lahore and the scope of this judgment is limited to the extent of vires of Section 10 (1) (i) of the Act.**

30. For the above reasons this petition alongwith connected petitions is allowed in the above terms. This judgment will decide the instant petition, as well as, connected writ petitions i.e., W.P. No.27171/2014 and 28557/2014 as all these petitions raise common questions of law and facts

31. Before parting with the judgment I acknowledge the valuable assistance rendered by Junaid Jabbar, Advocate/learned amici curie and M/s. Qaisar Abbas and

Mohsin Mumtaz, Research Associates/learned Civil Judges,  
Lahore High Court Research Centre (LHCRC).

**(Syed Mansoor Ali Shah)**  
Judge

*M. Tahir\**

**APPROVED FOR REPORTING**