

Subject:

Legal Opinion

Dear Sir,

This is in reference to our telephonic conversation held on 00.00.2000 wherein we had been asked to render our opinion on the application of a Notification upon you in light of the specific facts and circumstances of your case. We have gone through the contents of relevant law as well as through the other material as provided by you. In the following lines we will explain our opinion on the factual and legal issues involved in the subject matter.

2. That after completing all the academic requirements, you were declared eligible to appear in the final viva voce examination. Just before the date on which you were due to appear in the viva voce exam, a Notification was issued that made it mandatory for students to have at least one research paper accepted/published in an international journal before they could be allowed to appear in their final viva voce examinations by the Institute.

3. In compliance with the Notification, you too were asked to write a research paper and have it published before you could be allowed to appear for the final viva exam. The Notification does not apply to you on, *inter alia*, the following reasons/legal grounds:
 - A. That, firstly, by asking you to write a research paper even though you had been declared eligible for final viva exam the Institute is giving the Notification, sub-ordinate legislation, a retrospective effect which is contrary to the legal presumption that secondary/sub-ordinate legislation can never have a retrospective operation. This view has been upheld by the superior courts in a number of cases, including *Imtiaz Ahmed & Others vs.*

Punjab Public Service Commission through Secretary, Lahore & Others (PLD 2006 SC 472), Province of Punjab & Others vs. Aftab Ahmed & Others (2012 PLC(CS) 1402), Sheikh Fazal Ahmed vs. Raja Ziaullah Khan & Another (PLD 1964 SC 494) and Province of Punjab through Secretary to the Government vs. Dr. Muhammad Zafar Iqbal & 10 Others (2018 PLC(CS) 152).

In the case of *Muhammad Ramzan vs. Secretary Housing Physical and Environmental Planning (2016 YLR 2683)*, the Petitioner was allotted a plot of land in 1982 at the prevalent market rate, but before the payment could be made the Petitioner's allotment was contested through a lengthy litigation that lasted in 2003. After the final dismissal of the case, the Petitioner moved for implementation of the final order. The Respondents offered to implement the said order by allotting the plot to the Petitioner at an enhanced rate in accordance with the Disposal Rules, 2002. The Petitioner, aggrieved by the demand of enhanced price for the plot, filed Civil Petition before the Supreme Court of Pakistan. The Hon'ble Supreme Court decided in favor of the Petitioner and held that the Petitioner ought to be allotted the said plot at rate prevalent in 1982 rather than at the enhanced rate since the said Disposal Rules would not have any bearing on the case of the Petitioner, as being subordinate legislation, it would not be allowed to operate retrospectively. In light of the above, the Notification does not apply to you.

- B.** That, being officially declared eligible to appear in the final viva exam created a '**vested right**' in your favor to appear in the final exam and not be refrained from it under any circumstances.

According to the Merriam-Webster Dictionary a vested right is a '*right belonging completely and unconditionally to a person as a property interest that cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner.*' The legal definition of vested right is '*an*

absolute right or title to something, to be enjoyed either now or in the future. A vested right is unconditional; it is no longer dependent on any event even if it was in the past.’ A cardinal principle of law is that a vested right cannot be taken away retrospectively through sub-ordinate legislation. Reliance is placed on the following citations: ***Mir Hassan vs. Province of Sindh through Secretary & 3 Others (2017 PLC(CS) 864), Vasdev & Another vs. Government of Sindh through Secretary, Education Dept. & 5 Others (1996 PLC(CS) 761), Molasses Trading and Export (Pvt.) Ltd. v. Federation of Pakistan and others (1993 SCMR 1905) and Shahnawaz (Pvt.) Ltd. through Director Finance vs. Pakistan through the Secretary Ministry of Finance Government of Pakistan, Islamabad and another (2011 PTD 1558).***

In the case of ***Chairman Joint Admission Committee, Khyber Medical College, Peshawar & Others vs. Raza Hasan & Others (1999 SCMR 965)***, the Respondent applied for admission to one of the medical colleges of the Province. After his name had appeared in the list of successful candidates, the admission policy was altered by the Petitioner and twelve seats were allotted to the doctors' children resulting in curtailment of the Respondent's seat. The Respondent filed a writ petition before the Hon'ble High Court which was allowed and it was held that the Respondent had acquired a vested right to be admitted to the medical college. Against this decision of the High Court, the Petitioner filed petition before the Hon'ble Supreme Court. The Supreme Court upheld the decision of the High Court and stated that the Respondent had a vested right to be admitted to the medical college which cannot be taken away retrospectively through sub-ordinate legislation. In view of the above, the Notification does not apply to you.

- C. Once you were declared eligible to appear in the final viva, a vested right accrued in your favor to appear in the final viva exam and not be refrained

from it by the Institute. The retrospective application of the Notification adversely affects this vested right of yours. Before asking you to write a research paper in compliance with the Notification the Institute should have afforded you an opportunity to defend the vested right under the principle of natural justice. It is an established rule of law, so also enshrined in Article 10A of the Constitution of Pakistan, 1973, that where a decision/order of an Authority would adversely affect a person or a right vested in or enjoyed by him, then an opportunity of a hearing has to be given before the adverse order is passed against him. The principles of natural justice are to be read in each and every statute unless the statute expressly excludes the same. Reliance has been placed on the following citations:

Anwer Hussain vs Deputy Settlement Commissioner, Larkana & 4 Others (1983 CLC 851), Asim Khan and others v. Zahir Shah and others (2007 SCMR 1451), Commissioner of Income Tax, East Pakistan vs. Fazlur Rahman (PLD 1964 SC 410) and University of Dacca through its Vice Chancellor and Registrar vs. Zakir Ahmed (PLD 1965 SC 90).

An opportunity for a hearing is one of the cardinal principles of natural justice. The 3 rules/components/principles of natural justice are: (i) the party which would be affected by the decision should be given a fair opportunity to defend itself (ii) the order/decision should be fair and based on reasonable and valid grounds and (iii) no one should be a judge in their own cause.

In the case of ***Mst. Sadia Sultan vs. D.E.O & Others (2011 PLC(C.S.) 158)***, the Petitioner in pursuance of an advertisement applied for various posts under the Chief Minister, Education Section, Reforms Programme on temporary basis for five years. The Petitioner was selected and after medical examination and interview, she was appointed as Elementary School Educator vide appointment letter dated 31-10-2009 and posted at a Government Primary School. She reported for joining on 7-11-2009 and

thereafter, on 15-12-2009 Respondent (D.E.O) withdrew her appointment order with immediate effect without assigning any reason. As per the report of the Respondents, the appointment order of the Petitioner was withdrawn because her qualification was not in accordance with the recruitment policy of the respondents and her name in the merit list was due to a clerical mistake which had been rectified. The Petitioner filed a petition before the Hon'ble Lahore High Court. The High Court held that the petitioner had been appointed as Elementary School Educator vide appointment letter dated 31-10-2009, and she had accordingly submitted her joining report on 7-11-2009 and started performing her duties. The withdrawal of her appointment letter would be against the principle of natural justice when she had secured a vested right, which could not be taken away or withdrawn by the respondents without fulfilling the requirement of the principle of natural justice.

- D.** That, the said Notification is in contradiction to your reasonable and legitimate expectation. According to **Halsbury's Laws of England**, Volume 1(1), 4th Edition, paragraph 81, on pages 151-152, legitimate expectation is described as, "*A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice.*"

In the case of ***Dr. Maha Fatima Tariq vs. Government of Punjab, through Chief Secretary, Lahore & 3 Others (2022 PLC(C.S.) 894***, the Government advertised vacant posts of Medical Officers (MOs) / Women Medical Officers (WMOs), to be appointed on purely ad hoc / temporary basis, in daily newspapers. Interviews were conducted and suitable candidates were recommended including the Petitioner for appointment.

The Petitioner's name was included in the original merit list. However, the Petitioner was not appointed which ultimately led to this petition before the Hon'ble High Court. The Learned single bench of the High Court allowed the petition and directed the respondents to issue an appointment letter in favor of the Petitioner as per the merit list of eligible candidates. The merit list had created a vested right in favor of the Petitioner which was required to be given due weight and regard as she had developed a legitimate expectation to be considered for the appointment.

By asking you to comply with a requirement that was introduced after you were officially declared by the Institute to have complied with all the institutional requirements, the Institute is acting in utter disregard of your legitimate expectation.

It is pertinent to mention here that the actions of administrative authorities/public bodies are administrative actions. An administrative action can be quasi-legislative (rule-making action), quasi-judicial (decision-making actions), and/or fully administrative in nature (action involving the application of a rule made by legislative or quasi-legislative actions). In the instant matter, the enactment of Notification was done by the Institute by utilizing its quasi-legislative powers. The application/implementation of the Notification on the students of the Institute would be considered to be a purely administrative act, whereas, as far as your case is concerned, a decision whether to impose the Notification on you or not is a quasi-judicial act.

- E.** That, the Institute cannot reverse/rescind its decision – declaring you eligible for the final viva exam – as it had created vested rights in your favor. A well-settled principle of law is that an Authority, which has the power to reverse its order, cannot reverse an order that has created rights in favor of

a person concerned unless it's an illegal order under the principle of *locus poenitentiae*. This view has been upheld by the Hon'ble Supreme Court in a number of cases, including, *Director, Social Welfare, N.W.F.P. Peshawar v. Sadullah Khan (1996 SCMR 1350) and Pakistan through Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407)*.

In the case of *Vasdev & Another vs. Government of Sindh through Secretary, Education Dept. & 5 Others (1996 PLC(C.S.) 761)*, Petitioners in pursuance to an Advertisement by the Govt. applied for the posts of Primary School Teachers. They were interviewed and after fulfillment of all requisite formalities were issued appointment letters. In further compliance with the appointment letters, the Petitioners obtained medical fitness certificates and appeared before the relevant authorities for the purpose of acquiring their posting orders. The Petitioners were denied their posting orders on the plea that there had been a shift in Government policy and a ban had been imposed on new appointments. Petitioners filed Constitutional Petitions. The Learned Divisional Bench of the High Court held that the ban imposed by the Government would have no bearing on the appointments of the Petitioners as upon issuance of appointment letters the Petitioners acted upon them and obtained medical fitness certificates. The action of issuance of appointment letters cannot be rescinded under the principle of *locus poenitentiae*. The Hon'ble High Court observed that the “*order cannot be withdrawn or rescinded once it had taken legal effect and certain rights were created in favor of any individual.*”

Accordingly, by asking you to comply with the Notification the Institute is reversing its earlier decision, hence, the Notification does not apply to you.

4. Thus, in the light of the above facts and the principles/ratio laid down by the superior courts, it is safe to conclude that the demand raised by your Institute directing you to first write a research paper before you could be allowed to appear in the final viva voce exam, in compliance of a Notification that was issued after you had been lawfully declared eligible to appear in the exam, is patently unauthorized & illegal and can be challenged before a court of law.

Please do not hesitate to contact us if you have any queries in regard to this Opinion.

Regards,

ABC.