

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Muhammad Junaid Ghaffar &
Mohammad Abdur Rahman, JJ,*

C.P. No. D-179 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.5
in CP D-179 of 2024 : Javed Ahmed (appearing in person)

C.P. No. D-180 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.5
in CP D-180 of 2024 : Abdul Fatah Bhutto (appearing in
person)

C.P. No. D-181 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.6
in CP D-180 of 2024 : Mir Muhammad (appearing in person)

C.P. Nos.D-182 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.5
in CP D-182 of 2024 : Muhammad Saleem (appearing in
person)

C.P. No. D-183 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.5 : Imdad Hussain (appearing in person)

Date of hearing : 9 October 2024

C.P. No.D-184 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent Nos.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No.5 : Sada Hasan (appearing in person)

C.P. Nos.D-1776 of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent No.1 to 4 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No. 5 : Nemo

C.P. No.D-1777 Of 2024

K-Electric Limited
Vs.
Federation of Pakistan & Others

Petitioner : Through Mr. Ayan Mustafa Memon,
Advocate

Respondent No.1 : Through Mr. Kashif Nazeer, Assistant
Attorney General

Respondent No. 2 : Nemo

Date of Hearing : 9 October 2024

Date of Judgement : 31 October 2024

ORDER

MOHAMMAD ABDUR RAHMAN,J: Through this common order, we will be deciding eight Petitions each maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, by K-Electric Limited (hereinafter referred to as "KE") against recommendations made by the Wafaqi Mohtasib (Ombudsman), seven of which were upheld by the President of Pakistan on Representations made by KE and thereafter have been impugned, while the eighth has been impugned directly before this Court on the grounds that:

- (i) the Wafaqi Mohtasib (Ombudsman) did not have the requisite jurisdiction to entertain each complaint under Sub-Section (2) of Section 9 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (hereinafter referred to as the "Order,1983"); and
- (ii) that each of the complaints were barred under Sub-Section (3) of Section 10 of the Order, 1983.

A. The Petitions

2. The facts on the basis of which each of these Petitions are maintained are as hereinunder:

(i) CP No. D-179 of 2024

Complaint No. WMS/KHI/0002124/2022 was maintained by the Respondent No.5 and Complaint No. WMS/KHI/0002171/2022 was maintained by the Respondent No. 6 alleging that certain amounts remained payable by KE to each of them pursuant to an Agreement entered into as between each of them and KE on the basis of a Voluntarily Separation Scheme that had been promoted by the K-Electric Limited after its privatisation.

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 7 June 2022 allowed each of the Complaints and remanded the matter to the Chief Executive Officer of the KE with directions to:

" ... examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited"

The Recommendation was impugned by KE before the President of Pakistan through Representation No. 330/WM/2022 and which Representation was rejected by the President of Pakistan by an order dated 27 November 2022.

In this Petition KE impugns a Recommendation dated 7 June 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0002124/2022, maintained by the Respondent No.5 and on Complaint No. WMS/KHI/0002171/2022 maintained by the

Respondent No. 6, allowing those Complaints and which Recommendation upheld by the President of Pakistan in Representation No.281/WM/2022 by an Order dated 10 November 2023.

(ii) CP No. D-180 of 2024

Complaint No. WMS/KHI/0001219/2022 was maintained by the Respondent No.5 and Complaint No. WMS/KHI/0001320/2022 was maintained by the Respondent No. 6 alleging that certain amounts remained payable by KE to each of them pursuant to an Agreement entered into as between each of them and KE on the basis of a Voluntarily Separation Scheme that had been promoted by KE after its privatisation.

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 29 April 2022 allowed each of the Complaints and remanded the matter to the Chief Executive Officer of the KE with directions to:

“ ... *examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited within 30 days*”.

The Recommendation was impugned by KE before the President of Pakistan through Representation No.281/WM/2022 and which Representation was rejected by the President of Pakistan by an order dated 10 November 2023.

In this Petition KE impugns a common order dated 29 April 2022 passed by the Wafaqi Mohtasib (Ombudsman), on Complaint No. WMS/KHI/0001219/2022, maintained by the Respondent No.5, and Complaint No. WMS/KHI/0001320/2022, maintained by the Respondent No.6, allowing those Complaints and which Recommendation was upheld by the President of Pakistan in Representation No.281/WM/2022 by an order dated 10 November 2023.

(iii) CP No. D-181 of 2024

Complaint No. WMS/KHI/0001931/2022 was maintained by the Respondent No.5 alleging that certain amounts remained payable by

KE to him pursuant to an Agreement entered into as between him and KE on the basis of a Voluntarily Separation Scheme that had been promoted by KE after its privatisation.

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 26 May 2022 allowed the Complaint and remanded the matter to the Chief Executive Officer of the K-Electric Limited with directions to:

“ ... *examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited*”.

The Recommendation was impugned by KE before the President of Pakistan through Representation No.309/WM/2022 and which Representation was rejected by the President of Pakistan by an order dated 1 December 2023.

In this Petition KE impugns a Recommendation dated 26 May 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0001931/2022 maintained by the Respondent No.5 allowing the Complaint and which Recommendation was upheld by the President of Pakistan in Representation No.309/WM/2022 by an order dated 1 December 2023.

(iv) CP No. D-182 of 2024

Complaint No. WMS/KHI/0001936/2022 was maintained by the Respondent No.5 alleging that certain amounts remained payable by KE to him pursuant to an Agreement entered into as between him and KE on the basis of a Voluntarily Separation Scheme that had been promoted by KE after its privatisation.

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 26 May 2022 allowed the Complaint and remanded the matter to the Chief Executive Officer of the KE to:

“ ... *examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited*”.

The Recommendation was impugned by KE before the President of Pakistan through Representation No.312/WM/2022 and which Representation allowing those complaints was rejected by the President of Pakistan by an order dated 1 December 2023.

In this Petition KE impugns a Recommendation dated 26 May 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0001936/2022 maintained by the Respondent No.5 allowing the Complaint and which Recommendation was upheld by the President of Pakistan in Representation No.312/WM/2022 by an order dated 1 December 2023.

(v) CP No. D-183 of 2024

Complaint No. WMS/KHI/0002081/2022 was maintained by the Respondent No.5 alleging that certain amounts remained payable by KE to him pursuant to an Agreement entered into as between him and KE on the basis of a Voluntarily Separation Scheme that had been promoted by KE after its privatisation.

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 26 May 2022 allowed the complaint and remanded the matter to the Chief Executive Officer of the K-Electric Limited to:

“ ... *examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited*”.

The Recommendation was impugned by the Petitioner before the President of Pakistan through Representation No.310/WM/2022 and which Representation was rejected by the President of Pakistan by an order dated 1 December 2023.

In this Petition KE impugns a Recommendation dated 26 May 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0002081/2022 maintained by the Respondent No.5 allowing the Complaint and which Recommendation was upheld by the President of Pakistan in Representation No.310/WM/2022 by an order dated 1 December 2023.

(vi) CP NO D-184 of 2024

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 26 May 2022 allowed the Complaint and remanded the matter to the Chief Executive Officer of the K-Electric Limited to:

“ ... *examine the cases and resolve the above two cases according to rules and procedure of K-Electric Limited*”.

The Recommendation was impugned by the Petitioner before the President of Pakistan through Representation No.311/WM/2022 and which Representation was rejected by the President of Pakistan by an order dated 1 December 2023.

In this Petition KE impugns Recommendation dated 26 May 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0001941/2022 maintained by the Respondent No.5 allowing the Complaint and which Recommendation was upheld by the President of Pakistan in Representation No.311/WM/2022 by an order dated 1 December 2023.

(vii) CP NO D- 1776 of 2024

Complaint No. WMS/KHI/000110028/2022 was maintained by the Respondent No. 5, who was an employee of the KE, seeking a correction to be made by KE in their records as to the Respondent No. 5 age.

The Wafaqi Mohtasib (Ombudsman) by its order dated 1 April 2023 dismissed the Complaint contending that it did not have jurisdiction under Sub-Section (2) of Section 9 of the Order, 1983 to entertain complaints *“concerning any matter relating to the Agency in which he is or has been working or in respect of any personal grievance relating to his service therein.”*

An application was maintained by the Respondent No. 5 before the Wafaqi Mohtasib (Ombudsman) bearing Complaint No. KHI/10028/2022 (R.P) seeking to review the Recommendation dated 1 April 2023 and which was allowed on 15 June 2023 on the basis of a purported undertaking given by KE that they would issue the requisite correction *“subject to return of monetary benefits for one extra year on the basis of erroneous date of birth.”*

The Recommendation was impugned by KE before the President of Pakistan through Representation No.353/WM/2023 and which Representation was rejected by the President of Pakistan by an order dated 8 March 2024.

In this Petition KE impugns a Recommendation dated 15 June 2023 passed in Complaint No. KHI/10028/2022 (R.P) that reviewed

findings in a Recommendation 1 April 2023 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/000110028/2022 maintained by the Respondent No.5 allowing the Complaint and which Recommendation was upheld by the President of Pakistan in Representation No.353/WM/2023 by an order dated 8 March 2024.

(viii) CP NO D- 1777of 2024

The Wafaqi Mohtasib (Ombudsman) by its Recommendation dated 14 September 2022 allowed the Complaint and remanded the matter to the Chief Executive Officer of the K-Electric Limited to:

“ ... *examine the cases and resolve the issues of the Complainant according to rules and procedure of K-Electric Limited*”.

In this Petition KE impugns a Recommendation dated 14 September 2022 passed by the Wafaqi Mohtasib (Ombudsman) on Complaint No. WMS/KHI/0004579/2022 maintained by the Respondent No.5 allowing the Complaint.

B. The Contentions on Behalf of KE

3. Mr. Ayan Mustafa Memon entered appearance on behalf of KE. He contended that each of the Petitions have been maintained by impugning the Recommendations of the Wafaqi Mohtasib (Ombudsman) and the Orders passed on Representations by the President of Pakistan upholding those Recommendations, on the ground that the Wafaqi Mohtasib (Ombudsman) on account of Sub-Section (2) of Section 9 of the Order, 1983 lacked the requisite jurisdiction to entertain any matter pertaining to the service of a Complainant with an “agency”. He contended that while ordinarily a Petition as against Recommendations of the Wafaqi Mohtasib (Ombudsman) and Orders of the President of Pakistan could not be maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, where the Wafaqi Mohtasib (Ombudsman) had acted in excess of his jurisdiction, a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 could be maintained. He relied on a decision of the Supreme Court of Pakistan reported as **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad**

and others¹ in which when the Peshawar High Court had dismissed a Petition maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on the ground that the Petitioner had not maintained a Representation under Section 32 of the Order, 1983 as against a Recommendation made by the Wafaqi Mohtasib (Ombudsman), the Supreme Court of Pakistan overturned such a decision holding that in the event that the order passed by the Wafaqi Mohtasib (Ombudsman) was in excess of its jurisdiction, a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning the Recommendations of the Wafaqi Mohtasib would be maintainable before a High Court.

4. While conceding that KE came within the definition of the expression “Agency” as defined in Sub-Section (1) of Section 2 of the Order, 1983 read with Sub-Section (a) of Section 2 of the Federal Ombudsmen Institutional Reforms Act, 2013 as each of the Petitions pertained to issues relating to the service of each complainant with KE, the same could not be maintained before the Wafaqi Mohtasib (Ombudsman). In this regard he referred us to the order dated 1 April 2023 passed on Complaint No. WMS/KHI/000110028/2022, which is impugned in CP No.D-1776 of 2024 and in which initially the Wafaqi Mohtasib (Ombudsman) had accepted this contention and dismissed the complaint and which Recommendation the Wafaqi Mohtasib (Ombudsman) subsequently modified on review. He submitted that the Supreme Court of Pakistan in the decision reported as **Federation of Pakistan through Establishment Division vs. Brig (Rtd.) Zulfiqar Ahmad Khan and others,**² and a Division Bench of this Court in the decision reported as **Amber Ahmed Khan vs. Pakistan International Airlines Corporation, Karachi Airport, Karachi**³ had held that Wafaqi Mohtasib (Ombudsman) did not have the requisite jurisdiction to entertain matters relating to the service of a complainant with an agency; while in the decision reported as **Unilever Pakistan Limited through Company Secretary and General Attorney vs. Pakistan through Secretary Law and Justice and 5 others**⁴ a similar interpretation was cast on analogous provisions as contained in Sub-Section (3) of Section 9 of the Establishment of the Officer of Federal Tax Ombudsman Ordinance, 2000.

5. He further contended that under Sub-Section (3) of Section 10 of the Order, 1983 a complaint was to be maintained before the Wafaqi Mohtasib (Ombudsman) “*not later than three months from the day on which the*

¹ PLD 2016 SC 940

² 2007 SCMR 1313

³ PLD 2003 Karachi 405

⁴ 2020 PTD 2052

person aggrieved first had the notice of the matter alleged in the complaint” and admittedly as each of these complaints were maintained nearly seven years after the complainants, had notice of the cause each of them were not maintainable on this score as well. In this regard he relied on a decision of a Division Bench of the Lahore High Court, Lahore reported as **Ch. Muhammad Aslam vs. Islamic Republic of Pakistan**⁵ and a decision of the Islamabad High Court reported as **Allama Iqbal Open University (Aiou) Versus Federation of Pakistan Through Director General Legal For President Of Pakistan.**⁶

6. He concluded by contending that KE had never represented to the Wafaqi Mohtasib (Ombudsman) that the issue regarding additional payment to the private respondents was pending with KE and that such a statement has been incorrectly recorded in each of the Recommendations made by the Wafaqi Mohtasib (Ombudsman) and which Recommendations and the Orders passed by the President of Pakistan that upheld such recommendations were in excess of the jurisdiction conferred on the Wafaqi Mohtasib (Ombudsman) and hence void and liable to be set aside by this Court.

C. The Contentions of the Private Respondents

7. Mr. Abdul Fatah Shaikh who is the Respondent No. 5 in CP No. D-180 of 2024 contended that while he had entered into the Agreement with KE in or around the year 2013 and pursuant to which certain payments had been received by them. He however contended that he was kept on false hopes by KE that he would be paid an additional amount and for which he continued to contact the Chief Executive of KE up to the year 2016. However as KE did not honour its obligations, he had maintained a Complaint before the Wafaqi Mohtasib (Ombudsman) in the year 2022. He contended that he may be paid their entitlement as in accordance with their agreement with KE.

8. The Private Respondents in other Petitions, who were in appearance, each adopted the arguments of Mr. Abdul Fatah Shaikh.

⁵ PLD 2009 Lahore 386

⁶ 2023 CLC 638

D. The Contentions on behalf of the Federation of Pakistan

9. Mr. Kashif Nazeer learned Assistant Attorney General appeared on behalf of Federation of Pakistan. While conceding to Mr. Ayan Mustafa Memon contentions regarding the jurisdiction of the Wafaqi Mohtasib (Ombudsman) to entertain matters pertaining to the service of a complainant with an agency, Mr. Nazeer while relying on a judgment of a Division Bench of this Court reported as **Mst Nazima Khatoon vs. Province of Sindh and others**⁷ which supported the proposition also relied on a decision of the Lahore High Court, Lahore reported as **University of Agriculture, Faisalabad vs. Provincial Ombudsman Punjab, Lahore**⁸ wherein the learned Single Judge while accepting that the Provincial Ombudsman Punjab, Lahore, on the basis of analogous provisions in the Punjab Office of the Ombudsman Act, 1997, did not have the jurisdiction to entertain matters pertaining to the service of a Complainant with an agency, instead directed that the complaint should be deemed to be pending before the Agency for adjudication.

10. We have heard Mr. Ayan Mustafa Memon, Mr. Kashif Nazeer and each of the Private Respondents who were in appearance and have perused the record.

E. The Interpretation of the provisions of The Order, 1983 and of the Federal Ombudsmen Institutional Reform Act, 2013

11. A Wafaqi Mohtasib (Ombudsman) is a statutory office that has been created by Section 3 of The Order, 1983 and who is appointed by the President of Pakistan to adjudicate on complaints pertaining to maladministration in government or government-controlled bodies and which are referred to that the statute a “agencies”. Its jurisdiction is therefore controlled by that statute.

(i) Maintainability of a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against an order of the Wafaqi Mohtasib (Ombudsman) or an order of the President of Pakistan under The Order, 1983 on account of the Prohibition Contained in Section 29 of The Order, 1983

12. The maintainability of a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan in respect of matters adjudicated on by the Wafaqi Mohtasib (Ombudsman) by way of Recommendation and the

⁷ 2019 PLC (C.S.) 817

⁸ 2015 PLD (C.S.) 802

orders on Representation passed by the President of Pakistan under the Order, 1983 has been considered by various High Courts and the Supreme Court of Pakistan. One may point to there being an “express” statutory bar in Section 29 of the Order, 1983 purportedly preventing a Court to question the validity of any order passed by the Wafaqi Mohtasib (Ombudsman) and which section reads as hereinunder:

“ ... 29. *Bar of jurisdiction.--No Court or other authority shall have jurisdiction.-*

(1) *to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order ; or*

(2) *to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib.”*

There can be no dispute that “ouster of jurisdiction” clauses, such as the one contained in this section, do not in *toto* oust the jurisdiction of a High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The obvious ground where this Court could and has exercised its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would be where the Wafaqi Mohtasib has passed a Recommendation on a Complaint or for that matter the President of Pakistan has passed an order on a Representation under the Order, 1983 in excess of their jurisdiction as conferred on them by that statute.⁹ The Second ground for maintaining a Petition is where either the Wafaqi Mohtasib (Ombudsman) or the President of Pakistan, acting under the Order, 1983, have passed an order in violation of the principles of natural justice.¹⁰ Finally, where either the Wafaqi Mohtasib (Ombudsman) or the

⁹ See *Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others* 1998 SCMR 841; *Federation of Pakistan through Establishment Division vs. Brig. (Rtd.) Zulfiqar Ahmed Khan and others* 2007 SCMR 1313; *Muhammad Anwar vs. Federation of Pakistan through Secretary Establishment Division* 2011 SCMR 499; *Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others* PLD 2016 SC 940; *National Bank of Pakistan, Karachi vs. Wafaqi Mohtasib (Ombudsman) Karachi* PLD 1992 Karachi 339; *Tariq Majeed Chaudhry vs. Lahore Stock Exchange (Guarantee) Ltd.* PLD 1995 Lahore 572; *East West Insurance Company Limited vs. Wafaqi Mohtasib and 3 others* 1999 MLD 3050; *State Life Insurance Corporation of Pakistan vs. Wafaqi Mohtasib, Federal Ombudsman Secretariat Islamabad and another* 2000 CLC, 1593; *Civil Aviation Authority vs. Wafaqi Mohtasib (Ombudsman) and others* 2001 PLD (C.S.) 637; *Aviation Authority vs. Wafaqi Mohtasib (Ombudsman) and others* PLD 2001 Karachi 304; *Pakistan International Airlines Corporation through Chairman vs. Captain M.S.K. Lodhi* 2002 PLD (C.S.) 960; *Pakistan International Airlines Corporation vs. Aur Master (Pvt.) Limited* PLD 2004 Karachi 77; *Punjab Agriculture Development Supplies Corporation (Defunct) vs. Qazi Muhamamd Siddique and others* 2004 PLC (C.S.) 117; *Sami-ud-Din Ghauri vs. L.D.A. and others* 2004 MLD 1308; *Abdul Wahid vs. City District Government through District Coordination Officer* 2014 PLC (C.S.) 820

¹⁰ *Tariq Majeed Chaudhry vs. Lahore Stock Exchange (Guarantee) Ltd.* PLD 1995 Lahore 572; *Rehmat Ali vs. Punjab Small Industries Corporation And Others* 2002 YLR 2307; *Amber Ahmed Khan vs. Pakistan International Airlines Corporation, Karachi Airport, Karachi* PLD 2003 Karachi 405; *Messrs Easter Leather Company (Pvt.) Ltd. vs Raja Qamar Sultan Section Officer*

President of Pakistan fail to exercise their jurisdiction by passing a speaking order, a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would also be maintainable.¹¹

13. While considering the grounds that have been available to maintain a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, an objection is often forwarded that where a Representation under Section 32 of the Order, 1983 had not been maintained against a decision that had been passed by the Wafaqi Mohtasib (Ombudsman), there being an adequate remedy, a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would not be maintainable. To our minds, this issue stood decided by the Supreme Court of Pakistan in the decision reported as **Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others**¹² wherein when the High Court of Sindh had dismissed a Petition on the grounds that a Representation under Section 32 of the Order, 1983 had not been maintained by Pakistan International Airlines Corporation against the order of the Wafaqi Mohtasib (Ombudsman) the Supreme Court while allowing the appeal held that:

“ ... 11. As to the question, whether the Constitutional petition filed by the appellant before the High Court was competent, it may be pointed out that the learned Judges of the High Court have first referred to Article 32 of P.O. 1 of 1983 which provides for a representation to the President in respect of an order passed by the Mohtasib. Reference was also made to Article 29 in the said Order, which bars the jurisdiction of the Courts in this regard. They then went on to hold that since the petition filed by the respondent No.2 before the Mohtasib was competent, no interference with the same in the exercise of the Constitutional jurisdiction was warranted. It may however, be pointed out that, now it is well established that any order passed by the Mohtasib can be interfered with under Article 199 of the Constitution if it suffers from lack of Jurisdiction. In fact, the learned Judges of the High Court have themselves referred to the case of *International Cargo Handling Company (Pvt.) Ltd. v. Port Bin Qasim Authority* (PLD 1992 Kar. 65) wherein it was held:

“ No doubt, the jurisdiction of Courts is barred, *inter alia*, in respect of any decision or order made including order of injunction or stay, by the Mohtasib but where the order from the face of it is repugnant to law under which it was made or suffers from want of jurisdiction, a Court may invoke its inherent jurisdiction vested in it under law so as to prevent injustice done to an aggrieved person. ’

There can be no cavil with the above observations. having already held that the said order of the Mohtasib is without jurisdiction, the same could, I therefore, be

Government of Pakistan, Islamabad and 4 others PLD 2004 Lahore 83; **Prof. Dr. Anwar Ahmad Vs. Federation Of Pakistan Through Secretary, Ministry Of Education, Government Of Pakistan Islamabad and 2 others** 2004 CLC 174; **Ch Ghulam Nabi vs. Government of Sindh through Chief Secretary and 3 others** 2004 YLR 252; **Sardar Muhammad Ashiq Dogar vs. Federation of Pakistan through Secretary and another** 2004 YLR 471

¹¹ **Muhammad Tariq Pirzada vs. Government of Pakistan** 1999 CLC 583; **Muhammad Ilyas Lodhi vs. President, Islamic Republic of Pakistan Islamabad and 2 Others** 2002 CLC 244; **Ch. Muhammad Aslam vs. Islamic Republic of Pakistan and another** PLD 2009 Lahore 386

¹² 1998 SCMR 841

interfered with by the High Court. The learned Judges, therefore, erroneously declined to set aside the said order."

A similar decision was rendered by the Supreme Court of Pakistan in the decision entitled **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others**¹³ wherein the Supreme Court of Pakistan while overturning a decision of the Peshawar High Court which had refused to entertain a Petition on the ground that the Petitioner has failed to maintain the alternate remedy of a Representation under Article 32 of the Order 1983 against the order of the Wafaqi Mohtasib had held that:

" ... 11. *The question as to whether the learned High Court can entertain a Constitutional Petition against an order of the Wafaqi Mohtasib, it is well established law that his order can be interfered with by the learned High Court in exercise of its constitutional jurisdiction if the Petitioner satisfies that the order of the Wafaqi Mohtasib is without jurisdiction. We have not lost sight of Article 32 of the Order which provides alternate remedy to the aggrieved to approach the President of Pakistan by filing a representation against the Order of Wafaqi Mohtasib, but where the Order of the Wafaqi Mohtasib, on the face of it, is against the language of Article 9 of the Order or without jurisdiction, the High Court can exercise its constitutional jurisdiction so as to prevent injustice done to an aggrieved."*

However, in a decision reported as **Pakistan Railways through General Manager, Railways Headquarters Office, Lahore vs. Abdul Bari Khan and others**¹⁴ in which where the Lahore High Court, Lahore had dismissed a Petition maintained by the Pakistan Railways directly against the order of the Wafaqi Mohatasib (Ombudsman) without first maintaining a Representation before the President of Pakistan under Section 32 of The Order, 1983 the Supreme Court of Pakistan while dismissing the appeal opined that:

" ... 4. *Ch. Muhammad Aslam Sandhu, learned Advocate Supreme Court-on behalf of petitioners when asked as to why the alternate remedy which is equally efficacious could not be availed and why representation against the findings of Wafaqi Mohtasib could not be made to the President of Pakistan under Article 32 of the Order, 1983, no plausible justification could be furnished. In fact a futile attempt, has been made to cover the inefficiency, careless and callous approach of the officers concerned who failed to invoke the provisions as contained in Article 32 of the Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order; 1983 under the garb of writ petitions which have rightly been dismissed.*

The orders impugned being well-based and unexceptionable hardly warrants interference. The appeals are dismissed being devoid of merits. There shall, however, be no orders as to costs."

A similar view was given by the Supreme Court of Pakistan in two orders reported as **Water and Power Development Authority and others vs.**

¹³ PLD 2016 SC 940

¹⁴ PLD 2004 SC 127

Commissioner Hazara Division and others 1992 SCMR 2102 and **Messrs Shifa Medicos vs. Wafaqi Mohtasib (Ombudsman) and others**¹⁵ wherein on applications for leave to appeal, the same issue was considered by the Supreme Court of Pakistan but which being leave refusal orders are not binding on this Court.

14. There being conflicting decisions of the Supreme Court of Pakistan each of benches of the same number of Judges, relying on the decision of the Supreme Court of Pakistan as reported as **Multiline Associates vs. Ardeshir Cowasjee**¹⁶ we are obliged to follow the earlier decision reported as **Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others**¹⁷ as applied in **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others**,¹⁸ since in **Pakistan Railways through General Manager, Railways Headquarters Office, Lahore vs. Abdul Bari Khan and others**,¹⁹ the earlier judgement of **Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others**²⁰ was neither cited nor distinguished, therefore, the ratio decidendi laid down in **Pakistan Railways through General Manager, Railways Headquarters Office, Lahore vs. Abdul Bari Khan and others**²¹ for the present purposes, could not be considered as binding precedent. It would therefore follow that where it is shown that the Wafaqi Mohtasib (Ombudsman) has acted in excess of its jurisdiction, a Petition can be maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, directly before the High Court without maintaining a Representation as against the order of the Wafaqi Mohtasib under Section 32 of the Order, 1983. This Petition specifically being maintained on the ground that the Wafaqi Mohtasib (Ombudsman) did not have the requisite jurisdiction under Sub-Section (2) of Section 9 of the Order, 1983 to entertain Complaints pertaining to the Service of a Complainant with an agency and under Sub-Section (3) of Section 10 of the Order, 1983 as to whether the Complaint was presented within the time period prescribed, it therefore needs to be examined whether on each *lis* was maintained by the Wafaqi Mohtasib (Ombudsman) in excess of its jurisdiction or not.

¹⁵ 2003 SCMR 928

¹⁶ PLD 1995 SC 423

¹⁷ 1998 SCMR 841

¹⁸ PLD 2016 SC 940

¹⁹ PLD 2004 SC 127

²⁰ 1998 SCMR 841

²¹ PLD 2004 SC 127

(ii) **Jurisdiction to entertain Complaints pertaining to Service of a Complainant with an agency**

(a) **Sub-Section (1) of Section 9 and Section 33 of The Order, 1983**

15. The jurisdiction of the Wafaqi Mohtasib (Ombudsman) to adjudicate on a complaint maintained against an agency or any of the agencies officers or employees is determined under Section 9 of the Order, 1983 and which reads as hereinunder:

“ ... 9. Jurisdiction, functions and power of the Mohtasib. –

(1) The Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:

(a) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or

(b) relate to the external affairs of Pakistan or the relations or dealing of Pakistan with any foreign state or government; or

(c) relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in clause (1), the Mohtasib **shall not accept for investigation** any complaint **by or on behalf** of a public servant or functionary concerning **any matters** relating to the Agency in which he is, or has been, working in respect of any personal grievance **relating to his service therein.** ...”

16. The provisions of Section 33 of the Order, 1983 confers an “additional jurisdiction” on the Wafaqi Mohtasib (Ombudsman) to resolve disputes and which reads as hereinunder:

“ ... (1) Notwithstanding anything contained in this Order, the Mohtasib and a member of the Staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.

(2) The Mohtasib may appoint for purposes of liaison counsellors, whether honorary or otherwise, at local levels on such terms and conditions as the Mohtasib may deem proper.”

(b) **The Wafaqi Mohtasib (Ombudsman) interpretation of its own Jurisdiction**

17. The Wafaqi Mohtasib (Ombudsman) has chosen to interpret its own jurisdiction under Sub-Section (2) of Section 9 and Section 33 of the Order, 1983 and has issued numerous circulars and notifications in this regard. The first circular of relevance is a Circular dated 16 August 2019²² and which reads as hereinunder:

“ ...

CIRCULAR

*Subject: **PROCESSING OF COMPLAINTS RELATING TO SERVICE MATTER***

In a meeting held with the Investigating Officers at headquarters on 22.07.2019 on the above subject, the matter regarding complaints which strictly fall in the category of service matter came under discussion. In this regard it is clarified, with the approval of HWM, that

i. The complaint of a complainant, who is/has been working in the Agency complained against, will fall in the category of service matter.

ii. However, the following types of complaints shall not be treated as service matter if the complainant has made complaint against the Agency other than the Agency in which he or she is/ has been working in the following matters:-

Post-retirement benefits:

- a) Pension;*
- b) Gratuity,*
- c) G.P. Fund;*
- d) C.P. Fund;*
- e) Group Insurance,*
- f) Benevolent Fund;*
- g) Travel concession,*
- h) Medical facilities (to the retired employees);*
- i) Employees Old-age Benefits, and*
- j) Denial of admissible perks and privileges:*

In-service claims:

- a) Medical-reimbursement claims;*
- b) Allotment of accommodation and housing facilities,*
- c) Denial of admissible perks and privileges;*
- d) Delay and discrimination in the grant of various advances such as Motor Car Advance, Motorcycle Advance, House Building Advance and G.P. Fund Advance, and*
- e) Educational and other benefits for the children of employees.*

iii) Complaints of widows and family members of the deceased will not fall in the category of service matter in terms of Article 9(2) of P.O. No.1 of 1983 even if the complaint is made against the Agency in which the deceased employee had been working.

Sd-
(Aijaz Hussain Lone)
Director General (Coord)“

It seems that when this circular was opined on in an unreported Petition before the Islamabad High Court bearing Writ Petition No. 4852 of 2018

²² Ahmad, Muhammad Ashfar (2023) **Compendium for Investigation Appraisal and Implementaiton, Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad** at page 189

entitled **PESCO vs. President of Pakistan and others** and in which the interpretation cast by the Wafaqi Mohtasib (Ombudsman) was not accepted by the Islamabad High Court, a clarification was issued by the Wafaqi Mohtasib (Ombudsman) on 3 December 2020²³ in the following terms:

“ ... *Subject: PROCESSING OF CASES OF PERSONAL GRIEVANCE OF COMPLAINANTS AGAINST THE AGENCY IN WHICH THEY HAVE BEEN WORKING IN TERMS OF SUB-CLAUSE (2) OF ARTICLE 9 OF P.O. NO. 1 OF 1983.*

In a Write Petition, bearing No.4852/18 titled PESCO vs. President of Pakistan and Other, regarding jurisdiction of Wafaqi Mohtasib in service matters, the Islamabad High Court vide judgment dated 21.10.2020 allowed the Writ Petition on the ground that sub-clause (2) of Article 9 of P.O. I of 1983 clearly provides that the employee who has been working with the Agency cannot make a complaint to the Wafaqi Mohtasib regarding personal grievance against the Agency in which he has been working.

2. *The Judgment of Islamabad High Court has been considered and it has been decided that this Secretariat should not investigate and make recommendations in any complaint by or behalf of a public servant concerning any matters relating to the Agency in which he has been working in respect of any personal grievance relating to his service therein. However, if the Agency does not contest the complaint and is willing to provide relief to the complainant, this Secretariat may ask the Agency to provide the offered relief to the complainant as per its policy/rules/regulations. All Appraising Officers and IOs are advised to process such complaints in light of the above*

Sd-
(Ejaz Ahmad Qureshi)
Senior Adviser (Appraisal)”

(emphasis added)

Finally, a Circular dated 10 November 2023²⁴ superseding the Circular dated 16 August 2019 has also been issued by the Wafaqi Mohtasib (Ombudsman) clarifying that:

“ ... F.4(2)/Coord/WMS/2022 Dated: 10th November 2023

CIRCULAR

Subject: PROCESSING OF COMPLAINTS RELATING TO SERVICE MATTER

In supersession of earlier Circular No. 6(29)WMS/Coord/2019, dated 16.08.2019 on the subject noted above, the following clarifications are issued with the approval of HWM:-

(i) *The complaint of a complainant, who is/has been working in the Agency complained against, will fall in the category of service matter.*

²³ Ahmad, Muhammad Ashfar (2023) **Compendium for Investigation Appraisal and Implementaiton, Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad** at page 192

²⁴ Ahmad, Muhammad Ashfar (2023) **Compendium for Investigation Appraisal and Implementaiton, Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad** at page 195

(ii) *If the complainant has made a complaint regarding service matter against the Agency other than the Agency in which he or she is/has been working, the same will be entertained and disposed of by the office of Wafaqi Mohtasib.*

(iii) *The complaints of widow and family members of the deceased will not fall in the category of service matter in terms of Article 9(2) of P.O. No. 1 of 1983 even if the complaints are made against the Agency in which the deceased employee had been working.*

(iv) *The complaints of retired employees pertaining to their service matters against the Agency they have been working will be dealt with under Article 33 of P.O. 1 of 1983 related to informal resolution of disputes.*

Sd-
(Iqbal H. Siddiqui)
Director (Coordination)"

18. From the above circulars and clarifications, we conclude that the Wafaqi Mohtasib (Ombudsman) interpretation of its own jurisdiction is that:

- (i) the Wafaqi Mohtasib (Ombudsman) does not have jurisdiction to entertain a complaint regarding an issue pertaining to the complainant's service with an agency at which the complainant is or was employed;
- (ii) the Wafaqi Mohtasib (Ombudsman) does have the jurisdiction to entertain a complaint regarding an issue relating to the terms of service where the complainant makes a complaint not about the agency where the complainant was employed but about any other agency;
- (iii) the Wafaqi Mohtasib Ombudsman will have jurisdiction to entertain complaints maintained by "widows and family members" of a deceased employee of an agency in respect of matters pertaining to his service with an agency; and
- (iv) under Section 33 of the Order, 1983, despite not having the jurisdiction to investigate a matter pertaining to the service of a complainant with an agency, the Wafaqi Mohtasib (Ombudsman) nevertheless retains the jurisdiction to "entertain complaints" of retired employees pertaining to issues regarding their service against the Agency they have been working and to "ask the Agency to provide the offered relief to the complainant as per its policy/rules/regulations."

(c) **The Supreme Court of Pakistan interpretation of Sub-Section (2) of Section 9 of The Order, 1983**

19. The Supreme Court of Pakistan in the decision reported as **Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others**²⁵ while considering an issue as to whether the terms of service of an employee of the Pakistan International Airlines Corporation Limited were amenable to the jurisdiction of the Wafaqi Mohtasib had held that:

“ ... 9. Our attention has been invited by Mr. Umar Atta Bandial to Clause (2) of Article 9, which clearly indicates that the jurisdiction of Wafaqi Mohtasib is expressly excluded, in case of personal grievance of a public servant or a functionary serving in any "Agency" in respect of matters relating to his service therein. The term "Agency" has been defined by Article 2(1) in the said Order to mean " a Ministry, Division, Department, Commission or Office of the Federal Government or a statutory corporation or other institution established or controlled by the Federal Government". As the appellant-Corporation is a statutory corporation and is controlled by the Federal Government, it clearly falls within the purview of the term 'agency'. 'Therefore, the jurisdiction of Wafaqi Mohtasib is clearly barred by Clause (2) of Article 9 of the said Order. This question was considered by the learned Judges of the High Court, but a distinction was drawn between cases which may be accepted by the Wafaqi Mohtasib for investigation and another category of cases which may only be accepted for consideration. Although no such distinction appears to have been made by Article 9, but reference has been made by the learned Judges to Article 11 of the said Order which provides for the procedure to be followed by the Wafaqi Mohtasib after receiving a complaint for investigation. As the bar provided for in Clause (2) of Article 9 relates to a certain category of cases which may be accepted by the Wafaqi Mohtasib for investigation, it was so concluded by the learned Judges, that matters which did not require investigation by the former, were excluded from the purview of Clause (2) of Article 9. The findings arrived at by the learned Judges appear to be erroneous on the face thereof.

A plain reading of Article 9 indicates that barring matters referred to in the proviso to Clause (1) in the said Article, the Mohtasib has been empowered to undertake any investigation into any allegation of maladministration on the part of any 'Agency' or any of its officers or employees. Clause (2) in the said Article, however, bars the jurisdiction of the Mohtasib to accept any matter for investigation relating to the 'Agency if a complaint has been made by its functionary in respect of a personal grievance relating to his service therein. The said clause being a nonobstante clause stands on a higher pedestal than clause (1). The legislative intent is, therefore, clear that, the matters referred to in clause (2) have been excluded from the jurisdiction of the Mohtasib. Article 11 of P.O. 1 of 1983 only relates to procedure and it cannot be construed in a manner so as to nullify the clear and unambiguous provisions of Article 9(2), which specifically deal with matters relating to jurisdiction and powers of the Mohtasib. It is an elementary rule of construction that words which are plain and unambiguous are to be expounded in their natural and ordinary sense. Therefore, the learned Judges of the High Court were clearly to error while holding that the complaint of respondent No.2 before the Mohtasib was competent. See National Bank of Pakistan v. Wafaqi Mohtasib PLD 1992 Kar. 339."

²⁵ 1998 SCMR 841

In the decision reported as **Federation of Pakistan through Establishment Division vs. Brig. (Rtd.) Zulfiqar Ahmed Khan and others**²⁶

“

4. By looking at the very grievance of the respondent, as it has been agitated before the High Court and also before Wafaqi Ombudsman was with regard to the award and non-award of pensionary benefits depending on the conditions as to whether he has completed tenure of 10 years in the civil service which is purely relatable to the terms and conditions of service. By no stretch of imagination, this case could be brought out of the ambit of the terms and conditions of civil servant and in such view of the matter bar contained under Article 212 of the Constitution attracts and the High Court has wrongly assumed the jurisdiction despite the constitutional bar while accepting writ petition of the respondent. Reliance can be placed on Peer Muhammad v. Government of Balochistan through Chief Secretary and others 2007 SCMR 54 and Province of Punjab, through Secretary Education v. Shamshad Begum 2004 PLC (C.S.) 1027. terms and conditions of his service and for the redressal for such grievance a proper forum is available, i.e. Service Tribunal which could, in case the respondent was having a good case on merits, pass an effective order which may be favourable to the respondent, but the respondent instead of adopting a proper legal course, has divulged himself in the litigation courses which were not available to him under the law. The findings of the High Court whereby the orders passed on representation against the order of Mohtasib were set aside are also not sustainable. Article 9(1) prescribes the jurisdiction, functions and powers of Mohtasib and sub-Article (2) of the Article (ibid) contains bar thereto as under what circumstances such powers cannot be exercised which reads as under:-

"9(2). Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein."

The case of the respondent, which pertains to his personal grievance relating to his service clearly falls under the aforesaid sub-Article containing bar on the jurisdiction of Mohtasib. The Mohtasib has wrongly assumed jurisdiction while entertaining the complaint of the respondent and giving findings on it, which he could not do and when such matter comes before the Court i.e. consideration of the order of Mohtasib, as an ancillary one or incidentally and not under direct challenge, that can very conveniently be ignored i.e. the order being without jurisdiction and without lawful authority. If the same is set aside or reversed on representation as provided under the law, also cannot be set aside on account of any flaw, may be of not giving opportunity of hearing to the respondent as whether it has been set aside on representation or not, the order of Mohtasib on account of lack of jurisdiction would be of no consequence. Consequently, while accepting this appeal judgment of the High Court, impugned herein is set aside. No order as to costs."

Similarly, in the decision reported as **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others**²⁷ the

Supreme Court of Pakistan has held that:

... 8. It is not possible to mould the term "mal-administration" used in Article 9(1) of the Order under a rigid definition. The dictionary meaning of the term "mal-administration" is "to handle a matter inefficiently or improperly". In its wider sense, it refers to various types of mal-practices which are opposed to law, fair play and principles of

²⁶ 2007 SCMR 1313

²⁷ PLD 2016 SC 940

equity and justice. In common parlance, the introduction of the office of the Ombudsman and the conferment of powers upon it through the Order was styled to check administrative excess and abuses of bureaucracy. However these powers, within the Order, are not absolute and are subject to the restrictions contained in Article 9 of the Order. In other words, the Wafaqi Mohtasib can only exercise powers which are not in conflict with the language of Article 9 (1) and (2) of the Order. The term "mal-administration" has been interpreted by this Court in a number of cases reported as Muhammad Muntaz Khan Bhaba v. Special Court of Mr. Justice Munir A Shaikh, (1994 SCMR 728), Shafaatullah Qureshi v. Federation of Pakistan (PLD 2001 SC 142) and Capital Development Authority v. Zahid Iqbal (PLD 2004 SC 99).

9. In the case in hand, the learned High Court while dismissing the Writ Petition of the Petitioner has, inter alia, held that the Petition was not competent as an alternate remedy, in terms of Article 32 of the Order, was available. The grievance of the Petitioner was that the Wafaqi Mohtasib did not have the jurisdiction to order and or recommend the appointment of a person on the 20% quota reserved for the employees of different categories referred to in paragraph 3 above, who were admittedly over age. We have to examine as to whether the Order confers authority on the Ombudsman to entertain grievance of the nature under the garb of powers granted to him under Article 9 of the- Order. In other words, whether the Wafaqi Mohtasib can recommend the appointment of this nature by relaxing the upper age limit of a person? We are of the considered view that the appointment and or recruitment in a public sector company like Petitioner is an executive function and such function cannot be performed by the Wafaqi Mohtasib under Article 9 of the Order which excludes his jurisdiction to entertain a complaint of the nature.

10. If, ex facie, the Ombudsman is not conferred with such a power, and the order of the nature is passed by it, the High Court can always in exercise of its constitutional jurisdiction rectify such error. An alternate remedy provided under Article 32 of the Order cannot restrict the Constitutional jurisdiction of the High Court once it comes to the conclusion that the Order of the Wafaqi Mohtasib was outside the domain of Article 9. Sub-Article 2 of Article 9 clearly indicates that jurisdiction of Wafaqi Mohtasib is expressly excluded in cases of personal grievances of public servants or functionaries serving in any "Agency" in respect of the matters relating to their service. The term "Agency" has been defined in Article 2(1) of the Order which means a Ministry, Division, Department, Commission or Office of the Federal, Government or a statutory corporations or other institution established or controlled by the Federal Government. The Petitioner is a Company and is controlled by the Government and clearly falls within the purview of term "Agency", therefore, the jurisdiction of Wafaqi Mohtasib is barred under clause 2 of Article 9 of the Order.

The decision in **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others**²⁸ was followed by the Supreme Court of Pakistan in the decision reported as **Sui Northern Gas Pipelines Limited vs. President of Pakistan, President Secretariat (Public), Aiwan e Sadr, Islamabad and 2 others**²⁹ and in which it was held that:

²⁸ PLD 2016 SC 940

²⁹ 2020 SCMR 242

“ ... 7. As far as maintainability of the complaint before the Wafaqi Mohtasib is concerned, it has been held in the case reported as *Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib (Ombudsman) Islamabad and others* (PLD 2016 SC 940), in which a matter of similar nature came before this Court, and it was held as under:

"9. In the case in hand, the learned High Court while dismissing the Writ Petition of the Petitioner has, inter alia, held that the Petition was not competent as an alternate remedy, in terms of Article 32 of the Order, was available. The grievance of the Petitioner was that the Wafaqi Mohtasib did not have the jurisdiction to order and or recommend the appointment of a person on the 20% quota reserved for the employees of different categories referred to in paragraph 3 above, who were admittedly over age. We have to examine as to whether the Order confers authority on the Ombudsman to entertain grievance of the nature under the garb of powers granted to him under Article 9 of the Order. In other words, whether the Wafaqi Mohtasib can recommend the appointment of this nature by relaxing the upper age limit of a person? We are of the considered view that the appointment and or recruitment in a public sector company like Petitioner is an executive function and such function cannot be performed by the Wafaqi Mohtasib under Article 9 of the Order which excludes his jurisdiction to entertain a complaint of the nature."

(emphasis supplied)"

8. Placing reliance upon the judgment of this Court reported as *Peshawar Electric Supply Company Ltd. (supra)*, it can be safely adduced that the Wafaqi Mohtasib did not have jurisdiction to hear the case of Respondent No.3 against the Petitioner Company. The learned Lahore High Court, Lahore, has erred in dismissing the Writ Petition and the Wafaqi Mohtasib was not vested with jurisdiction in the instant case."

Clearly each of these judgements clarify that issues pertaining to the service of a complainant with an agency are outside the jurisdiction of the Wafaqi Mohtasib (Ombudsman) as being barred under Sub-Section (2) of Section 9 of the Order, 1983.

(d) This Court's Interpretation of Sub-Section (2) of Section 9 of The Order, 1983 and the Circulars and Clarification issued by the Wafaqi Mohtasib (Ombudsman)

20. Keeping in mind the literal interpretation of Sub-Section (2) of Section 9 of The Order, 1983 and the very clear opinions of the Supreme Court of Pakistan, we find ourselves bemused as to how the Wafaqi Mohtasib (Ombudsman) continues to insist that it has the requisite jurisdiction to adjudicate on matters regarding service in the interpretations that have been cast by it under Circulars and Clarifications as detailed hereinabove and which we are therefore constrained to examine.

21. The "jurisdiction functions and powers" of the Wafaqi Mohtasib (Ombudsman) have been clarified in Section 9 of the Order, 1983 and which can be invoked either on:

- (i) the complaint of an “aggrieved person”;
- (ii) a reference by the President of Pakistan;
- (iii) a reference by the Federal Council;
- (iv) a reference of the National Assembly;
- (v) a motion of the Supreme Court of Pakistan during proceedings;
- (vi) a motion of a High Court during proceedings; or
- (vii) on the Wafaqi Mohtasib (Ombudsman) own motion i.e. *Suo Moto*.

Each of the complaints, reference or motions have to, at all times, be in the nature of an investigation into an “allegation of maladministration” on the part of an “Agency, its officers or employees”. The expression “maladministration” has been defined in Sub-Section (2) of Section 2 of the the Order, 1983 but being introduced by the expression “includes” would render the definition as not being exhaustive.³⁰ Needless, to say that while the prescriptions of Sub-Section (2) of Section 2 of the Order, 1983 do not limit situations that may constitute “maladministration,” this does not permit the Wafaqi Mohtasib (Ombudsman) to expand its jurisdiction by interpreting that word in a manner to go beyond its natural meaning so as to result in it being repugnant to the natural meaning of the word or as to the context in which that word is being used in the statute. The second restriction imposed on the Wafaqi Mohtasib (Ombudsman) is that it is not open for to it to deal with any and all kinds of maladministration, rather it is restricted to “maladministration that can be attributed to an “agency” as defined in Sub-Section (1) of Section 2 of the Order, 1983 read with subsection (a) of Section 2 of the Federal Ombudsman Establishment Reforms Act, 2013. Through a proviso to Sub-Section (1) of Section 9 of the Order, 1983 the following aspects of maladministration are specifically excluded from the jurisdiction of the Wafaqi Mohtasib (Ombudsman) and whereby it is prohibited from both “investigating or “inquiring” into:

- “ ... (a) any matter sub-judice before a Court of competent jurisdiction or judicial Tribunal or board in Pakistan on the date of receipt of a complaint, reference or motion by him; or
- (b) any matter relating to the external affairs of Pakistan or the relations or dealings of Pakistan with any. foreign state or government; or

³⁰ See ***Usmania Glass Sheet Factory Limited, Chittagong vs. Sales Tax Officer, Chittagong***. PLD 1971 SC 205; ***Mushtaq Ahmed vs. The State*** 1991 SCMR 543; PLD 1989 SC 128; ***Don Basco High School vs. the Assistant Director EOBI; Dilworth v. Commissioner for Land and Income Tax*** (1899) AC 99 (PC).

(c) *any matter relating to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces."*

22. The list of matters falling within the jurisdiction of the Wafaqi Mohtasib (Ombudsman) are further narrowed by Sub-Section (2) of Section 9 of the Order, 1983 and where by virtue of a non-obstante clause the provisions of Sub-Section (1) of Section 9 of the Order, 1983 have been excluded in respect of matters relating to the service of a "public servant or functionary" with an "agency", from the jurisdiction of the Wafaqi Mohtasib (Ombudsman) and which covers both the eventualities of the complaint either being made by such a person directly or by another person "**on his behalf**". On a literal interpretation of Sub-Section (2) of Section 9 of the Order, 1983 it would seem that where any "aggrieved person" maintains a complaint before the Wafaqi Mohtasib (Ombudsman) under Sub-Section (1) of Section 9 of the Order, 1983, the words "**any matter**" as used in Sub-Section (2) of Section 9 of the Order, 1983 are wide enough to exclude **all issues pertaining to the service** of a "public servant or functionary" with an "agency" from the purview of the jurisdiction of the Wafaqi Mohtasib (Ombudsman) under that statute. In addition the words "on his behalf" as used in Sub-Section (2) of Section 9 of the Order, 1983 render it irrelevant as to whether the application is made directly by the "aggrieved person" or by some other person, as if the complaint is made by some other person and is successful the "public servant of functionary" would indirectly benefit and hence it could only be conceived that the complaint was being made "on his behalf" thereby using a technicality to bypass the stipulation made in Sub-Section (2) of Section 9 of the Order, 1983. That being said, issues pertaining to the service of someone who is not a "public servant of functionary" with an agency in respect of their service with that agency would not be excluded. In addition, the words relating to the tenure of the service of the "public servant or functionary" being mentioned in the section i.e. as to whether that person "**is, or has been working**" with the agency, would to our mind be wide enough to cover both the eventualities of the cause of action occurring either during a time when the Complainant is employed with the agency or after the term of the Complainants employment i.e. after his dismissal or after his retirement from the agency and thereby excluding both eventualities for the jurisdiction of the Wafaqi Mohtasib (Ombudsman). We are therefore clear that no distinction can be made by the Wafaqi Mohtasib (Ombudsman) as to his jurisdiction to entertain a complaint relating to the service of a public servant of functionary with an agency as in respect of the term of the service having ended or whether it is ongoing, when considering whether or not to entertain a complaint as in both eventualities, the Wafaqi Mohtasib is mandatorily

bound to “**not accept for investigation**” any such complaint, even if referred by any of the persons or bodies listed in Sub-Section (1) of Section 9 of the Order, 1983. We are therefore clear that interpretation cast by the Wafaqi Mohtasib (Ombudsman) in its Circular dated 16 August 2019 and in the Circular dated 10 November 2023 is incorrect.

23. It seems that in an unreported decision of the Islamabad High Court bearing Writ Petition No. 4852 of 2018 entitled **PESCO vs. President of Pakistan and other**, the Islamabad High Court while considering the Circular dated 16 August 2019 had specifically directed the Wafaqi Mohtasib (Ombudsman) from not exercising its jurisdiction in respect of matters pertaining to the service of a public servant or functionary with an agency and had opined as hereinunder:

“ ... 6. The controversy leading to filing of the instant petition has been mentioned in detail hereinabove, hence need not be reproduced. The bare perusal of the order of Wafaqi Mohtasib dated 17.07.2014 shows that the petitioner assured respondent No.2 that the grievance of respondent No.3 shall be redressed; however, it is trite law that the consent of the parties cannot confer jurisdiction of any forum. As noted above, respondent No.3 had filed complaint for recovery of the balance pensionary benefits; though at the relevant time no objection regarding the jurisdiction was raised by the petitioner and it was only done so after the aforementioned judgment of the Hon'ble Supreme Court of Pakistan i.e. PESCO v. Wafaqi Mohtasib (Ombudsmen) Islamabad (PLD 2016 SC 940).

7. Section 9 of the Order provides for jurisdiction of Wafaqi Mohtasib. Under sub Section 2 that starts with non obstante clause as notwithstanding in clause (1), the Mohtasib shall not accept for investigation complaint by or on behalf of a public functionary concerning any matter relating to the Agency in which he is or has been, working in respect of any personal grievance relating to his service therein. In light of above clauses the petitioner is an Agency, respondent No.3 could not have invoked the jurisdiction of Wafaqi Mohtasib for recovery of balance pensionary benefits as the same amount to personal grievance relating to his service. The fact that vide circular dated 16.08.2019 Wafaqi Mohtasib has categorized the cases which can be filed before the Office of Wafaqi Mohtasib, in my opinion, is not true interpretation of sub Section 2 ibid inasmuch as under the law no categorization or bifurcation has been made. The circular provides that postretirement benefits can be claimed through an application under Section 9 of the Order, however, sub Section 2 clearly provides that an employee who has been with the Agency cannot make a complaint regarding personal grievance meaning thereby that even retired employees cannot move an Agency for matters against the ex-employer. The referred conclusion is verified by the judgment of the Hon'ble Supreme Court of Pakistan in case titled Peshawar Electric Supply Company Ltd. Wafaqi Mohtasib (Ombudsman) Islamabad and others (PLD 2016 Supreme Court 940). The august Apex Court observed as follows.

"10. If, ex facie, the Ombudsman is not conferred with such a power, and the order of the nature is passed by it, the High Court can always in exercise of its constitutional jurisdiction rectify such error. An alternate remedy provided under Article 32 of the Order cannot restrict the Constitutional jurisdiction of the High Court once it comes to the conclusion that the Order of the Wafaqi Mohtasib was outside the domain of Article 9. Sub-Article 2 of Article 9 clearly indicates that jurisdiction of Wafaqi Mohtasib is expressly excluded in cases of personal

grievances of public servants or functionaries serving in any "Agency" in respect of the matters relating to their service. The term "Agency" has been defined in Article 2(1) of the Order which means a Ministry, Division, Department, Commission or Office of the Federal Government or a statutory corporations or other institution established or controlled by the Federal Government. The Petitioner is a Company and is controlled by the Government and clearly falls within the purview of term "Agency", therefore, the jurisdiction of Wafaqi Mohtasib is barred under clause 2 of Article 9 of the Order

11. The question as to whether the learned High Court can entertain a Constitutional Petition against an order of the Wafaqi Mohtasib, it is well established law that his order can be interfered with by the learned High Court in exercise of its constitutional jurisdiction if the Petitioner satisfies that the order of the Wafaqi Mohtasib is without jurisdiction. We have not lost sight of Article 32 of the Order which provides alternate remedy to the aggrieved to approach the President of Pakistan by filing a representation against the Order of Wafaqi Mohtasib, but where the Order of the Wafaqi Mohtasib, on the face of it, is against the language of Article 9 of the Order or without jurisdiction, the High Court can exercise its constitutional jurisdiction so as to prevent injustice done to an aggrieved."

8. Insofar as the stance of respondent No.3 regarding postretirement disciplinary proceedings is concerned, the same prima facie is correct and the matter has been clearly highlighted and concluded by the Hon'ble Supreme Court of Pakistan in case reported as Muhammad Zaheer Khan Government of Pakistan through Secretary, Establishment and others (2010 SCMR 1554) wherein it was held that pending disciplinary proceedings against civil servant abate if the latter had attained the age of superannuation.

9. In view of the above, respondents No.1 & 2 were not competent to entertain and issue direction on the complaint of respondent No.3, hence the instant petition is allowed resultantly, orders impugned in the instant petition are set aside."

Notwithstanding such an interpretation of the law by the Islamabad High Court, with which we are in agreement, the Wafaqi Mohtasib (Ombudsman) has continued to apply the same interpretation by maintaining in the Circular dated 10 November 2023 that in the event that the "Agency does not contest the complaint and is willing to provide relief to the complainant" then the Secretariat of the Wafaqi Mohtasib (Ombudsman) "may ask the Agency to provide the offered relief to the complainant as per its policy/rules/regulations". We are controlling ourselves when we express our views of such an interpretation as cast by the Wafaqi Mohtasib (Ombudsman) by referring to it as "shocking". A prohibition exists in Sub-Section (2) of Section 9 of the Order, 1983 from accepting any complaint in respect of issues emanating from the service of a "public servant or functionary" with an "agency" as has been clarified by the Supreme Court of Pakistan. As the very right of the Wafaqi Mohtasib (Ombudsman) to entertain such a complaint has been restrained the question of issuing a notice to the "agency" does not arise, let alone to inquire as to whether or not "agency" would be contesting the complaint or not let alone thereafter

to issue directions. Such an interpretation cast by the Wafaqi Mohtasib (Ombudsman) does not comply with its jurisdiction as clarified in the Order, 1983 and would be illegal and liable to be set aside.

(d) Interpretation of Section 33 of The Order, 1983

24. It is interesting to note that independent of the jurisdiction conferred on the Wafaqi Mohtasib (Ombudsman) under Section 9 of The Order, 1983 an additional jurisdiction has been conferred on the Wafaqi Mohtasib (Ombudsman) under Section 33 of that statute, Sub-Section (1) of which section purports to confer the authority on the Wafaqi Mohtasib (Ombudsman) to “*informally conciliate, amicably resolve, stipulate, settle, or ameliorate **any grievance.***” The section beginning with a non-obstante clause³¹ renders such a jurisdiction as conferred in Section 33 to be independent of the jurisdiction conferred in Section 9 of that statute. In addition, when one considers that the jurisdiction conferred on the Wafaqi Mohtasib (Ombudsman) is to adjudicate on “any grievance”, it would seem that the use of such words would be wide enough to allow the Wafaqi Mohtasib (Ombudsman) to go beyond issues relating maladministration and would therefore potentially cover all disputes of any nature e.g. criminal, civil, administrative. However, such an interpretation would not be correct. The preamble of the Order, 1983 limits the scope of the Wafaqi Mohtasib (Ombudsman) to issues pertaining to maladministration and which states as hereinunder:

“ ... *Whereas it is expedient to provide for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through maladministration.*”

Clearly, the scope of the statute having been clarified in the preamble to being limited to resolving “*injustice done to a person through maladministration*” the jurisdiction conferred on the Wafaqi Mohtasib (Ombudsman) cannot traverse beyond the scope of the statute into other grievances.³² We are therefore of the opinion that the expression “any grievance” as used in Section 33 of the Order, 1983 should be read in conjunction with the preamble of that statute and be limited to any grievance relating to maladministration involving an agency.

³¹ See *Zulfiqar Ali Babu vs. Government of Punjab* PLD 1997 Supreme Court 11 ;*E.F.U General Insurance Company Ltd vs. Federation of Pakistan* PLD 1997 SC 700; *Muhammad Mohsin Ghuman vs. Government Of Punjab Through Home Secretary, Lahore* 2013 SCMR 85; *Syed Mushahid Shah vs. Federal Investment Agency* 2017 SCMR 1218; *Muhammad Iltaf Khan vs. Basheer* 2022 SCMR 356; *Rajby Industries Karachi vs. Federation Of Pakistan* 2023 SCMR 1407

³² See *College of Physicians and Surgeons Pakistan vs. Wafaqi Mohtasib and others* PLD 2003 Karachi 667

25. Having determined the subject matter of the complaints that can be entertained by the Wafaqi Mohtasib (Ombudsman) under Section 33 of the Order, 1983, it is interesting to note that the power conferred on the Wafaqi Mohtasib (Ombudsman) is so as to allow him to “informally conciliate, amicably resolve, stipulate, settle, or ameliorate” such grievances. The expression “informally” used in the section immediately puts the power conferred on the Wafaqi Mohtasib (Ombudsman) under that section at variance with the power contained in Section 11 on a complaint entertained under Section 9 of the Order, 1983 and whereby the Wafaqi Mohtasib (Ombudsman) makes what we would refer to as a “formal” recommendation to an agency on a complaint maintained by an aggrieved person and hence clearly the jurisdiction under Section 33 exercised by the Wafaqi Mohtasib (Ombudsman) cannot result in a Recommendation being made by it. The difference therefore between the powers under Section 9 of The Order, 1983 and Section 33 of the Order, 1983, to our mind, is that where the former allows for a recommendation on a complaint to be made, the latter allows for an “informal” resolution to be adopted without any recommendation to being made i.e. to get both the complainant and the agency to amicably and informally resolve their dispute and if no resolution to the dispute is achieved “informally” then the attempt to resolve the dispute should abate and the matter should be allowed to be resolved through a complaint under Section 9 of the Order, 1983 or by some other legal forum.

26. The final question that arises is to as whether such a power that is conferred on the Wafaqi Mohtasib (Ombudsman) under Section 33 of the Order, 1983 is to be exercised suo moto, on a complaint on referral from some authority or with the consent of both the parties to the dispute. The only assistance that we can obtain is from the latter part of the section wherein it has been clarified that the Wafaqi Mohtasib (Ombudsman) can exercise such a jurisdiction:

“ ... *without written memorandum and without the necessity of docketing any complaint or issuing any official notice.*”

While the section guides us as to the circumstances which will not preclude the Wafaqi Mohtasib (Ombudsman) from acting under that section, it does not in any manner clarify the manner in which the Wafaqi Mohtasib (Ombudsman) should ordinarily act ! To our mind the Wafaqi Mohtasib (Ombudsman) being a statutory functionary can only act within the purview of the statute which constitutes his powers as any action taken by him in excess of such powers would be ultra vires and void. As there is no power conferred in Section 33 of the Order, 1983 on the Wafaqi Mohtasib to

unilaterally act pursuant to those provisions, we are therefore clear that when exercising his powers under this Section, the Wafaqi Mohtasib (Ombudsman) cannot act *suo moto*. However, if a request is placed before the Wafaqi Mohtasib (Ombudsman) at the instance of one of the parties to the grievance to deal with a matter Section 33 of the Order, 1983, the Wafaqi Mohtasib (Ombudsman) could, on the basis of the powers conferred on him under section 14 of the Order, 1983, issue notice and exercise his authority under Section 33 of the Order, 1983. The jurisdiction, however would thereafter be restricted to get the parties to resolve their dispute, through the processes mentioned in Section 33 of the Order, 1983, but at all times to get both the complainant and the agency to amicably and informally attempt to resolve their dispute while maintaining a degree of impartially and not to browbeat the agency to resolve the matter. Finally, if no resolution to the dispute is achieved “informally” within a reasonable time, then the Wafaqi Mohtasib (Ombudsman) should discontinue those proceedings and allow the dispute to be resolved through more “formal” routes.

(iii) Interpretation of Sub-Section (3) of Section 10 of the Order, 1983

27. Sub-Section (3) of Section 10 of The Order, 1983 reads as hereinunder:

“ ... (3) *A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Mohtasib may conduct an investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.*”

The provision clearly stipulates a time period within which a complaint can be maintained under Sub-Section (1) of Section 9 of the Order, 1983 as being within a period “*three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint.*” We are clear that in every complaint maintained under Section 9 of the Order, 1983 the issue of limitation is a preliminary issue which has to be considered first by the Wafaqi Mohtasib (Ombudsman). If the complaint is found to have been maintained after the three month period, the Wafaqi Mohtasib (Ombudsman) would have to clarify as to what “special circumstances” existed that had permitted him to continue to entertain the complaint. While no clarification has been given in the section as to what these “special circumstances” necessarily should be, suffice to say that **ordinarily** such circumstances should justify the reason for the delay and which should specifically be clarified by the Wafaqi Mohtasib (Ombudsman) in the final recommendation made under Section 11 of the Order, 1983 and which

while doing so must also decide any objections that the agency might have raised on this issue during the proceedings.

28. We have also considered the application of Sub-Section (3) of Section 10 of the Order, 1983 to Section 33 of the Order, 1983 and are of the opinion that while that provision clearly attracts to a complaint maintained under Sub-Section (1) of Section 9 of the Order, 1983, on account of Section 33 excluding the other provisions of the Order, 1983 applying to the provision contained in that section Sub-Section (3) of Section 10 of the Order, 1983 does not limit the use of such power of Wafaqi Mohtasib (Ombudsman) under that section after the expiry of that time period.

(iv) Interpretation of Section 13 of the Federal Ombudsmen Institutional Reform Act, 2013

29. The provisions of the Order, 1983 do not confer on the Wafaqi Mohtasib (Ombudsman) a right to review his own order. Such a right was conferred on the Wafaqi Mohtasib (Ombudsman) by virtue of Section 13 of the Federal Ombudsmen Institutional Reform Act, 2013 and which reads as hereinunder:

- “ ...
- (1) *The Ombudsman shall have the power to review any findings, recommendations, order of decision on a review petition made by an aggrieved party within thirty days of the findings, recommendations, order or decision.*
- (2) *The Ombudsman shall decide the review petition within forty five days.*
- (3) *In review, the Ombudsman may alter, modify, amend or recall the recommendation, order or decision.*

30. The scope of the powers of review that have been conferred on the Wafaqi Mohtasib under Section 13 of the Federal Ombudsmen Institutional Reform Act, 2013 were opined on by Miangul Hasan Aurazeb, J of the Islamabad High Court in the decision reported as **Allama Iqbal open University (AIU) through Registrar vs. Federation of Pakistan through Director General Legal for President of Pakistan and 2 others**³³ and wherein his Lordship held as hereinunder:

³³ 2023 CLC 638

“ ... SCOPE OF THE OMBUDSMAN’S POWER OF REVIEW UNDER SECTION 13 OF THE FEDERAL OMBUDSMAN INSTITUTIONAL REFORMS ACT, 2013:-

43. It is by now well established that a Court or a quasi-judicial authority cannot review its own order unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. Section 13(1) of the Federal Ombudsman Institutional Reforms Act, 2013 (“the 2013 Act”) empowers the Ombudsman to review any findings, recommendations, orders or decisions on a review petition made by an aggrieved party within thirty days of the findings, recommendations, orders or decisions whereas Section 13(3) provides that in review, the Ombudsman may alter, modify, amend or recall the recommendation, order or decision. Section 24(1) of the 2013 Act gives an overriding effect to the provisions of the said Act to any other law for the time being in force whereas Section 24(2) provides that in case there is a conflict between the provisions of the 2013 Act and the “relevant legislation” (which is defined in Section 2(c) of the 2013 Act to include the 1983 Order), the provisions of the 2013 Act, to the extent of inconsistency, shall prevail.

44. Unlike Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (“C.P.C.”), the language of Section 13(1) of the 2013 Act does not restrict the Ombudsman’s power of review to cases where (i) there is a discovery of a new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not have been produced by him at the time when the order was passed, or (ii) there is some mistake or error apparent on the face of the record, or (iii) there is any other sufficient reason. Even though the power of review conferred on the Ombudsman under Section 13(1) of the 2013 Act does not carry the fetters envisaged by Order XLVII, Rule 1 C.P.C., the Ombudsman cannot be said to have unbridled power to come to a totally different conclusion from the one taken earlier on the basis of the very same material and facts that were placed before him earlier. The Ombudsman’s discretion to exercise its power of review conferred by Section 13(1) of the 2013 Act can be structured if he was to exercise that power only in cases where requirements contained in Order XLVII, Rule 1 C.P.C. are satisfied. I say so on the basis of the law laid down in the following cases:-

(i) In the case of *Sahib Rai Vs. Custodian of Evacuee Property, Karachi* (PLD 1957 SC 63), an application was filed for review of the order passed by the Custodian of Evacuee Property confirming the order of the Assistant Custodian. The said application was filed under Section 36(5) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, which provided that the Custodian or Additional Custodian may, within the prescribed period, and after giving notice to the parties concerned and the Rehabilitation Authority, review his own order. One of the questions that arose for consideration in the said case was whether a review of the Custodian’s original order was justified on the basis of evidence which constituted new and important matter relevant to the case, and which was not available to the Custodian at the time when he passed the original order. The Hon’ble Mr. Justice A.R. Cornelius (as he then was) agreed with the submission made by Mr. Khalid Ishaq, the learned counsel for the petitioner in the said case, that although the Pakistan (Administration of Evacuee Property) Ordinance, 1949 did not state in detail the circumstances in which a review of an order by the Custodian or Additional Custodian should be permissible, recourse could be had to the general law for ascertaining the principles governing the exercise of this power in the relevant respect. For the purposes of clarity, the relevant portion of the said judgment is reproduced herein below:-

“By section 114 power is given to aggrieved persons to apply for a review of judgment, and in rule 1 of Order XLVII, the Code sets out in detail the circumstances in which such an application shall be competent. One of these circumstances is “the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within (his) knowledge or could not be produced (by him) at the time when the decree was passed.” Clearly, in order to meet the case

covered by this provision, an elastic rule of limitation was necessary, and section 5 of the Limitation Act expressly provides such elasticity.

It is evident that in the present case, the application filed in 1955 by the evacuee brothers and the evidence which they produced constituted new and important matter relevant to the case, and furnished evidence which was not available to the Custodian at the time when the first orders were made in the case, including the order of the 10th May 1951. Mr. Khalid Ishaq in the course of his argument, very rightly admitted that although the Ordinance did not state in detail the circumstances in which a review of an order by the Custodian or Additional Custodian should be permissible, recourse could be had to the general law for ascertaining the principles governing the exercise of this power in the relevant respect."

(Emphasis added)

*(ii) The scope of review under the proviso to Section 14(2) of the Emigration Ordinance, 1979 came up for consideration before the Hon'ble Lahore High Court in the case of Al-Qamar Recruiting Agency Vs. Government of Pakistan (1989 MLD 3335). The proviso to Section 14(1) of the said Ordinance gave a right of appeal to the Federal Government from an order passed by the Director General or any other officer in exercise of the power delegated to him. The said proviso also provided that the decision of the Federal Government shall, subject to Section 14(2), be final. Section 14(2) provided that "the Federal Government may review its decision under sub-section (1) and the decision of the Federal Government in review shall be final." The Hon'ble Lahore High Court agreed with the submission made by Mr. S.M. Zafar that the provisions in Section 14(2) of the Emigration Ordinance, 1979 must be construed in the same manner as an ordinary power of review hemmed by the principles laid down in Order XLVII, Rule 1 C.P.C. The Hon'ble High Court held that the Federal Government, in exercise of its powers under Section 14(2) *ibid*, cannot reopen the whole matter and that the power of review is confined to discover errors apparent on the face of the record.*

45. *On the basis of the law laid down by the Hon'ble Supreme Court in the case of Sahib Rai Vs. Custodian of Evacuee Property, Karachi (supra), and Al-Qamar Recruiting Agency Vs. Government of Pakistan (supra) it must be held that the Ombudsman can exercise his power of review under Section 13(1) of the 2013 Act if the conditions enumerated in Order XLVII, Rule 1 C.P.C. are satisfied. ...*

47. *The power of review was indeed available to the Ombudsman but it was not to be exercised in order to give the complainant another shot at the case. In the case of Muhammad Khan Vs. Government of West Pakistan (PLD 971 Baghdad-ul-Jadid 53), the Hon'ble Mr. Justice Anwarul Haq (as he then was) held that the power of review is not intended to enable a Court to reverse its previous judgment on the basis of a maturer appreciation of the arguments previously presented, or by reason of additional arguments which were previously omitted from being advanced by the party concerned, and such omission was not on account of any reasons mentioned in Order XLVII, Rule 1 C.P.C. In the case of Sh. Mehdi Hassan Vs. Province of Punjab (2007 SCMR 755), the Hon'ble Supreme Court held as follows:-*

"This is settled law that the points already raised and considered before the Court, cannot be re-agitated in review jurisdiction which is confined to the extent of patent error or a mistake floating on the face of record which if not corrected may perpetuate illegality and injustice. The mere fact that another view of the matter was possible or the conclusion drawn in the judgment was wrong, would not be a valid ground to review the judgment unless it is shown that the Court has failed to consider an important question of law."

While finding ourselves bound by the judgement of the Supreme Court of Pakistan reported as **Sahib Rai Vs. Custodian of Evacuee Property, Karachi**³⁴ in respect of the proposition that an authority does not have an unbridled power of review and which, where absent in its constituting statute, have to be considered on the principles as contained in the Code of Civil Procedure, 1908, are also in complete agreement with the findings of the learned single Judge of the Islamabad High Court on this issue as interpreted in the context of interpreting the power of review as conferred on the Wafaqi Mohtasib under the Order, 1983 read with Section 13 of the Federal Ombudsmen Institutional Reform Act, 2013. The Wafaqi Mohtasib (Ombudsman) does not have an unbridled power to review its own recommendations and such a right of review, if exercised, must be done on the basis of the principles as to review as settled under the Code of Civil Procedure, 1908 and which certainly do not give the Complainant another “shot at the case”.

F. The Opinion of the Court

31. The opinions as rendered by the Supreme Court of Pakistan in the decisions reported as **Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others**,³⁵ **Federation of Pakistan through Establishment Division vs. Brig. (Rtd.) Zulfiqar Ahmed Khan and others**,³⁶ **Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others**³⁷ and **Sui Northern Gas Pipelines Limited vs. President of Pakistan, President Secretariat (Public), Aiwan e Sadr, Islamabad and 2 others**³⁸ leave no room for any doubt that matters pertaining to the service of a “public servant of functionary” with an “agency” whether relating to the period during or after the term of his employment are, on account of the provisions of Sub-Section (2) of Section 9 of the Order, 1983, outside the jurisdiction of the Wafaqi Mohtasib (Ombudsman).

32. On the basis of these judgements we have no doubt that the payments as claimed by the Petitioners are within the realm of matters pertaining to the service of the private respondents with KE and hence were outside the jurisdiction of the Wafaqi Mohtasib (Ombudsman) falling within the exception contained in Sub-Section (2) of Section 9 of the Order, 1983. In this regard the Recommendation dated 1 April 2023, whereby the Wafaqi

³⁴ PLD 1957 SC 63

³⁵ 1998 SCMR 841

³⁶ 2007 SCMR 1313

³⁷ PLD 2016 SC 940

³⁸ 2020 SCMR 242

Mohtasib (Ombudsman) had dismissed Complaint No. WMS/KHI/000110028/2022 (which is the subject matter of CP No. 1776 of 2024), holding that it did not have the jurisdiction to entertain that *lis* was correct. The grounds for review in respect of the Recommendation are indicated in the order dated 15 June 2023 as hereinafter:

“ ... *The Complainant, vide his application has requested for review of closure findings of Hon’ble Wafaqi Mhtasib on the ground that he was not satisfied with the decision as he is retired for the employment of agency in 2011 & wanted another opportunity to be provided to him for hearing & decision on the basis of merit of case. The Complainant stated that he is not satisfied with the impugned findings he requested to review his case and he may be heard now.*”

To our mind, as against the threshold indicated in the decision reported as **Allama Iqbal open University (AIU) through Registrar vs. Federation of Pakistan through Director General Legal for President of Pakistan and 2 others**³⁹ we cannot imagine how such a ground can be sustained for maintaining an application for review under Section 13 of the Federal Ombudsmen Institutional Reform Act, 2013 as it abjectly was for another chance to argue the case which cannot be a ground of review. The application itself should have been dismissed on this ground alone and the fact that the Wafaqi Mohtasib (Ombudsman) has instead chosen to review the order and issue a Recommendation is beyond our comprehension. Even if we examine this order as against the threshold set by the Wafaqi Mohtasib (Ombudsman) itself in its Circular dated 16 August 2019 wherein it has specifically clarified that it could not entertain a complaint pertaining to an issue of service “*of a complainant who is/has been working in the Agency complaint against*” or in the second circular dated 10 November 2023 which overrides the Circular dated 16 August 2019 and in which it was considered that “*The complaint of a complainant, who is/has been working in the Agency complained against, will fall in the category of service matter*” or in its clarification dated 3 December 2020 wherein it has been considered that it will not entertain such matters as “*sub-clause (2) of Article 9 of P.O. I of 1983 clearly provides that the employee who has been working with the Agency cannot make a complaint to the Wafaqi Mohtasib regarding personal grievance against the Agency in which he has been working*” then clearly such a jurisdiction could not have vested in the Wafaqi Mohtasib (Ombudsman) to pass the order as it did in that matter.

33. Similarly, in each of the other Petitions, the Recommendations, and orders on the complainants which have been impugned before us, each

³⁹ 2023 CLC 638

them pertain to an issue regarding the service of each of the complainants with an agency with which they were employed i.e. KE, leaving us with no doubt that each of the Complaints were barred under Sub-Section (2) of Section 9 of the Order, 1983 and being outside the jurisdiction of the Wafaqi Mohtasib (Ombudsman) should not have been entertained by it.

34. While our findings as to the question of the jurisdiction of the Wafaqi Mohtasib (Ombudsman) itself would be enough to have allowed each of these Petitions, we feel it necessary to also consider the question of limitation as clearly each of the complaints have been entertained after the period prescribed in Sub-Section (3) of Section 10 of the Order, 1983 having expired. The time period in that section admittedly being three months, no finding has been given as to how the Complaint has apparently been entertained after such a period nor has any finding been given as to what "special circumstances" existed which permitted the Wafaqi Mohtasib (Ombudsman) to entertain such a Complaint. The payments to each of the Complainants pertaining to the period between 2011 and 2015 and against which Complaints have been maintained in the year 2022 each of them have clearly been maintained "*later than three months from the day on which the person aggrieved first had the notice of the matter*" and which were therefore clearly not maintainable and should hence have also been dismissed on this ground as well.

35. Keeping in mind the jurisdiction of the Wafaqi Mohtasib (Ombudsman) as not being hidebound by procedure, we had considered as to whether the scope of the Complaints as maintained by the private respondents could have been considered "informally" under Section 33 of the Order, 1983 so as to sidestep the issue of limitation and the issue of jurisdiction under Sub-Section (2) of Section 9 of The Order, 1983. As KE has categorically stated before us that the issue regarding such payments is not an issue that is pending before it and which it is averred has incorrectly been recorded in each of the recommendations of the Wafaqi Mohtasib, we are of the opinion that any attempts to informally address such issues should have also abated and such a jurisdiction could not have been exercised by the Wafaqi Mohtasib whereby a formal Recommendation was made by it on this issue. Each of these Petitions must therefore be allowed.

36. For the foregoing reasons and while holding that each of the Recommendations that have been passed by the Wafaqi Mohtasib (Ombudsman) and the Orders that have been passed by the President of Pakistan have been passed in excess of their jurisdiction, relying on the

decisions of the Supreme Court of Pakistan reported as *Pakistan International Airlines Corporation, Karachi vs. Wafaqi Mohtasib and others*⁴⁰, *Federation of Pakistan through Establishment Division vs. Brig. (Rtd.) Zulfiqar Ahmed Khan and others*⁴¹ *Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad and others*⁴² and *Sui Northern Gas Pipelines Limited vs. President of Pakistan, President Secretariat (Public), Aiwan e Sadr, Islamabad and 2 others*⁴³ we uphold the maintainability of each of the Petitions and set aside the impugned Recommendations that have been passed by the Wafaqi Mohtasib (Ombudsman) and the Impugned Orders that have been passed by the President of Pakistan in each of those Petitions as being barred having been presented after the time period prescribed under Sub-Section (3) of Section 10 of the Order, 1983 and also to be in excess of the jurisdiction of the Wafaqi Mohtasib as being matters pertaining to the service of the Complaints with an Agency which has been specifically excluded under Sub-Section (2) of Section 9 of the Order, 1983.

37. While parting with this Order, we feel it necessary to state that after examining the caselaw that has developed as to the jurisdiction of the Wafaqi Mohtasib (Ombudsman) it is apparent that the Wafaqi Mohtasib (Ombudsman) is consistently attempting to expand its jurisdiction beyond its statutory mandate and which is resulting in unwarranted litigation being presented before the High Courts. While we had considered imposing costs, we have on this occasion restrained ourselves and instead direct that a copy of this Order should be sent to the President of Pakistan who should ensure that the orders of the Supreme Court of Pakistan regarding the jurisdiction of the Wafaqi Mohtasib (Ombudsman), as detailed in this Order, should not be second guessed.

Each of these Petition stands allowed in the above terms with no order as to costs.

J U D G E

J U D G E

Karachi dated 31 October 2024

⁴⁰ 1998 SCMR 841

⁴¹ 2007 SCMR 1313

⁴² PLD 2016 SC 940

⁴³ 2020 SCMR 242