

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk, CJ

Mr. Justice Gulzar Ahmed

Mr. Justice Mushir Alam

CIVIL PETITIONS No.565-568 & 582-584 OF 2014

[On appeal against common Judgement dated 17.03.2014, passed by the Islamabad High Court, Islamabad, in ICA No.8 of 2012]

CIVIL PETITIONS No.1596-1597, 1602, 1643 & 2064-2067 OF 2014

[On appeal against common Judgement dated 03.07.2014 passed by the Peshawar High Court, Peshawar, in W.P.No.2657 of 2012]

CRIMINAL PETITION No.214 OF 2014

[On appeal against common Judgment dated 17.03.2014, passed by the Islamabad High Court, Islamabad, in ICA No.8 of 2012]

AND

CMA No.3540 OF 2014 in C.P.No.565 OF 2014

[For impleadment of Telecom Pensioners Association as Respondent]

Pakistan Telecommunication Employees Trust (PTET) through its M.D., Islamabad. (in CPs.565-568, 2064-2067, CrI.P.214 & CMA.3540)

Pakistan Telecommunication Company Limited. (in CPs.582-584,1602)

The President, PTCL, & another. (in CPs.1596-1597 & 1643)
Petitioner(s)

VERSUS

Muhammad Arif & others. (in CP.565)

Fazil Malik & others. (in CPs.566,582)

Fida Hussain & others. (in CPs.567, 584)

Muhammad Anwar Shahid & others. (in CP.568, 583)

Muhammad Arif & others. (in CrI.P.214 & CMA.3540)

Mst. Bakhat Pari & others. (in CPs.1596, 2066)

Muhammad Yousaf Afridi & others. (in CPs.1597, 1602, 2064)

Sadiq Ali & others. (in CPs.1643, 2065)

Muhammad Rafique & others. (in CP.2067)
Respondent(s)

For the Petitioner(s)

- [in CP.565 & 566] : Mr. Khalid Javed Khan, ASC
- [in CP.567] : Mr. Zia-ul-Haq Makhdoom, ASC
- [in CP.568] : Mr. Rizwan Ijaz, ASC
Mr. Zia-ul-Haq Makhdoom, ASC
- [in CP.582-584, 1596-1597,
1602, 1643] : Mr. Shahid Anwar Bajwa, ASC
Ms. Zahida Awan, EVP (Legal) PTCL
- [in CrI.P.214, CP.2064-2067] : Mr. Zulfiqar Khalid Maluka, ASC

For the Applicant(s)

- [in CMA.3540] : Mr. Hashmat Ali Habib, ASC

For the Respondent(s)

- [R.1-34 in CP.565]
[R.1-134 in CP.566]
[R.1-34 in CP.582] : Mr. Khalil-ur-Rehman, ASC
- [R.1-4,6-9,11-18,20-51 in
CPs.567, 584] : Mr. Ghulam Mahboob Khokhar, ASC
- [R.1 in CP.568] : Mr. Abdul Rahim Bhatti, ASC
- [R.2 in CP.568]
[R.1-2 in CP.583] : Ch. Mushtaq Hussain, ASC
- [R.1-60 in CP.1596]
[R.1 in CP.1597]
[R.1 in CP.1602]
[R.1-805 in CP.1643]
[R.1 in CP.2064]
[R.1-624 in CP.2065]
[R.1-60 in CP.2066]
[R.1-135 in CP.2067] : Mr. Salah-ud-Din Khan, ASC

- Dates of Hearing : 10.11.2014, 27.11.2014, 28.11.2014,
01.12.2014 & 02.12.2014

JUDGMENT

GULZAR AHMED, J.— These petitions have arisen from two sets of proceedings initiated by the respondents against the petitioners (1) at the Islamabad High Court, Islamabad and; (2) at Peshawar High Court, Peshawar. The impugned judgment of the Islamabad High Court, Islamabad is dated 17.03.2014 while impugned judgment of Peshawar High Court, Peshawar is dated 03.07.2014. Initially one set

of Writ Petitions were filed in the Islamabad High Court, Islamabad, which were allowed by a learned Single Judge vide common judgment dated 21.12.2011 against which the petitioners filed Intra Court Appeals, which have been dismissed by the impugned judgment. The Writ Petitions in the Peshawar High Court, Peshawar, were decided by its Division Bench, by the impugned judgment.

2. Admittedly, the respondents were the serving employees, retired employees and widows of retired employees, who were employed in the Pakistan Telegraph & Telephone Department (**T&T Department**) and through various enactments were transferred to Pakistan Telecommunication Corporation (**the Corporation**) and then to the Pakistan Telecommunication Company Limited (**the Company**). The enactments under which their services were transferred are dealt with in this judgment herein below. In nutshell the grievance of the respondents who have filed Writ Petitions in the High Courts was that the pension was being paid to the erstwhile employees of T&T Department transferred to the Corporation and then to the Company which was with increase announced by the Government of Pakistan but this increase in pension was abruptly stopped by the petitioners. The respondents have prayed that the pension be paid in accordance with the increase announced by the Government of Pakistan vide its notification dated 05.07.2010.

3. We have heard the learned ASCs for the parties and have gone through the record.

4. Mr. Khalid Javed Khan, learned ASC appearing for the petitioner-Pakistan Telecommunication Employees Trust, after extensively going through various enactments and rules etc., has

contended that there is no provision in the Civil Servants Act, 1973 for increase of pension and that whatever increase in pension is granted by the Federal Government is on the basis of its own policy. He also contended that the provision of Civil Servants Act being not applicable to employees of the Company consequently any increase in pension granted by the government to the civil servants will not extend to the employees of the Company. He further contended that though pension is granted as a part of terms and conditions of service but its increase is not the part of terms and conditions as the increase in pension is basically a matter of policy which has to be decided by the Trustees of the Trust. He contended that though the Trust is a statutory Trust but there being no provision in the statute providing for increase in pension, the increase in pension being a matter of policy is granted through an executive order. He admitted that before 2010, the pension to the employees of the Company was being increased as per the one announced by the Government of Pakistan but in 2010 the increase granted by the Government was not followed rather the increase in pension was granted as announced by the Trustees of the Trust. He contended that if the employees are paid pension, as increased by the Government of Pakistan, the provision of Section 44 of the Act of 1996 will become redundant. He further contended that the liability of the Trust to pay pension and its increase to the employees is restricted only to those, who were in employment in 1996, and those who came into employment after 1996 are not governed by the Trust and are merely contract employees and their contribution is paid to the Employees Oldage Benefit Institution (EOBI). He also contended that the petitioner has paid benefit of

Voluntary Separation Scheme (**VSS**) to the employees and those who have received the benefit of VSS cannot maintain the petition as their dues including pensionary dues have been fully paid by the petitioner.

5. Mr. Zia-ul-Haq Makhdoom, learned ASC for the petitioner in C.P.No.567 of 2014; Mr. Rizwan Ijaz, learned ASC for the petitioner in C.P.No.568 of 2014; and Mr. Zulfiqar Khalid Maluka, learned ASC for the petitioner in CrI.P.No.214 of 2014 & C.P.Nos.2064-2067 of 2014 have adopted the arguments advanced by Mr. Khalid Javed Khan.

6. Mr. Shahid Anwar Bajwa, learned ASC for the petitioners in C.P.Nos.582-584, 1596-1597, 1602 & 1643 has contended that after 1996 on PTCL becoming a private Company, all the terms and conditions of service of respondents came to be fixed by the Company with the condition that it should not be less favourable to which they were entitled. He further contended that in considering the increase in pension actuary report is required to be taken into consideration and the actuary report is made on the basis of inflation, financial constraints of the Company to fund the unfunded portion of the increase. He contended that those employees who have opted for VSS in 2007, 2008 & 2009 are being paid pension @ 7% every month according to the terms of VSS and such being the bargain made by the VSS optees, they are not entitled to grant of any other pensionary benefit. He contended that Section 45 (2) of the Act of 1996 provides for contribution by the Company to the Pension Fund the amount determined by Actuary representing the unfunded proportion of the accrued pension liabilities from the effective date. He further contended that in terms of SRO NO.115(I)/96 dated 11.02.1996 the Company has discharged its obligation by making payment to the

Trust according to the amount specified in Schedule-III of the said SRO and such became past and closed transaction. He contended that there are two types of regulations; one are statutory and the other are non-statutory and that the PTET Rules are statutory rules and are designed to govern the transferred employees. He further contended that the case of *Masood Ahmed Bhatti* is being reconsidered by this Court.

7. Mr. Khalil-ur-Rehman, learned ASC for private respondents in C.P.Nos.565, 566 and 582 of 2014 has read the provisions of six Ordinances commencing from Ordinance LI of 1994. The learned ASC has contended that through Trust Deed dated 02.04.1994 Pakistan Telecommunication Corporation Employees Pension Fund was created and all departmental employees transferred to the Corporation were entitled to be paid pension as defined under the Federal Government Pension Rules. He contended that after promulgation of the Act of 1996, Pakistan Telecommunication Employees Trust was created which took over the liability of the Pension Fund created by the Trust Deed of 02.04.1994 to that there was a continuity of Pension Fund from the one created by Trust Deed dated 02.04.1994 to that of the Pakistan Telecommunication Employees Trust. He referred to the definition of the term 'telecommunication employees' as given in the Act of 1996 and contended that all employees of former T&T Department are entitled to receive pensionary benefits as per the one fixed by the Federal Government. He contended that through vesting order dated 07.02.1996 issued by the Ministry of Communication, Government of Pakistan, the effective date of vesting of all properties, rights and liabilities of the Corporation to that of Pakistan Telecommunication

Company Limited was announced to be that of 01.01.1996. Similarly, all employees of the Corporation become employees of the Company also from 01.01.1996 with liability in respect of payment of pension, therefore, the entitlement for payment of pension at the rate fixed by the Federal Government was accepted by the Company. He referred to the provision of subsection (2) of Section 59 of the Act of 1996 and contended that all orders passed prior to the promulgation of this Act were saved including the Employees Pension Fund Rules, 1994 and that the Company has assumed the liability and such pension is also protected.

8. Ch. Mushtaq Hussain, learned ASC for the respondents in C.P.Nos.568 & 583 of 2014 has made distinction of 4 kinds of employees that of T&T Department, Corporation Employees, Contract Employees and Company Employees and contended that the respondents are employees of T&T Department and being transferred employees their benefits cannot be reduced from the one they were enjoying as such departmental employees which is inclusive of pension. He further contended that the Transferred Employees are being paid salary and other dues that of a government employees and posed a question as to why the pension as fixed by the Federal Government should not be paid to the respondents.

9. Mr. Salah-ud-Din Khan, learned ASC for the respondents in C.P.Nos.1596, 1597, 1602, 1643, 2064, 2065, 2066 and 2067 of 2014 has referred to the letter dated 05.04.2013 of the Ministry of Information Technology wherein four questions were referred to the Ministry of Law with regard to payment of dues and the opinion of

Ministry of Law dated 11.03.2013 where in dealing with the question of increase in pension it is opined as follows: -

“Whether increase in pension of Federal Government is also allowed to transferred employees of the PTCL the issue is answered in the affirmative because their terms and conditions have been guaranteed by the Federal Government”.

10. Mr. Abdul Rahim Bhatti, learned ASC for the respondents in C.P.Nos.568 & 583 of 2014 has contended that the employees of T&T Department were transferred to the Corporation and then to the Company by operation of law with specific provision that their terms and conditions will not be varied to their disadvantage. He contended that the Company has been following the government rules in payment of pension upto 2010 and that such was a guaranteed right of the respondents which cannot be denied. He also referred to the share-purchase agreement and the notifications providing for increase in pension and contended that the increase in pension, as per government rules, having been paid for almost 13 years became practice and such practice cannot be discontinued as it becomes law. He further contended that the Transferred Employees are civil servants and their terms and conditions of service are governed by the Civil Servants Act. In support of his submissions, learned ASC has relied upon the case of Pakistan Telecommunication Corporation & another V. Riaz Ahmed & 6 others [PLD 1996 SC 222]; Divisional Engineer Phones, Phones Division, Sukkur & another V. Muhammad Shahid & others [1999 SCMR 1526]; and order dated 23.08.2013 passed by this Court in Civil Petition Nos.717 & 718 of 2013.

11. Mr. Hashmat Ali Habib, learned ASC for the applicants in CMA No.3540 of 2014 and Mr. Ghulam Mahboob Khokhar, learned ASC

for the respondents in C.P.Nos.567 & 584 of 2014 have adopted the arguments of the respondents' counsel referred to above.

12. The functions of telecommunication in Pakistan were being undertaken by the T&T Department of the Federal Government of Pakistan. By the Pakistan Telecommunication Act, 1991 (**the Act of 1991**), Pakistan Telecommunication Corporation was established with the purpose and function to establish, maintain and operate telecommunication with transfer of assets and liabilities and all employees of T&T Department to the Corporation. Section 9 of the Act of 1991 provided that the employees of T&T Department transferred to the Corporation shall have the same terms and conditions to which they were entitled immediately before such transfer and that the terms and conditions of service shall not be varied by the Corporation to their disadvantage. Subsequently, the Pakistan Telecommunication (Re-Organization) Act, 1996 (**the Act of 1996**) was promulgated for the re-organization of Pakistan Telecommunication system in Pakistan by establishing Pakistan Telecommunication Authority, Frequency Allocation Board, National Telecommunication Corporation and Pakistan Telecommunication Employees Trust and transfer of telecommunication service to private sector etc. Under Section 34 of the Act of 1996, the Federal Government established a Company known as Pakistan Telecommunication Company Limited incorporated under the Companies Act, 1984, with the principal object of provision of domestic and international telecommunication. Section 35 of the Act of 1996 empowered the Federal Government to issue Vesting Order vesting certain rights and liabilities of the Corporation to the Company from the effective date. The Vesting Order was also to

specify the employees of the Corporation to be transferred and become the employees of the Company from the effective date. Sub Section (1) of Section 36 of the Act disentitled the Transferred Employees to any compensation as a consequence of transfer to the Company. The proviso, however, lays down that the Federal Government shall guarantee the existing terms and conditions of service and rights, including pensionary benefits of the Transferred Employees. Sub Section (2) of Section 36 provided that the terms and conditions of service of the Transferred Employees shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate compensation. Sub Section (5) of Section 36 provided that in the order vesting property of the Corporation to the Company, the Federal Government shall require the Company to assume responsibility of pensionary benefits of the telecommunication employees and the Company shall not alter such pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation. In terms of Section 35 of the Act of 1996, the Government of Pakistan issued Vesting Order dated 07.02.1996, by which all properties and liabilities of the Corporation were vested in the Company w.e.f. 01.01.1996 and all employees of the Corporation except those transferred to Pakistan Telecommunication Authority, Frequency Allocation Board, National Telecommunication Corporation and Pakistan Telecommunication Employees Trust stood transferred to and become the employees of the Company w.e.f. 01.01.1996. It further provided that w.e.f. 01.01.1996 the liability of Corporation in respect of payment of pension to telecommunication employees shall

be transferred to the Pakistan Telecommunication Employees Trust and the Company shall be liable for and assume the responsibility to contribute to the Pakistan Telecommunication Employees Trust the amount determined in accordance with Section 45. The order further provided that the Corporation without being wound up stands dissolved and ceased to exist w.e.f.01.01.1996.

13. From the reading of the Act of 1991 and thereafter of the Act of 1996, it is abundantly clear that the employees of T&T Department were transferred to the Corporation with the terms and conditions of their service similar to the one they were enjoying before such transfer. It is not in dispute before us that the employees of T&T Department, whose case is before us, were transferred to the Corporation and they enjoyed the same terms and conditions of service as were applicable to them as employees of T&T Department. Under the terms and conditions of service, such employees were also entitled to payment of pension on their retirement. On 2nd April, 1994, the Corporation executed a Trust Deed establishing Pakistan Telecommunication Corporation Employees Pension Fund. Para 2 of which reads as follows: -

“All departmental employees transferred to the Corporation as defined in section 9 of the Pakistan Telecommunication Corporation Act, 1991 shall be entitled to benefits as defined under the Federal Government Pension Rules as applicable to such employees before the formation of PTC.”

By section 44 of the Act of 1996, the Federal Government has established a trust called Pakistan Telecommunication Employees Trust (**the Trust**). Section 45 of the Act of 1996 made provision for issuing of Vesting Order by the Federal Government of vesting of all assets

and such liabilities as are specified in the Trust from the effective date. Section 46 of the Act of 1996 lays down functions and powers of the Trust which, inter alia, provides for making of provision for the payment of pensions to telecommunication employees to the extent of their entitlement with exclusive right to determine the amounts, if any, payable in respect of pension benefits to the telecommunication employees. It has already been mentioned above that by the Vesting Order dated 07.02.1996, inter alia, the liability of payment of pension of telecommunication employees was transferred to the Trust and the Company was liable and has assumed the responsibility to contribute to the Trust, the amounts determined in accordance with Section 45.

14. The question that needs to be addressed is about the status in obtaining of pension by the employees of the erstwhile T&T Department, who were transferred to the Corporation from where they were transferred to the Company. It is clear from the reading of provision of the Act of 1991 so also that of the Act of 1996 that the terms and conditions of service of the Transferred Employees from T&T Department to the Corporation and then to the Company remain unaltered and they continued to be paid the benefits as were admissible to them as employees of T&T Department. There seems to be no dispute until 2009 regarding the entitlement of pension to the employees of erstwhile T&T Department inasmuch as they have been paid pension at the same rate of increase as has been provided by the Federal Government to its employees as is apparent from the record of pension payment submitted by the counsel for the Trust by way of CMA No.6331 of 2014, which shows the payment of pension as follows: -

CMA No.6331 of 2014

Pension increased by the Pakistan Telecommunication Company Employees Trust

Year(s)	Category	Percentage
2004-05	(i) Retired before 01.01.96	16% As per GOP
	(ii) Retired after 01.01.96	8%
2005-06	(i) Retired before 01.01.96	10% as per GOP
	(ii) Retired after 01.01.96	10%
2006-07	(i) Retired before 01.01.96	20% As per GOP
	(ii) Retired after 01.01.96	20%
2007-08	(i) Retired before 01.01.96	Per GOP
	(ii) Retired after 01.01.96	
2008-09	(i) Retired before 01.01.96	20% As per GOP
	(ii) Retired after 01.01.96	20%
2009-10	(i) Retired before 01.01.96	15% As per GOP
	(ii) Retired after 01.01.96	15%

15. The above chart of payment of pension by the Trust shows that there were in all two categories of employees to whom the pension was being paid by the Trust; (1) who retired before 01.01.1996 and (2) who retired after 01.01.1996. The chart also makes it clear that those who had retired before 01.01.1996 are being paid pension as per the increase announced by the Government of Pakistan while those who had retired after 01.01.1996 being paid pension according to the rate fixed by the Trust. The payment of pension by the Trust until 2009 appears to be consistent with the rate and entitlement of the employees of erstwhile T&T Department as has been amplified from the provisions of the Act of 1991 and the Act of 1996 read with Para 2 of the Trust Deed of 2nd April, 1994, which term was not varied or altered in creation of the Trust rather the same was kept intact.

16. While examining the question in issue we also examined some precedents of this Court in respect to the employees of PTCL, who were initially in employment of T&T Department from where they

were transferred to the Corporation and then to the Company. In the case of Divisional Engineer Phones, Phones Division , Sukkur & another V. Muhammad Shahid & others [1999 SCMR 1526], the respondents were appointed Telephone Operators and it was held that *“in cases of Corporation created by the Government through statutory instruments if existing employees are transferred to the Corporation in the absence of any provision to the contrary, the Transferred Employees continue to remain in the service of Corporation on the same terms and conditions under which they were working before their transfer to the Corporation. Therefore, if an employee of the Corporation before his transfer to the Corporation was a civil servant, he continues to be a civil servant. In all other cases, where an employee is appointed in the service of the Corporation after the Corporation is established, his service is governed by Service Rules of the Corporation. If such Rules are not statutory, the principal of master and servant governed the relationship between the employee and the Corporation”*. In the case of Pakistan Telecommunication Corporation & another V. Riaz Ahmad & 6 others [PLD 1996 SC 222], it was held that the employees of T&T Department transferred to the Corporation were civil servants. In the case of Ejaz Ali Bughti V. PTCL & others [2011 SCMR 333], this Court has held that as there were no statutory rules of service applicable to the employees of the Company and in view of the judgment in the case of Muhammad Mubeen-us-Salam V. Federation of Pakistan [PLD 2006 SC 602], the petitioner was not civil servant and his appeal before the Service Tribunal was not maintainable. In the case of Pakistan Telecommunication Corporation Limited V. Iqbal Nasir & others [PLD 2011 SC 132], though it was held that the Company is a

person within the meaning of Article 199 (5) of the Constitution and will be amenable to the writ jurisdiction of the High Court but there being no statutory rules of service applicable to its employees, the writ petition in the High Court was found to be not maintainable.

17. Mr. Shahid Anwar Bajwa, learned ASC for the Company has contended that the case of Masood Ahmed Bhatti & others V. Federation of Pakistan through Secretary, M/O Information Technology & Telecommunication & others [2012 SCMR 152] may not be relied upon by this Court for the reason that such judgment is being reconsidered by this Court. What we understand from this submission of the learned ASC is that a review petition for the review of a reported judgment may be pending in this Court. We may note that until the judgment of this Court is reviewed and some other conclusion is reached other than the one which has already been pronounced by this Court, the same remains in field and operates as a law pronounced by this Court. Therefore, we cannot ignore this case inasmuch as it is a judgment of three members bench of this Court and as per the law of precedent, the same is binding on us. In this case, the appellants were admittedly civil servants and they were transferred from T&T Department to the Corporation and then to the Company. The grievances of the appellants were with regard to promotion, for payment of pensionary benefits and of VSS. The High Court of Sindh has dismissed the constitutional petition filed by the appellants on the ground of non-availability of statutory rules of service applicable to the employees of the Company. This Court, after evaluating various provisions of the Acts of 1991 and 1996 and the Vesting Order dated 07.02.1996 has made following observations :-

"14. We may now consider the effect of this transfer of the appellants to PTCL along with the assets and liabilities of the Corporation and the implications of such transfer on the nature of the rules of employment applicable to the appellants from the date (i.e. 1.1.1996) they became employees of PTCL. The provision to section 35(2) of the Reorganization Act provides a clear answer to this controversy. It specifies that even after the transfer of the appellants to PTCL their terms and conditions of service which existed on 1.1.1996, would be the base and bare minimum in matters of their employment with PTCL. These terms and conditions were imposed on PTCL by the Reorganization Act, as a legal obligation and the Vesting Order was issued by the Federal Government "in exercise of powers conferred by section 35" of the Reorganization Act. The Federal Government, it will be noted, had been granted limited powers only; the constraint on it was that the terms and conditions of service of employees of the Corporation could not be varied to their disadvantage. PTCL, as the recipient of the properties and rights of the Corporation, also assumed the liabilities of the Corporation. Such liabilities necessarily included the liabilities owed to the employees, arising from the terms and conditions of their service as these could not be varied to their disadvantage.

15. Thus it is evident that at the moment of transition when the appellants ceased to remain the employees of the Corporation and became the employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore, by definition were statutory rules as has been discussed above. PTCL, no doubt, could made beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1.1.1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation. "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 *ibid* from varying such terms and conditions of service to the disadvantage of the appellants.

16. An easy and uncomplicated test becomes available to us to help determine the status of the employment rules governing the appellants. If the current employer of the appellant viz. PTCL is constrained by legislation such as section 35(2) of the Reorganization Act, and as a consequence, cannot vary the existing rules to the disadvantage of the appellants, because of such legislation, it must follow that such law has the effect of saving the rules which existed

when the appellants became employees of PTCL. Such existing rules, having been protected by section 35(2), therefore, can only be categorized as statutory rules.

17. Section 36 of the Reorganization Act also has relevance in determining the controversy which arises in these appeals. Subsection (2) of section 36 gives protection to the terms and conditions of service of employees such as the appellants who stood transferred from the Corporation to PTCL on 1.1.1996. Their terms and conditions of service cannot be altered adversely by PTCL "except in accordance with the laws of Pakistan or with the consent of the transferred employees and the award of appropriate compensation". When this legal provision is read together with section 35, it becomes abundantly clear that by operation of the Reorganization Act, the terms and conditions of service of the appellants as on 1.1.1996 stood conferred on them as vested rights under the said law".

18. Thus, in the above case this Court has held that the terms and conditions of service so also the rules of service which were applicable to the T&T Department employees while in employment of the Government of Pakistan will continue to be applicable to them on their transfer to the Corporation and then to the Company. The proposition advanced by Mr. Khalid Javed Khan, learned ASC, that an order granting increase in pension is an executive function based on a policy taking into consideration various factors of inflation and financial conditions, on its face, appears to be correct as the same is based upon the pronouncement of this Court in the case of Akram Ul Haq Alvi V. Joint Secretary (R-II) Government of Pakistan, Finance Division, Islamabad & others [2012 SCMR 106]. However, the question before us is not about the tenor and status of the government order or the order which is passed by the petitioner for increasing the pension on the very entitlement of the respondents to the benefit of increase in pension awarded by the Government. The entitlement of the

respondents to the increase in pension, as the one announced by the Government of Pakistan, is to be determined on the basis of the law applicable to their employment. In *Masood Ahmed Bhatti's* case (supra), this Court has held that not only the terms and conditions of service of the employees of T&T Department who were transferred to the Corporation and then to the Company will be the same but also the rules of service as were applicable to them as employees of T&T Department. Thus, it becomes clear that the employees of T&T Department who were transferred to the Corporation and then to the Company having retired, they will as per the terms and conditions of service will be entitled to payment of pension also according to the one announced by the Government of Pakistan. Thus if any increase in pension is announced by the Government of Pakistan for its employees, the same will also apply and will be paid to the employees of T&T Department transferred to the Corporation and then to the Company. This view of ours is further fortified by the provision of Section 46 (1) (d) of the Act of 1996 where it is stated that the Board of Trustees of the Trust shall make provision for payment of pension to telecommunication employees to the extent of their entitlement. The very term "*to the extent of their entitlement*" shows that there are different kinds of employees having different entitlement and provisions for them have to be made accordingly. This is also apparent from the chart shown above where there already existed two kinds of employees, one who have retired before 01.01.1996 and the other who have retired after 01.01.1996 to whom different rate of increase in pension is paid. It is, therefore, not correct to state that there will be redundancy of Section 44 of the Act of 1996 if the

Trustees are allowed to make provision for the pension according to their own working. In view of this clear provision in Section 46 of the Act of 1996, we do not find that this Section has any direct nexus with Section 44 of the Act of 1996 nor the redundancy to Section 44 can be attributed. We are here only dealing with cases of those employees, who were employed in T&T Department and transferred to the Corporation and then to the Company and not any other employees. Similarly, we also note that there is no mention in either of the two impugned judgments regarding the question of VSS. We, therefore, do not consider it appropriate to decide this question at this stage.

19. Adverting to the submission of Mr. Shahid Anwar Bajwa, learned ASC, we may note that while the Company may be entitled to fix the terms and conditions of service of its employees so also the provision of pension by the Board of Trustees of the Trust but as discussed above, as regards the employees of T&T Department transferred to the Corporation and then to the Company, their terms and conditions of service stand protected by the provision of Section 9 of the Act of 1991 and Sections 35, 36 and 46 of the Act of 1996 and thus they will be entitled to payment of increase in pension as is announced by the Government of Pakistan. The contribution of the Company to the Pension Fund determined by the Actuary and its payment by the Company does not appear to be of much relevance because the question before us is of entitlement of the respondents to the increase in pension. In the case of Secretary, Government of the Punjab, Finance Department & 269 others V. M. Ismail Tayer & 269 others [2014 SCMR 1336], this Court has held that while on completion to commutation period the civil servant is entitled to

payment of full pension. It was noted, and such has been done time and again by this Court that pension is a part of a civil servant's retirement benefit and is not bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation. The right to pension is conferred by law which could not be arbitrarily abridged or reduced except in accordance with law. The aspect of the statutory rules has already been dealt with above and we tend to agree with the rule laid down in the case of *Masood Ahmed Bhatti* (supra).

20. For the foregoing reasons, we have come to conclusion that the respondents, who were the employees of T&T Department having retired after their transfer to the Corporation and the Company, will be entitled to the same pension as is announced by the Government of Pakistan and that the Board of Trustees of the Trust is bound to follow such announcement of the Government in respect of such employees. Consequently, these petitions are dismissed.

CJ.

J.

Islamabad
APPROVED FOR REPORTING
Hashmi

J.

Announced in open Court on 12.06.2015

J.