

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi
Justice Aamer Farooq
Justice Syed Arshad Hussain Shah

F.C.P.L.A. No. 464/2025

*(against the order dated 21.10.2025, passed
by the Peshawar High Court, Abbotabad
Bench in WP No. 870-A/2025)*

Ghulam Abbas

.....Petitioner(s)

Versus

Telephone Industries of Pakistan & 2 Others.

.....Respondent(s)

For the Petitioner(s) : Raja Muhammad Khan, ASC

For the Respondent(s) : N.R.

Date of Hearing : 06.02.2026

J U D G M E N T

Syed Hasan Azhar Rizvi, J.- The petitioner has filed the present petition under Article 175F(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**), to impugn the legality of the judgment dated 21.10.2025 (**'impugned judgment'**) passed by the Peshawar High Court, Abbottabad Bench (**'High Court'**), whereby a writ petition filed by respondent No.1, the Telephone Industries of Pakistan (**'T.I.P.'**), under Article 199 of the Constitution was accepted, and the orders dated 28.03.2022 and 04.06.2023 passed by the *Wafaqi Mohtasib* (**'respondent No.3'**), as well as the order dated 08.06.2023 passed by the President of Pakistan (**'respondent No.2'**) in favour of the present petitioner, were set aside.

2. The factual background of the present controversy, as set out in the petition, is that the petitioner served in the T.I.P., a wholly owned subsidiary of the Federal Government, for over thirty-five years with an unblemished service record, dedicating his best years, skill, and loyalty to building the institution. Upon his retirement on 31.03.1998, he became entitled to pensionary benefits in accordance with the Executive Pension Rules, 1986, duly framed by the Board of Directors of the T.I.P.

and sanctioned by the Ministry of Finance (Regulations Wing). However, after his retirement, the T.I.P. did not fully finalize his pension case, as the cost of living allowance at the rate of 7% of pay was not included in his emoluments for the purpose of recalculating his pension with effect from the date of his retirement. The restoration of the commuted portion of the pension, as well as the grant of annual increases in accordance with the pension rules, has also not been allowed. In the circumstances, he approached the respondent No.3 by filing a complaint. On the very first date of hearing, the Chief Financial Officer of the T.I.P. voluntarily recorded a written undertaking that his pension issues would be resolved within 30 to 45 days. Based on this undertaking, the respondent No.3 closed further proceedings on his complaint vide order dated 28.03.2022, with a direction to the T.I.P. to submit a compliance report within 60 days. Subsequently, the petitioner filed a review petition before respondent No.3 against the said order, seeking inclusion of a specific direction regarding the cost of living allowance at the rate of 7%, as the same had inadvertently been omitted therefrom. The said review petition was allowed, and a revised finding was issued by the respondent No.3 vide order dated 04.06.2022, whereby the T.I.P. was directed to place the matter before its Board of Directors in the next meeting and to determine a specific date for payment of the amount due to the petitioner. Against these orders, the T.I.P. preferred a representation before respondent No.2; however, the same failed, as it was dismissed on the ground of limitation vide order dated 08.06.2023. Being aggrieved, the T.I.P. subsequently approached the High Court by filing a writ petition under Article 199 of the Constitution, which was allowed, and all the earlier orders were set aside through the impugned judgment. Hence, the present petition.

3. The learned counsel for the petitioner contends that the impugned judgment of the High Court is illegal, without authority, and suffers from jurisdictional infirmity. The petitioner had approached the respondent No.3 with a complaint, and the Chief Financial Officer of the T.I.P. gave a written undertaking to resolve the pension issues within 30–45 days. Relying on this undertaking, the complaint was disposed of with directions for compliance within a period stipulated therein. Having submitted to the authority and given an unequivocal undertaking, the

T.I.P. is estopped from resiling from the same. The High Court, as such, erred in setting aside the well-reasoned orders of respondents No.2 and 3, incorrectly holding that they acted *coram non judice* and in excess of jurisdiction. The representation filed by the T.I.P. before the respondent No.2 was dismissed as time-barred on 08.06.2023. The said order attained finality, and the writ petition filed thereafter was not maintainable in view of the availability of an adequate alternate statutory remedy already exhausted. Finally, the petitioner, a retired employee of advanced age, has litigated for decades to enforce his lawful pensionary entitlements. The principles of equity, justice, and good conscience require that his statutory rights under the pension rules be protected, and the impugned judgment may be set aside, with directions for immediate compliance and payment of all dues, including consequential benefits.

4. We have heard the submissions of the learned counsel for the petitioner and have perused the material on record, with their assistance. Upon a careful examination of the record, it is evident that the petitioner was admittedly an employee of T.I.P., the respondent No. 1, and, upon attaining the age of superannuation, was retired on 31.03.1998. Although he may have had a genuine grievance regarding his pensionary benefits against T.I.P, the pivotal question requiring determination is whether he could lawfully invoke the jurisdiction of the respondent No. 3, namely the *Wafaqi Mohtasib*, for redressal of such grievance. Without expressing any opinion on the merits or otherwise of the petitioner's claim, it is necessary, as a matter of jurisdictional propriety, to *first* examine the competence and lawful authority of the respondent No. 3 to entertain the complaint and to pass the order dated 28.03.2022, and subsequently the order dated 04.06.2022, whereby its earlier findings were modified to some extent. This course is imperative because questions of jurisdiction go to the root of the matter; any order passed without lawful authority or *coram non judice* is void *ab initio* and cannot be sustained irrespective of the merits of the underlying claim.

5. The *Wafaqi Mohtasib* (Federal Ombudsman of Pakistan) is a statutory institution established under the Establishment of the Office of *Wafaqi Mohtasib* (Ombudsman) Order, 1983 (**Order of 1983**), to investigate and redress complaints of maladministration against Federal

Government 'agencies', as defined in section 2(1) of the Order of 1983. It provides an expeditious, inexpensive, and informal forum for citizens seeking relief against arbitrary, unjust, or oppressive administrative actions of federal functionaries. Article 9 of the Order of 1983 delineates and crystallizes the jurisdiction of the *Wafaqi Mohtasib* as follows:

'9. Jurisdiction, functions and powers of the Mohtasib.—(1) *The Mohtasib may on a complaint by an 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 maladministration 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 judicial Tribunal or board in Pakistan on the date of receipt of a complaint, reference or motion by him ; or*
- (b) relate to the external affairs of Pakistan or the relations or dealings 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 matter relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The Mohtasib may set up regional offices as, when and where required.'

Underlining is for emphasis.

6. It goes without saying that the establishment of the office of the *Wafaqi Mohtasib* and the conferment of powers upon it through the Order of 1983 were intended to provide an independent forum to

investigate allegations of maladministration against any Agency as well as against its officers or employees. The object was to ensure transparency, accountability, and expeditious redress of grievances arising from arbitrary or unjust administrative actions. However, the powers so conferred are neither unfettered nor absolute. They are circumscribed by the limitations expressly provided in Article 9 of the Order of 1983. In other words, the *Wafaqi Mohtasib* may exercise jurisdiction only to the extent permitted by Article 9(1) and (2), and any assumption of authority beyond the statutory contours laid down therein would amount to acting without lawful authority and *coram non judice*.

7. In the present case, the issue raised by the petitioner before the respondent No. 3 unmistakably pertains to his personal grievance arising out of his service in T.I.P., particularly concerning his pensionary benefits. Despite the clear nature of the dispute, the respondent No. 3 entertained the complaint and proceeded to issue directions to the T.I.P. to resolve the petitioner's pensionary matter within the stipulated period. Such action is in direct contravention of Article 9(2) of the Order of 1983, which expressly mandates that the *Wafaqi Mohtasib* shall not accept for investigation any complaint made by or on behalf of a public servant or functionary in respect of any matter relating to the Agency in which he is, or has been, serving, where the grievance concerns his personal service affairs. The legislative intent behind this exclusion is manifest: service matters and personal employment disputes are to be adjudicated by the competent fora specifically constituted for that purpose, and not by the *Wafaqi Mohtasib*. The respondent No. 3, however, lost sight of this fundamental statutory bar and assumed jurisdiction in a matter expressly excluded by law. Consequently, the orders referred to above are *coram non judice*, having been passed without lawful authority, and are thus liable to be set aside.

8. The learned counsel for the petitioner has invited our attention to Article 29 of the Order of 1983, which bars the jurisdiction of the Courts in respect of any action taken, order made, or anything done by the *Wafaqi Mohtasib* under the said Order. On the strength of this provision, he contends that the High Court was not legally justified in interfering with the impugned orders in exercise of its constitutional jurisdiction under Article 199 of the Constitution. We are mindful of the

statutory bar contained in Article 29, as well as the settled jurisprudence governing the scope of judicial review in such matters. It is by now well established that a constitutional court may interfere under Article 199 of the Constitution where an order of the *Wafaqi Mohtasib* suffers from want or excess of jurisdiction, is *coram non judice*, or has been passed in violation of the law. In this regard, reference may aptly be made to the judgment of the Supreme Court of Pakistan in the case of *Pakistan International Airlines Corporation Karachi v. Wafaqi Mohtasib and others* (1998 SCMR 841). There can be no cavil with the above proposition. Since we have already held that the impugned orders of the *Wafaqi Mohtasib* were passed without lawful authority and in excess of jurisdiction, the High Court was fully justified in setting them aside, notwithstanding the bar contained in Article 29 of the Order of 1983.

9. Coming to another important ground urged by the petitioner, it has been contended that the representation filed by T.I.P. under Article 32 of the Order of 1983 before the respondent No. 2, i.e., the President of Pakistan, was dismissed; therefore, the order passed by the *Wafaqi Mohtasib* attained finality, and the subsequent writ petition was not maintainable in view of the availability and exhaustion of an adequate alternate statutory remedy. This contention is wholly misconceived and devoid of legal substance. The respondent No. 2 did not adjudicate the representation on merits; rather, it was dismissed on the technical ground of limitation. An order declining to entertain a matter on limitation does not amount to an affirmation of the impugned order on merits, nor does it cure an inherent jurisdictional defect, if any, in the original proceedings. Even otherwise, assuming for the sake of argument that the representation had been decided on merits and the orders of the respondent No. 3 had been upheld by the President of Pakistan, such affirmation would not validate an order passed without lawful authority. It is a settled principle that an order suffering from a patent lack of jurisdiction is a nullity in the eye of the law and cannot attain finality merely because an alternate remedy has been invoked or exhausted. The remedy provided under Article 32 is undoubtedly a statutory recourse available to an aggrieved party; however, it does not operate as an absolute bar to the constitutional jurisdiction of the High Court under Article 199 of the Constitution, particularly where the impugned order is

ex facie contrary to Article 9 of the Order of 1983 or has been passed without jurisdiction. Almost similar observations have been made by the Supreme Court of Pakistan in the case of Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib (Ombudsman) Islamabad and others (PLD 2016 SC 940). In such circumstances, the High Court is fully competent to exercise its constitutional powers to rectify the illegality and prevent the perpetuation of a jurisdictional error.

10. It is a matter of record that an authorized officer of T.I.P. participated in the proceedings before the *Wafaqi Mohtasib* and, through a written undertaking, assured that the petitioner's matter would be resolved within thirty days. In view of that undertaking, the petitioner has argued that T.I.P., having not objected to the jurisdiction of the *Wafaqi Mohtasib* at the relevant time, is now estopped from challenging the same; consequently, the complaint was rightly disposed of on the basis of the said assurance. This contention was comprehensively examined and repelled by the High Court in the impugned judgment. We fully endorse the view taken by the High Court that jurisdiction cannot be conferred upon any court, tribunal, or quasi-judicial forum by consent, acquiescence, waiver, or conduct of the parties. It is further added that the jurisdiction is a creature of statute; it must either exist in law or not at all. It cannot be assumed, enlarged, or validated by the agreement or silence of litigants. To hold otherwise would defeat the very scheme of the statute. The Supreme Court of Pakistan was confronted with a similar situation in Muhammad Afzal v. Board of Revenue, West Pakistan and another (PLD 1967 SC 314). In that case, the appellant (Muhammad Afzal) approached the High Court for a writ to quash the order of the Member, Board of Revenue. The writ was dismissed, although the point was raised before the High Court that the order of the Member was wholly without jurisdiction, as section 91(iii) of the Sind Irrigation Act, 1879, expressly provided that the order of a Collector thereunder would be 'final and conclusive,' subject to any order that may be passed by the (Revenue) Commissioner. The learned Judges of the High Court were of the view that this point should have been raised before the Board of Revenue, and not having been raised there, they would not permit it to be raised for the first time in a petition under Article 98 of the Constitution 1962 (now Article 199 of the present

Constitution). This Supreme Court interfered in the matter and set-aside the order passed by the High Court with the following observation: --

'By mere submission, in the capacity of a respondent, to the authority of the Member [Board of Revenue], the appellant could not be thought to have conferred a jurisdiction on the Member which he did not possess, or to have waived his right to challenge the Member's power to interfere with the order of the Commissioner.'

Similar views have been expressed by the Supreme Court of Pakistan in Pir Sabir Shah v. Shad Muhammad Khan, Member Provincial Assembly, N.-W.F.P. (PLD 1995 SC 66), Maulvi Aziz-ur-Rehman v. Ahmad Khan and others (2004 SCMR 1622), Multan Electric Power Company Ltd. v. Muhammad Ashiq and others (PLD 2006 SC 328) and Syed Muhammad Hussain Shah v. Abdul Qayyum and others (2011 SCMR 743).

11. To sum up, if parties were permitted to vest jurisdiction in a forum expressly barred by law, the statutory limitations imposed by the legislature, particularly those contained in Article 9 of the Order of 1983, would be rendered nugatory. Moreover, the doctrine of estoppel does not operate against a statute. No undertaking, concession, or participation can override an express legal prohibition. Even if T.I.P. initially failed to raise an objection or gave an undertaking in good faith to resolve the petitioner's grievance, such conduct cannot cure an inherent lack of jurisdiction. An order passed without lawful authority is *void ab initio* and remains a nullity in the eye of law, irrespective of the parties' consent, waiver, or subsequent conduct. The petitioner is, however, at liberty to agitate the said undertaking before any competent forum, if so advised.

12. For the foregoing reasons, it is concluded that the case of the petitioner, which pertains to his personal grievance relating to his service, clearly falls under the aforesaid sub-Article 2 of Article 9 of the Order of 1983 containing a bar on the jurisdiction of *Wafaqi Mohtasib*. The *Wafaqi Mohtasib* has wrongly assumed jurisdiction while entertaining the complaint of the petitioner and giving findings on it, which he could not do. Thus, the High Court correctly understood the controversy at hand and made a well-founded decision based on the relevant law on the issue. In its thorough analysis of the applicable law and the available facts, the High Court arrived at a sound and reasoned

conclusion that is both legally correct and just. Hence, no illegality, perversity, or misreading or non-reading of evidence has been found in the impugned judgments. Accordingly, leave is refused, and the petition is dismissed.

13. Above are the reasons for our short order of even date.

Judge

Judge

Judge

Islamabad, the
6th February, 2026.

APPROVED FOR REPORTING

*Ghulam Raza/ **