

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE AAMER FAROOQ
JUSTICE ALI BAQAR NAJAFI

F.C.P.L.A.1427/2026

*[against the order dated 11.03.2026 passed by
the Islamabad High Court, Islamabad in W.P.
No.3069/2024]*

*Employees Old Age benefits Institution
through its authorized Deputy Director
(Law) and another*

...Petitioner(s)

Versus

Javed Iqbal Bhatti and others

...Respondent(s)

For the Petitioner(s) : Mr. Umer Ijaz Gilani, ASC
Syed Rifaqat Hussain Shah, AOR
Dr. Abdul Rheman, Dy. Dir (L)

Respondent No.1 : In-person

Research Assistance By : Dr. Muhammad Mumtaz,
Research Officer

Date of Hearing : 18.09.2026

O R D E R

AMIN-UD-DIN KHAN, C.J.- This petition has been filed under Article 175(F)(1)(C) of the Constitution of the Islamic Republic of Pakistan, 1973 challenging the order dated 11.03.2026 passed by the Islamabad High Court in Writ Petition No. 3069/2024, whereby the writ petition filed by the petitioner(s) was dismissed.

2. The brief facts giving rise to the controversy are that respondent No.1, Javed Iqbal Bhatti, remained in the employment of Askari Bank Limited from 01.07.2008 to 09.05.2014, rendering 5 years, 10 months and 8 days of service. Upon his application for old-age benefits under the Employees' Old-Age Benefits Act, 1976 ("the Act"), he was sanctioned an old-age grant of Rs.48,000/- on 16.12.2015. Subsequently, in view of the judgment rendered by Supreme Court in *Workers' Welfare Funds, Ministry of Human Resources Development, Islamabad v. East Pakistan Chrome Tannery (Pvt.) Ltd.*, PLD 2017 SC 28, whereby the applicability of the Act to banking institutions was held to be excluded,

Respondent No.1's entitlement to benefits under the Act ceased to subsist. Aggrieved thereof, Respondent No.1 invoked the jurisdiction of the Federal Ombudsman, who, vide order dated 19.06.2023, directed payment of old-age pension to him. The said order was assailed before the President of Pakistan, but was maintained vide order dated 04.09.2024. The petitioners thereafter questioned both orders before the High Court, which, through the impugned judgment, declined to interfere and upheld the orders passed by the Federal Ombudsman and the President. Hence, the present petition.

3. We have heard the learned counsel for the parties and, with their assistance, examined the record in the light of the statutory framework governing the controversy.

4. The foremost question that falls for determination is whether the Federal Ombudsman could assume jurisdiction over a dispute concerning entitlement to old-age benefits under the ("the Act"), notwithstanding the specific statutory mechanism prescribed therein for determination of such entitlement and for redress of grievances arising therefrom. The answer must be in the negative. Where the legislature, while creating a statutory right or benefit, has simultaneously designated the authority competent to determine its existence and extent and has provided a hierarchy of remedies against such determination, the legislative scheme cannot ordinarily be bypassed by invoking a parallel jurisdiction for adjudication of the very same entitlement. To permit otherwise would not merely render the special statutory mechanism otiose, but would also enable a forum exercising jurisdiction for a distinct statutory purpose to assume a function which the legislature has expressly entrusted to another authority. For reference section 33 is hereby reproduced;

"33. Decisions on complaints, questions and disputes. If any complaint is received or any question or dispute arises as to—

- (a) whether a person is an insured person within the meaning of this Act;
- (b) the amount of wages of an insured person for the purposes of this Act;
- (c) the amount of contribution payable by an employer in respect of an insured person;

(d) the person who is the employer in respect of an insured person;
 (e) entitlement to any benefit under this Act or as to the amount and duration thereof;
 (ee) registration of an industry or establishment; or]
 (f) any other matter in respect of any contribution or any allowance referred to in clause (e), or dues payable or recoverable under this Act relating to contributions or the aforesaid [benefit]”

Section 33 of the Act is couched in comprehensive terms and expressly confers upon the Employees’ Old-Age Benefits Institution (“EOBI”) jurisdiction to determine, inter alia, the status of an insured person and, most pertinently, his “entitlement to any benefit under this Act or as to the amount and duration thereof.” The grievance raised by Respondent No.1 falls squarely within the contemplation of clause (e) thereof. The legislative scheme, therefore, leaves no room for doubt that the determination of such entitlement is not entrusted to an undefined or concurrent forum; rather, the legislature has constituted a specific statutory mechanism and vested the competent authority, namely the Institution, with the jurisdiction to determine such questions in the manner and within the period prescribed by the Act. This principle has recently been reiterated by Supreme Court in *Sui Northern Gas Pipeline case*¹. The same principle was also laid down by Supreme Court in *Nayyar Islam case*², Wherein it was settled that:

“the provisions of special law exclude the application of general law in the context in which the former provision has been enacted.”

5. Jurisdiction, the contours whereof are delineated by the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (“Order of 1983”). Article 9 thereof empowers the Mohtasib to undertake an investigation into an allegation of “maladministration” on the part of an Agency, or any of its officers or employees. The jurisdictional fact which, therefore, activates the authority of the Mohtasib is the existence of an allegation of maladministration attributable to an “Agency” within the meaning of Article 2(1) of the Order of 1983. The expression

¹ *Sui Northern Gas Pipelines Ltd. (SNGPL), Islamabad v. Messrs S.K. Pvt. Limited and others*, 2025 SCMR 570

² *Capt. Nayyar Islam v. Judge Accountability* (2012 SCMR 669)

“maladministration” has itself been assigned a comprehensive meaning by Article 2(2) and includes a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations; constitutes an unjustified departure from established practice or procedure; is perverse, arbitrary, unreasonable, unjust, biased, oppressive or discriminatory; rests upon irrelevant grounds; or involves the exercise, failure or refusal to exercise authority for corrupt or improper motives. The definition further brings within its fold neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities. Thus, the legislative expression is deliberately wider than a mere violation of law and extends to those species of administrative conduct which, though not necessarily reducible to an express statutory breach, result in injustice on account of arbitrariness, unfairness, oppression, neglect, unreasonable delay or administrative inefficiency. Jurisdiction is determined by the substance and true nature of the controversy, and not by the nomenclature employed by a complainant. In the present case, Respondent No.1 did not challenge any independent act of maladministration separated from the statutory scheme; rather, in substance and effect, he sought determination and payment of an old-age benefit claimed to be due under the Act. Such a claim squarely attracts section 33 and is required to be pursued before the forum and in accordance with the procedure prescribed therein. To permit the Federal Ombudsman to adjudicate upon such a claim would amount to creating a parallel adjudicatory jurisdiction outside the statutory framework and, in effect, confer upon an authority constituted under a general law power which the legislature has expressly vested in a specialized institution under a special enactment. Such an interpretation would not merely depart from the legislative scheme; it would render the mechanism expressly provided under section 33 otiose. It is a settled principle of statutory interpretation that every provision of an enactment must be given meaningful operation and effect, and no construction should ordinarily be adopted which reduces an express statutory mechanism to redundancy or superfluity.

6. The assumption of jurisdiction could not be sustained merely by describing the grievance as one of “maladministration”. Articles 2 and 9 of the Order of 1983, when read together and in the light of its declared object, make it manifest that the jurisdiction of the Mohtasib is essentially directed towards diagnosing, investigating, redressing and rectifying injustice occasioned through maladministration. The jurisdiction is, therefore, attracted where three essential elements co-exist: firstly, the impugned act or omission is attributable to an Agency, or its officer or employee, falling within the statutory fold; secondly, the grievance complained of possesses one or more of the characteristics of maladministration enumerated in Article 2(2); and, thirdly, the matter is not hit by any of the express exclusions or prohibitions contained in Article 9 or elsewhere in the governing law. Once these jurisdictional ingredients are present, the mere fact that the impugned conduct emanates from the exercise of administrative authority does not insulate it from scrutiny by the Mohtasib. Conversely, mere dissatisfaction with an administrative decision, divorced from any allegation capable of falling within the statutory concept of maladministration, would not by itself furnish a jurisdictional foundation for intervention by the Mohtasib.

7. We would, therefore, hold that the expression “maladministration” is the substantive touchstone for determining the jurisdiction of the Wafaqi Mohtasib under Article 9 of the Order of 1983. The jurisdiction cannot be enlarged beyond the limits prescribed by the statute on considerations of equity or expediency; nor can it be constricted by treating maladministration as synonymous only with an express violation of law. Its amplitude must be gathered from the language deliberately employed in Article 2(2). Accordingly, where the complained-of conduct of an Agency answers any of the statutory descriptions of maladministration and does not fall within an express exclusion, the Mohtasib is vested with jurisdiction to investigate the grievance and, upon recording a finding of maladministration, to exercise such remedial authority as the law confers. Where the foundational ingredients are absent, however, assumption of jurisdiction would itself amount to an excess of the authority conferred by the Order of 1983.

8. It is the substance and legal character of the controversy, and not the nomenclature employed by the complainant, that determines jurisdiction. Equally, jurisdiction cannot be conferred upon an authority by consent, acquiescence, waiver or erroneous assumption; it must emanate from the governing statute. Consequently, the order dated 19.06.2023 passed by the Federal Ombudsman, being without lawful jurisdiction, was void for want of jurisdiction and could not constitute a valid foundation for the subsequent order of the President dated 04.09.2024 or the impugned judgment of the High Court, insofar as they affirmed or maintained the same. A decision rendered without jurisdiction does not acquire legal validity merely by its subsequent affirmation by an appellate, revisional or constitutional forum.

9. Tested on this touchstone, the complaint of Respondent No.1 discloses no act or practice constituting maladministration. Stripped of its nomenclature, his grievance was simply that he was entitled to an old-age pension under the Employees' Old-Age Benefits Act, 1976 ("the Act") and that the benefit had not been extended to him. The controversy, therefore, was not whether the petitioners had acted arbitrarily, capriciously, negligently, unjustly or otherwise contrary to law in the discharge of an administrative function; rather, it was whether Respondent No.1 possessed a substantive statutory entitlement to the claimed benefit. That question is one of statutory entitlement, falling within the specific adjudicatory framework of the Act, and cannot, by the mere use of the expression "maladministration", be transmuted into a complaint falling within the jurisdiction of the Ombudsman.

10. More importantly, the legislature has itself constituted a specific forum for determination of precisely this class of controversy. Section 33 of the Act expressly provides that where any question or dispute arises, inter alia, as to the "entitlement to any benefit under this Act or as to the amount and duration thereof", such question shall be determined by the Institution in the manner prescribed by the Act and the regulations made thereunder. The claim advanced by Respondent No.1 falls directly and unequivocally within the ambit of section 33(e). Once the legislature has expressly entrusted the determination of such

questions to the Institution, the Federal Ombudsman could not assume jurisdiction over the same controversy by resort to the general provisions of the Order.

11. The distinction between an allegation of maladministration and a dispute as to substantive statutory entitlement is fundamental and cannot be effaced by the form or nomenclature of the complaint. The Ombudsman is not a substitute for every statutory forum, nor does his jurisdiction extend to matters which the legislature has specifically committed to a designated authority under a special enactment. To hold otherwise would permit every dispute concerning the interpretation, application or entitlement to a statutory benefit to be recast as “maladministration”, thereby enabling the general jurisdiction of the Ombudsman to override the specific adjudicatory mechanism enacted by the legislature. Such an interpretation would not only defeat the legislative scheme but would render the jurisdiction expressly conferred by section 33 wholly redundant. Instead, the Ombudsman proceeded to determine the substantive entitlement of Respondent No.1 to an old-age pension under the Act—a matter which the legislature has expressly entrusted to the EOBI under section 33. The exercise thus transcended a mere error in the exercise of jurisdiction and amounted to an assumption of jurisdiction over a subject matter falling outside the lawful competence of the Ombudsman.

12. Consequently, the foundational jurisdictional condition for invoking the authority of the Federal Ombudsman was wholly absent. The Ombudsman could neither enlarge the jurisdiction conferred upon him by the Order by characterizing a dispute as one of maladministration, nor usurp the statutory function expressly entrusted to the EOBI under section 33 of the Act. The order dated 19.06.2023 was, therefore, rendered *coram non judice* and without lawful jurisdiction. Its subsequent affirmation by the President could neither validate the assumption of jurisdiction nor cure the inherent defect attaching to the original order. The impugned judgment of the High Court, to the extent that it sustains orders founded upon such an assumption of jurisdiction, consequently cannot be legally sustained.

13. Even otherwise, the claim of Respondent No.1 to old-age pension is devoid of statutory foundation. Admittedly, he remained in the employment of Askari Bank Limited from 01.07.2008 to 09.05.2014 and thus had verified insurable service of 5 years, 10 months and 8 days. Section 22(1)(b) of the Act predicates entitlement to old-age pension upon payment of contributions in respect of an insured person for a period of not less than fifteen years. Section 22(2)(ii), however, carves out a limited exception in favour of an insured person who had attained the age of forty-five years on the relevant date, permitting, in the circumstances contemplated therein, reduction of the qualifying period from fifteen years to five years.

14. The benefit of the aforesaid relaxation is, however, expressly curtailed by the proviso to section 22, which declares that “nothing in this section shall apply to an employee insured under this Act on or after 1st day of July, 2008.” The language employed by the legislature is explicit and leaves no room for extending the exception beyond the class for which it was intended. Respondent No.1 entered the service of Askari Bank Limited on 01.07.2008 and, therefore, falls within the exclusion created by the proviso. His entitlement necessarily had to be determined under the general qualifying requirement prescribed by section 22(1)(b). Having admittedly accumulated less than six years of insurable service, as against the statutory minimum of fifteen years, he did not acquire a right to old-age pension under the Act.

15. Viewed in this statutory setting, refusal of pension cannot be regarded as an arbitrary denial of a vested right, much less an instance of maladministration. The petitioners were bound to administer the Act as enacted and possessed no authority to waive, relax or circumvent a mandatory condition of eligibility. To have granted a pension notwithstanding the absence of the prescribed qualifying service would itself have amounted to a departure from the statute. The subsequent grant of an old-age benefit to Respondent No.1 on 16.12.2015 does not advance his case. Such benefit represented the entitlement found admissible to him within the applicable statutory framework; it could neither supply the deficiency in qualifying service nor create an entitlement to pension

contrary to section 22. It is well settled in principle that a statutory benefit must derive its legitimacy from the enactment which creates it and cannot be enlarged through considerations of equity, sympathy or administrative indulgence where the legislature has prescribed an express condition to the contrary.

16. This brings us to the jurisdictional premise of the proceedings before the Federal Ombudsman. The jurisdiction under Article 9 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 is attracted by an allegation of “maladministration” as statutorily defined; it does not confer a general appellate authority to override or dispense with conditions imposed by the governing enactment. In the present case, the record reveals no unlawful exercise or refusal to exercise authority, arbitrariness, discrimination, administrative neglect or other conduct capable of answering the statutory description of maladministration. What was assailed before the Ombudsman was, in substance, the consequence flowing from the application of section 22 to the admitted service record of Respondent No.1. An administrative action taken in obedience to an express statutory command does not assume the character of maladministration merely because its consequence is adverse to the claimant. In the absence of any statutory entitlement to pension, there was correspondingly no failure on the part of the petitioners to discharge a legal obligation towards Respondent No.1. The foundational jurisdictional fact necessary for intervention by the Federal Ombudsman was, therefore, absent, and the complaint, insofar as it sought conferment of a benefit withheld by the statute itself, was not amenable to relief on the ground of maladministration.

17. There is yet another aspect of the matter which merits consideration. The Employees’ Old-Age Benefits Act, 1976 (“Act”) itself embodies a complete statutory mechanism for the determination and redress of disputes concerning entitlement to benefits thereunder. Section 33 vests the Institution with the authority to determine questions relating, inter alia, to the entitlement of an insured person to any benefit and the amount and duration thereof, and obliges it to communicate its decision,

together with the reasons therefor, to the person concerned. The determination so made is not left without further statutory recourse. Section 34 provides for review in the circumstances contemplated therein, including the discovery of new facts, whereas section 35 confers upon an aggrieved person a right of appeal against a decision rendered under section 33 or upon review under section 34. The legislature has thus consciously devised a structured and sequential regime comprising original determination, review and appellate redress for adjudication of disputes concerning benefits under the Act. Where the statute creating the right also identifies the authority competent to determine its existence and prescribes the remedies through which such determination may be questioned, the dispute must ordinarily be resolved within that statutory framework and by the fora upon which the legislature has conferred such jurisdiction.

18. Equally material is the failure of the impugned orders to engage with the statutory questions lying at the heart of the controversy. Neither the order of the Federal Ombudsman nor the decision whereby it was maintained, as reflected in the impugned judgment, explains how denial of a claim governed by the express requirements of sections 22 and 33 of the Act could, in the circumstances of the case, be brought within the statutory concept of “maladministration”; by what authority the mandatory qualifying period prescribed by section 22 could be disregarded or relaxed; or on what legal basis the mechanism specifically provided under sections 33 to 35 for determination, review and appeal was considered inapplicable or capable of being bypassed. These were not peripheral matters, but questions bearing directly upon the existence of the claimed right as well as the assumption of jurisdiction by the Federal Ombudsman. Their determination was, therefore, a necessary antecedent to the grant of relief. An adjudicatory conclusion, however categorically expressed, cannot cure the omission to examine the statutory provisions from which both the asserted entitlement and the competence to grant relief must derive. The requirement to record reasons is not an empty formality. Reasons constitute the rational link between the material before an adjudicatory forum, the law applicable thereto, and the conclusion ultimately reached; they demonstrate that the

controversy has been determined through application of law rather than assertion of authority. This obligation assumes greater significance where the existence of jurisdiction depends upon the proper construction of a statute and the order under challenge affects substantive rights created and regulated by that very enactment. In such circumstances, the adjudicatory forum must confront the material statutory provisions, resolve the questions arising therefrom and disclose an intelligible legal basis for the conclusion reached. A bare conclusion, or its subsequent affirmation without addressing the controlling provisions of law, cannot substitute for such adjudication. Where, therefore, the determinative statutory questions are left unanswered and jurisdiction is assumed without demonstrating its legal foundation, the resulting order cannot be sustained merely on the strength of the conclusion recorded therein.

19. By assuming jurisdiction and directing payment of a benefit notwithstanding the express statutory conditions governing its entitlement, the Federal Ombudsman, in effect, substituted himself for the authority upon which the legislature had conferred the power to determine such entitlement and thereby travelled beyond the jurisdiction vested in him under the Order. The President, and thereafter the High Court, failed to maintain the distinction between an act or omission amounting to “maladministration”, which may attract the jurisdiction of the Federal Ombudsman under Article 9 of the Order, and the determination of a substantive statutory entitlement which falls to be made in accordance with the mechanism prescribed by the governing enactment. A determination adverse to a claimant does not, merely by reason of its adverse consequence, assume the character of maladministration. Unless the decision-making process is attended by an act or omission independently answering the statutory description of maladministration, the jurisdiction of the Federal Ombudsman cannot be invoked to circumvent the conditions of entitlement prescribed by the statute or to confer a benefit which the statute itself does not permit.

20. The impugned judgment, viewed in this perspective, cannot be sustained. It fails to give effect to the mandatory qualifying

requirement embodied in section 22 of the Act and, at the same time, overlooks the jurisdictional limits within which the Federal Ombudsman may exercise authority under Article 9 of the Order. Once Respondent No.1 did not satisfy the statutory conditions for old-age pension and no act or omission constituting maladministration was established independently of the refusal of that claim, the jurisdictional foundation for intervention by the Federal Ombudsman ceased to exist. Neither the President nor the High Court could sustain an order which, in substance, conferred a statutory benefit despite the absence of the conditions upon which the legislature had made that benefit dependent. The impugned judgment, as well as the orders maintained thereby, consequently suffer from errors of law warranting interference by this Court.

21. For the foregoing reasons, the petition is converted into an appeal and allowed. The impugned judgment of the High Court, together with the orders of the Federal Ombudsman and the President maintained thereby, is set aside.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad,
18.09.2026
APPROVED FOR REPORTING
RajaAhsan/-