

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

C.P.L.A. No.1285-K of 2023

(Against the judgment dated 29.08.2023 of the High Court of Sindh, Karachi in C.P No.D-4067 of 2023)

Muhammad Akhlaq Khan

... Petitioner

Versus

National Industrial Relation Commission and others

... Respondents

For the Petitioner: Mr. Salahuddin Ahmed, ASC
Assisted by Mr. Abbas Omer Leghari, AHC

For the Respondents: Mr. Muhammad Umer Lakhani, ASC
Ms. Abida Parveen Channar, AOR
(for respondent No.2)

Date of Hearing: 01.09.2026

JUDGMENT

Muhammad Karim Khan Agha, J.- This civil petition for leave to appeal is directed against the judgment dated 29.08.2023 (**“impugned judgment”**) passed by a learned Division Bench of the High Court of Sindh in a constitutional petition filed by the petitioner. The dispute concerns the eligibility of the petitioner to contest the election of the office-bearers of respondent No. 3, KESC Labour Union (**“the Union”**). By an order dated 10.03.2023, a Single Member of the National Industrial Relations Commission (**“NIRC”**) found no material showing the petitioner to be ineligible for election as an office-bearer of the Union. The Full Bench of the NIRC, however, set aside that order on 16.06.2023. The petitioner challenged the Full Bench order before the High Court and sought a declaration that he was eligible to contest the election. The High Court dismissed the constitutional petition, holding that the petitioner was not eligible to contest the election for a position within the remaining twenty-five percent of the Union’s executive in terms of proviso to section 8(1)(d) of the Industrial Relations Act 2012 (**“IRA 2012”**).

2. The petition sets out the following material facts and proceedings as the background to the present matter. The petitioner was an employee of the Karachi Electric Supply Company (**“KESC”**),

now K-Electric, and a member of the Union. He was elected Chairman of the Union in 2017 and again in 2019. The Union was later elected, through a referendum, as the collective bargaining agent for K-Electric. Disputes subsequently arose over the election of its office-bearers. A challenge to that election was dismissed by the Registrar of Trade Unions on 20.05.2019, leading to four appeals before the Chairman of the NIRC. By order dated 17.02.2020, the Chairman dismissed two appeals seeking cancellation of the Union's registration but allowed the other two concerning the change of its office-bearers, set aside the order of the Registrar and directed that a fresh election be held. It was also observed that the petitioner, then stated to be 61 years of age, had attained the age of superannuation and was no longer an employee or workman of K-Electric and, therefore, could not be an office-bearer of the Union. It was further noted that he was admittedly an advocate by profession, and doubt was expressed about the documents produced to show suspension of his license to practice law.

3. In the ensuing election process, the petitioner filed his nomination papers for the office of Chairman of the Union, claiming eligibility under the proviso to section 8(1)(d) of the IRA 2012. The opposing group objected on the ground that he had retired from K-Electric and was a practicing advocate. In response, the petitioner relied upon a certificate issued by the Sindh Bar Council showing that his license to practice had remained suspended since 16.05.2017. The officer authorized to conduct the election upheld the objections and rejected his nomination papers. The petitioner challenged that decision through Constitutional Petition No. 5651 of 2020. The High Court, by order dated 11.11.2020, permitted him to contest the election, subject to the final outcome of the petition. The election dispute also led to several other suits and petitions filed by respondent No. 2 and some other members of the Union. Although the petitioner was elected Chairman of the Union on 15.11.2020, he could not assume office because of an interim order passed by the High Court in one of those suits. It appears from the concise statement filed by respondent No. 2 that, in 2022, the petitioner sought to amend Constitutional Petition No. 5651 of 2020 so as to challenge the observations regarding his eligibility made in the order dated 17.02.2020 passed by the Chairman, NIRC, which he had not initially challenged. The material before us does not disclose whether the application for amendment

was decided. The concise statement further shows that the High Court recalled, on 18.11.2022, the interim permission granted to the petitioner to contest the election.

4. During the pendency of these proceedings, the tenure of the executive body of the Union elected in November 2020 expired, and another internal election was held under the by-laws of the Union. The petitioner's group and the rival Progressive Group filed competing applications before the NIRC for recognition of their respective office-bearers. By a consolidated order dated 10.03.2023, a Single Member of the NIRC accepted the application of the petitioner's group, rejected the competing application and found no material showing the petitioner to be ineligible to hold office. The NIRC accordingly notified the change of office-bearers on 17.03.2023. On the same date, however, the High Court disposed of two related suits, being Suits No. 1447 of 2022 and 413 of 2021, by directing the NIRC to hold a fresh election within four weeks. On contempt applications subsequently filed in those suits, the High Court, by order dated 23.05.2023, directed implementation of its earlier order. Respondent No. 2 challenged the consolidated order dated 10.03.2023 passed by the Single Member of the NIRC before the Full Bench of the NIRC. By order dated 16.06.2023, the Full Bench set aside the consolidated order, taking into account the orders dated 17.03.2023 and 23.05.2023 whereby the High Court had directed that fresh elections be held within four weeks. It further directed the Single Member of the NIRC to proceed with the matter accordingly. Pursuant thereto, the authorized officer of the NIRC commenced fresh election proceedings and, by notice dated 04.07.2023, required the petitioner's group and the Progressive Group to appear with their membership lists.

5. The petitioner challenged the order dated 16.06.2023 passed by the Full Bench of the NIRC through Constitutional Petition No. D-4067 of 2023. His grievance was that the Full Bench had, without hearing him, also set aside the findings regarding his eligibility to contest the election for the executive body of the Union. He further apprehended that, with the finding in his favour having been set aside, respondent No. 2 would again object to his eligibility to contest the fresh election. By the impugned judgment, the High Court dismissed the petition. It was held that, as the petitioner was no longer an employee or workman of K-Electric, he was ineligible to contest the

Union election against the remaining twenty-five percent of the executive positions.

6. Mr. Salahuddin Ahmed, learned ASC for the petitioner, argued that the High Court had misread section 8(1)(d) of the IRA 2012. He submitted that, although the main provision requires at least seventy-five percent of the executive members of a trade union to be workmen employed in the relevant establishment or industry, the proviso expressly removes that condition for the remaining twenty-five percent. The High Court, therefore, erred in holding that members falling within the remaining twenty-five percent must also be workmen employed in the establishment. He further submitted that the case of **Habib Sugar Mills Ltd v Registrar of Trade Unions** (2001 PLC 441), relied upon in the impugned judgment, had been decided under the Industrial Relations Ordinance 1969 (**"IRO 1969"**), which did not contain a proviso corresponding to the one now appearing in section 8(1)(d) of the IRA 2012. Learned counsel maintained that the observations made in the order dated 17.02.2020 regarding the petitioner's eligibility were unrelated to the matters then before the NIRC and had been made without hearing him. In contrast, the Single Member of the NIRC, after considering the petitioner's employment letter and his status as an advocate, had recorded findings in his favour in the order dated 10.03.2023. The Full Bench of the NIRC set aside those findings without impleading or hearing the petitioner, thereby offending Article 10A of the Constitution. It was also argued that the petitioner had no grievance against the orders passed in Suits No. 1447 of 2022 and 413 of 2021 directing a fresh election; consequently, his failure to challenge those orders could not be used to defeat his separate right to contest that election. In particular, he stressed that the historical background to permitting up to twenty-five percent of the executive to consist of persons who were not workers of the organization had not been considered in its correct legal perspective. He took us through the history and rationale underlying the requirement that at least seventy-five percent of the executive of a trade union consist of workers of the organization, while the remaining twenty-five percent may consist of persons who are not such workers. In this regard, he also referred to various international instruments, particularly the relevant conventions of the International Labour Organization (**"ILO"**) ratified by Pakistan. In support of his submissions, he relied upon **Coca Cola Beverage Pakistan Limited v**

Registrar Trade Unions Sindh (2010 PLC 48), **Imperial Tobacco Co of India Ltd v Commissioner of Income-Tax South Zone Karachi** (PLD 1958 SC 125), **Hanover Fire Insurance Company v Muralidhar Banechand** (PLD 1958 SC 138), **Sadia Jabbar v Federation of Pakistan** (2018 PTD 1746), **Nadia Naz v President of Pakistan** (PLD 2023 SC 588), Ratifications of ILO Conventions by Pakistan, decisions of the Committee of Freedom of Association of the Governing Body of the ILO, Indian Trade Union Act 1926, IRO 1969, Report of Royal Commission on Labour in India and an article published by Anamika Kishore on LinkedIn dated 04.12.2015 titled as “*Should role of outsiders be restricted in Indian Trade Unions?*”.

7. Conversely, Mr. Muhammad Umer Lakhani, learned ASC for respondent No. 2, supported the impugned judgment and submitted that the petitioner was seeking indirectly to unsettle the observations regarding his ineligibility recorded in the order dated 17.02.2020 passed by the Chairman, NIRC, although he had never directly challenged that order. He had instead participated in the election process initiated under it and had thereby acquiesced in it. Even in Constitutional Petition No. 5651 of 2020, the petitioner had initially challenged only the rejection of his nomination and not the earlier order. It was also submitted that the petitioner’s assertions concerning suspension of his license to practice law and his alleged employment rested upon disputed documents; respondent No. 2 maintained that the petitioner had continued to appear as an advocate despite the claimed suspension of his license. Such disputed questions of fact could not be determined in constitutional jurisdiction. Learned counsel further argued that the petitioner had not sought interpretation of section 8(1)(d) of the IRA 2012, or challenged its validity, before the High Court and could not build a new case around that provision in the present proceedings. According to learned counsel, the remaining twenty-five percent of the Union executive must also consist of workmen, and the petitioner, being neither an employee nor a workman of K-Electric, was ineligible. In support of these submissions, learned counsel relied upon the cases of **Hemanta Kumar Bhattacharjee v S.N. Mukherjee** (AIR 1954 Calcutta 340), **Raja Muhammad Mumtaz v NIRC** (2010 TD (Labour) 113), **Muhammad Munir v Registrar, Industry-Wise Trade Unions, NIRC** (2014 PLC 159) and **Habib Sugar Mills Ltd v Registrar of Trade Unions** (2001 PLC 441).

8. We have heard the learned counsel for the parties and perused the record.

9. At the outset, it may be noted that K-Electric is a trans-provincial establishment, having offices in both Sindh and Balochistan, and thus falls within the purview of the IRA 2012, the preamble to which is reproduced below for ease of reference:

*An Act to consolidate and rationalize the **law relating to formation of trade unions, and improvement of relations between employers and workmen** in the Islamabad Capital Territory and in trans-provincial establishments and industry*

WHEREAS, the Constitution of the Islamic Republic of Pakistan recognizes the freedom of association as a fundamental right of the citizen;

AND WHEREAS the Islamic Republic of Pakistan has ratified ILO Convention No.87 on Freedom of Association and Convention No.98 on Right to Organize and Collective Bargaining;

*AND WHEREAS it is expedient to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level, **relating to formation of trade unions and federations or trade unions, determining the collective bargaining agents regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto;***

(Bold added)

10. Regardless of the several proceedings that have preceded the present petition and the various issues arising therefrom, the controversy before us lies within a narrow compass — the eligibility of the petitioner to contest the election against the remaining twenty-five percent of the executive of the Union even though he is no longer a workman. Our consideration shall, therefore, remain confined to this question: whether the “remaining twenty-five percent” under the proviso to section 8(1)(d) of the IRA 2012 must still consist of workmen, although they need not be employed in the establishment or industry concerned, or whether persons who are not workmen may also form part of that twenty-five percent. Section 8(1)(d) of the IRA 2012 is reproduced below for ease of reference:

8. Requirement for registration. — (1) A trade union shall not be entitled to registration under this Act unless the constitution thereof provides for the following matters, namely:-

(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy five percent from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;**

Provided that the condition of being employed in any establishment or any industry as aforesaid shall not apply to the remaining twenty five percent of the members of such executives;

(Bold added)

11. The first question which arises on a bare reading of section 8(1)(d) of the IRA 2012 is why the legislature considered it necessary to draw a distinction between the minimum seventy-five percent of the executive and the remaining twenty-five percent. Why could the entire executive not consist of workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed? What was the legislative intent behind providing, through the proviso, for the remaining twenty-five percent of the executive? The answer to these questions would help us in determining the composition of the “*remaining twenty-five percent*” and, in particular, whether it is confined to any specific category of persons.

12. In **Black’s Law Dictionary**, “**union**” is defined as under:

Union, n. An organization formed to negotiate with employers, on behalf of workers collectively, about job-related issue such as salary, benefits, hours, and working conditions. Unions generally represent skilled workers in trades and crafts. – Also termed labour union; labour organization; organization.

13. A trade union thus provides an organized means through which workers may negotiate with their employers and collectively pursue their common employment-related interests, such as salaries, benefits, hours, and working conditions. The formation of such unions also finds constitutional recognition in Article 17(1) of the Constitution, which guarantees to every citizen the right to form associations or unions, subject to reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan, public order or morality. The executive of a trade union acts on behalf of the

union in accordance with its constitution and the governing law. This makes the composition of the executive important: while those whom the union represents have an evident interest in its control, the question still remains why the law has nevertheless left room for a part of the executive to be drawn from persons other than those specified for the minimum seventy-five percent. Who may form part of the remaining twenty-five percent, and the legislative intent underlying this arrangement, must, in the first instance, be determined from the statutory provision, i.e. section 8(1)(d) of the IRA 2012, governing the composition of the executive.

14. Against this background, the interpretation placed upon section 8(1)(d) of the IRA 2012 in the impugned judgment may first be examined. The High Court, in the impugned judgment, held that the petitioner, having admittedly ceased to be an employee of K-Electric, did not fall within the category of a workman and was, therefore, ineligible to contest the election for Chairman of the Union. Relying on **Habib Sugar Mills Ltd v Registrar of Trade Unions** (2001 PLC 441), the proviso to section 8(1)(d) of the IRA 2012 was construed to mean that “25% outsiders are also necessarily be in the category of workmen and employed in the establishment or the industry for which the trade Union is being framed [sic].” Thus, the High Court required the remaining twenty-five percent of the members of the executive to satisfy two conditions: (i) they must be workmen, and (ii) they must be employed in the establishment or industry for which the trade union has been formed. The latter condition is plainly contrary to the express terms of the proviso, which declares that the requirement of such employment shall not apply to those members. Whether they must nevertheless be workmen is a separate question demanding deeper inquiry, which we shall undertake below. There is, however, no room to impose upon the remaining twenty-five percent the condition of employment in the establishment or industry concerned when the proviso expressly dispenses with that requirement.

15. The High Court also failed to appreciate that **Habib Sugar Mills Ltd (supra)** was decided under the IRO 1969, which did not contain a proviso corresponding to the one now appearing in section 8(1)(d) of the IRA 2012. With the incorporation of this proviso, there is no basis for requiring that the remaining twenty-five percent of the members of the executive must necessarily be “employed in the

establishment or the industry for which the trade Union is being framed.” Further, if the remaining twenty-five percent were required to satisfy both conditions, they would be subject to precisely the same requirements as the minimum seventy-five percent specified in the main clause. Such a construction would erase the distinction drawn by the main clause and leave the proviso without any effect. Therefore, the conclusion that the remaining twenty-five percent must also be employed in the establishment or industry concerned is not in consonance with the plain language of the proviso. This error does not, however, by itself resolve the controversy. It may still be contended, and it has been argued by the learned counsel for respondent No. 2, that those members must nevertheless be workmen and that, on this ground alone, the petitioner remains ineligible. It is this contention that requires further consideration.

16. The proviso to section 8(1)(d) of the IRA 2012 states that the condition of being employed in “*any establishment or an industry as aforesaid*”, i.e. as provided in clause (d), shall not apply to the remaining twenty-five percent of the members of the executive. The actual controversy concerns the scope of this proviso: whether these members must still be workmen, though they need not be employed in the establishment or industry concerned, or whether the proviso also permits persons who are not workmen to be included in the executive.

17. As already noted, **Habib Sugar Mills Ltd (supra)** was decided under the IRO 1969. It is, therefore, necessary to examine the relevant statutory provision considered in that case. Section 7(1)(d) of the IRO 1969, as it then stood, provided as follows:

7. Requirements for registration—(1) *A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely:—*

*(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy five per cent from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;***

(Bold added)

It follows that the provision was broadly similar to section 8(1)(d) of the IRA 2012 inasmuch as it required that not less than seventy-five percent of the executive be drawn from amongst the workmen actually

engaged or employed in the establishment or establishments or the industry for which the trade union had been formed. There was, however, a material difference. Section 7(1)(d) of the IRO 1969 contained no proviso dealing expressly with the remaining twenty-five percent. In particular, it did not provide, as the present proviso does, that the condition of being employed in the establishment or industry concerned would not apply to them.

18. A learned Single Judge of the High Court of Sindh recognised in **Habib Sugar Mills Ltd (supra)** that section 7(1)(d) of the IRO 1969 “*only says that 75% of the office-bearers of a Trade Union shall be from amongst the workmen actually engaged or employed in the industry*”. The learned Judge, however, did not accept the contention that the remaining twenty-five percent could be persons who were not workmen, considering such an interpretation to be “*contrary to the essence and spirit of the law*”. Adopting what was described as a “*rational interpretation*”, it was held that “*25% outsiders should also necessarily be in the category of workman though not employed in the employment where the Union is applying for registration*”. This interpretation, the learned Judge observed, “*will be in consonance with the essence and spirit of the law*”.

19. The interpretation adopted in **Habib Sugar Mills Ltd (supra)**, however, requires closer examination in the light of the language and scheme of section 7(1)(d) of the IRO 1969. As the learned Judge himself observed, section 7(1)(d) of the IRO 1969 “*only says*” that seventy-five percent of the office-bearers were to be drawn from workmen actually engaged or employed in the industry. The provision did not require that the remaining twenty-five percent must also be workmen. Having expressly prescribed the qualification of being a workman engaged or employed in the establishment for not less than seventy-five percent of the executive, the legislature left the remaining outside that requirement, without prescribing any corresponding qualification for them. To nevertheless hold that they must also necessarily be workmen was to read into the provision a qualification which its plain language did not contain. The language employed in the statute is the determinative factor in ascertaining legislative intent. It was observed in **Abdul Nafey v Muhammad Rafique** (2023 SCMR 2096),

8. *Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said.*

Further, the learned Judge appeared to treat membership of a trade union and holding office in its executive as one and the same, although the two were separately dealt with by the IRO 1969. Moreover, when the statutory scheme itself retained predominant control with the workmen by requiring at least seventy-five percent of the executive to be drawn from them and by vesting the choice of office-bearers in the members of the union, who were exclusively workmen, recourse to the “*essence and spirit of the law*” may not justify reading into section 7(1)(d) a qualification which the legislature had not prescribed. It is also significant that where the legislature intended to disqualify a person from holding office in a trade union, it did so expressly. Section 7A specifically prescribed a disqualification for being elected as, or being, an officer of a trade union; the absence of any corresponding requirement that the remaining twenty-five percent under section 7(1)(d) must necessarily be workmen may further go against supplying such a qualification by interpretation. For these reasons, the interpretation placed upon section 7(1)(d) of the IRO 1969 in **Habib Sugar Mills Ltd (supra)** does not, by itself, provide a satisfactory answer to the question whether the remaining twenty-five percent were necessarily required to be workmen.

20. It is a general rule of statutory interpretation that where the language of a statute is clear and unambiguous, there is no need to resort to interpretation and its plain meaning must be given effect. It is only where the language of a statute or a provision thereof is unclear or ambiguous that the need for interpretation arises. This principle was stated in the case of **Justice Khurshid Anwar Bhinder v Federation of Pakistan** (PLD 2010 SC 483) in the following terms:

36. *...The language as employed in Article 188 of the Constitution is very plain and simple and there is absolutely no confusion on the basis whereof different interpretation could be made. “A fundamental principle of constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. As has been aptly observed, “the pole star in the construction of a Constitution is the intention of its makers and adopters.” When the language of the statute is not only plain but admits of but one meaning, the task of*

interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Such language best declares, without more, the intention of the lawgivers, and is decisive of it. The rule of construction is “to intend the Legislature to have meant what they have actually expressed”. It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is unambiguous and is in accord with justice and convenience, the Courts cannot busy themselves with supposed intentions, however admirable the same may be, because, in that event they would be travelling beyond their province and legislating for themselves. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the Court must interpret that language in accordance with the indication of the intention of the Legislature so plainly given.

(Bold added)

In the present case, however, the meaning and effect of section 8(1)(d) of the IRA 2012, particularly the proviso thereto, is not free from difficulty, as is also apparent from the interpretation placed upon the corresponding provision of the IRO 1969 in **Habib Sugar Mills Ltd (supra)**. It is, therefore, necessary to examine the provision in its statutory context and determine the meaning intended by the legislature.

21. The provision having undergone a change since the IRO 1969 considered in **Habib Sugar Mills Ltd (supra)**, particularly with the introduction of the proviso in the IRA 2012, its evolution through earlier enactments may be helpful in understanding the purpose underlying its present form. It is, therefore, useful to examine how the legislature dealt with the composition of the executive of a trade union in successive enactments. The statutory development may be traced from the Indian Trade Unions Act 1926 (“**1926 Act**”), which was enacted to provide for the registration of trade unions and, in certain respects, to define the law relating to registered trade unions in British India. Section 22 of the 1926 Act, which dealt with the proportion of office-bearers required to be connected with the industry, as originally enacted, is set out below for ease of reference:

22. Proportion of officers to be connected with the industry. — *Not less than one-half of the total number of the officers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:*

Provided that the Local Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

(Bold added)

The 1926 Act was adopted by Pakistan following independence. It was subsequently amended by the Trade Unions (Amendment) Ordinance 1960 (Ordinance No. XIV of 1960), whereby section 22 was substituted as follows:

22. Election of officers. — (1) No person who is or has at any time been convicted under this Act shall be elected as an officer of a Trade Union.

(2) A registered Trade Union shall **not elect more than twenty five per cent** of the total number of its officers from among persons who are not actually employed or engaged in the industry with which the Trade Union is connected:

Provided that the Central Government may, by notification in the official Gazette, prohibit, on grounds of security, Trade Unions in any industry carried on by or under the authority of the Central Government and connected with defence, to elect such officer.

(Bold added)

Section 22 was again substituted by the Trade Unions (Amendment) Ordinance 1961 (Ordinance No. XI of 1961) as follows:

22. Election of officers. — (1) No person shall be elected as an officer of the Trade Union who —

(a) has at any time been convicted of an offence under this Act or under section 23 or section 24 of the Industrial Disputes Ordinance, 1959; or

(b) has at any time been dismissed from employment in any industry on the ground of conviction for an offence —

(i) involving, in the opinion of the appropriate Government, moral turpitude; or

(ii) relating to activities prejudicial to the defence or security of Pakistan; or

(c) in the case of a person referred to in sub-section (2), is not a paid full-time Trade Union worker.

(2) A registered Trade Union shall **not elect more than twenty-five per cent** of the total number of its officers from amongst the persons who are not, for the time being, employed or engaged in the industry with which the Trade Union is connected:

Provided that the Central Government may, on the grounds of security, by notification in the official Gazette, prohibit any Trade Union in any industry connected with defence carried on by or under the authority of the Central

Government, from electing any officer from amongst such persons.

(Bold added)

The 1926 Act was repealed in the erstwhile province of West Pakistan by the West Pakistan Trade Unions Ordinance 1968, the relevant provision whereof provided as follows:

29. (1) No person shall be elected as an officer of a registered Trade Union, who --

(a) has at any time within the preceding 3 years been convicted of an offence under this Ordinance or under section 23 or section 24 of the Industrial Disputes Ordinance, 1959 (Ordinance LVI of 1959), or under section 30 or section 31 of the West Pakistan Industrial Disputes Ordinance, 1968;

(b) has been convicted of an offence involving moral turpitude, or for any act, prejudicial to the defence or security of Pakistan, or public order, and sentenced to imprisonment for a term of not less than 6 months, unless 3 years or such less period as Government may, by notification in the official Gazette, specify in this behalf has elapsed from the date of expiration of the sentence.

*(2) A registered Trade Union, shall elect **not less than 75 per centum** of the total number of its officers, from amongst the persons, who are for the time being employed or engaged in the industry with which the Trade Union is connected.*

(3) No person shall be elected as an officer of a registered Trade Union who has not

(a) in case he is employed or engaged in the industry with which the Trade Union is concerned attained the age of 21 years; and

(b) in any other case, attained the age of 25 years, and is a paid full time Trade Union worker.

(4) No person shall hold office in more than one registered Trade Union.

(5) Government may, on the grounds of security, by notification in the official Gazette, prohibit any registered Trade Union in any industry connected with defence carried on by or under the authority of the Central Government, from electing any person as its officer, who is not for the time being employed or connected with such industry.

(6) On the coming into force of this Ordinance, if any person who is an officer of a registered Trade Union and under the provisions of this Ordinance is disqualified, or is not qualified to become or to be, an officer of such registered Trade Union, he shall forthwith vacate his office, and cease to be such officer, and his seat shall, as soon as may be, be filled in accordance with the provisions of this Ordinance and the rules of the registered Trade Union, by a person qualified to hold such office.

(Bold added)

It may be seen that a distinction was consistently maintained in the composition of the executive body of a trade union. Under section 22 of the 1926 Act, as originally enacted, not less than one-half of the officers were required to be persons actually engaged or employed in the industry concerned. The 1960 Amendment increased this proportion in substance to seventy-five percent by providing that not more than twenty-five percent could be elected from persons not actually employed or engaged in the industry concerned. The 1961 Amendment retained the same proportion and expressly provided that persons not employed or engaged in the industry concerned could form part of the remaining twenty-five percent, though it required such persons to be paid full-time trade union workers. The West Pakistan Trade Unions Ordinance 1968 continued substantially the same arrangement: not less than seventy-five percent of the officers were required to be persons employed or engaged in the industry concerned, while a person falling outside that category could be elected subject, inter alia, to the requirement that he be a paid full-time trade union worker. Thus, by the time of the 1968 Ordinance, the seventy-five/twenty-five division had become an established feature of the statutory scheme, with the law expressly regulating the qualifications of persons who were not employed or engaged in the industry but could nevertheless form part of the remaining twenty-five percent.

22. The West Pakistan Trade Unions Ordinance 1968 was repealed by the IRO 1969. The relevant provision of the IRO 1969, as originally enacted, was section 7(d), which provided as follows:

7. Requirements for registration — *A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely:—*

*(d) the names of the persons forming the executive committee including the officers, of whom **seventy five per cent** shall be from amongst the workers actually engaged or employed in the establishment with which the trade union is connected, and the manner of their election;*

(Bold added)

The seventy-five/twenty-five division was thus retained, but with a material change in the manner in which it was expressed. Unlike the preceding law, section 7(d) of the IRO 1969 did not prescribe any

qualification for the remaining twenty-five percent. It merely required seventy-five percent of the executive to be drawn from workers actually engaged or employed in the establishment with which the trade union was connected. In particular, the earlier requirement that a person not employed or engaged in the industry must be a paid full-time trade union worker was no longer reproduced. The omission of that qualification, which had been expressly prescribed under the preceding law, would therefore indicate that section 7(d), as enacted, did not itself restrict the remaining twenty-five percent to any particular category of persons.

Clause (d) of section 7 was subsequently substituted by the Industrial Relations (Amendment) Ordinance 1970 (Ordinance No. XIX of 1970), as follows:

*(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy five per cent** from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;*

(Bold added)

Thus, so far as relevant for the present purpose, the 1970 amendment retained the seventy-five/twenty-five division, but made certain changes in the expression of the requirement. While the original provision required seventy-five percent of the executive to be workers actually engaged or employed in the establishment with which the trade union was connected, the amended provision required not less than seventy-five percent to be workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union had been formed. Significantly, however, the amended provision, like the original provision, prescribed no qualification for the remaining twenty-five percent.

By virtue of the Labour Laws (Amendment) Ordinance 1972 (Ordinance No. IX of 1972), section 7(d) was renumbered as section 7(1)(d) upon the addition of a new sub-section (2).

23. The IRO 1969 was repealed by the Industrial Relations Ordinance 2002 (**“IRO 2002”**). Section 6(1)(d) thereof provided as follows:

6. Requirements for registration.— (1) A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely:—

(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy-five per cent** from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;

(Bold added)

24. The IRO 2002 was thereafter repealed by the Industrial Relations Act 2008 (**“IRA 2008”**). Section 6(1)(d) thereof provided as follows:

6. Requirements for registration.— (1) A trade union shall not be entitled to registration under this Act unless the constitution thereof provides for the following matters, namely:—

(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy-five percent** from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;

(Bold added)

It is thus evident that neither the IRO 2002 nor the IRA 2008 made any material change to the provision as it had stood under section 7(1)(d) of the IRO 1969. Throughout, the requirement remained that not less than seventy-five percent of the executive be drawn from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union had been formed. Neither enactment, however, contained a proviso dealing expressly with the remaining twenty-five percent or otherwise prescribed who could form part of it.

25. A further and more significant development occurred with the Industrial Relations Ordinance 2011 (**“IRO 2011”**). Section 8(1)(d) thereof provided as follows:

8. Requirements for registration.— (1) A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely:—

(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy five percent** from amongst the workmen

actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;

Provided that the condition of being employed in any establishment or an industry as aforesaid shall not apply to the remaining twenty-five percent of the members of such executives;

(Bold added)

We see an identical corresponding provision i.e. section 8(1)(d) in the subsequent enactment, the IRA 2012, which is reproduced below:

8. Requirements for registration.— (1) *A trade union shall not be entitled to registration under this Act unless the constitution thereof provides for the following matters, namely:—*

*(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include **not less than seventy-five percent** from amongst the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;*

Provided that the condition of being employed in any establishment or an industry as aforesaid shall not apply to the remaining twenty-five percent of the members of such executives;

(Bold added)

The main clause of section 8(1)(d) of the IRO 2011, and then the IRA 2012, retained the earlier formulation. However, there was a significant addition. A proviso was appended expressly declaring that the condition of being employed in the establishment or industry concerned would not apply to the remaining twenty-five per cent of the executive. This legislative development assumes significance in construing the proviso. Where the language of an earlier provision is substantially carried forward in a later enactment, but with an addition not found in the earlier law, the addition cannot ordinarily be treated as without purpose. It is a well-established rule of statutory interpretation that no word in a statute is to be treated as surplusage or redundant (**Muhammadi Steamship Co Ltd v Commissioner of Income-Tax** (PLD 1966 SC 828)). Some meaning and effect must, therefore, be given to the proviso expressly introduced by the legislature.

26. The main clause of section 8(1)(d) of the IRA 2012 itself requires that not less than seventy-five percent of the executive be drawn from amongst the workmen actually engaged or employed in the establishment, establishments or industry for which the trade union

has been formed. It does not prescribe the status or qualification of the remaining twenty-five percent. The proviso does not alter the requirement applicable to the minimum seventy-five percent. Nor does it, in terms, prescribe any qualification for the remaining twenty-five percent. What it does is to expressly declare that “*the condition of being employed in any establishment or an industry as aforesaid*” shall not apply to those remaining members. The addition is significant because, under the enactments from the IRO 1969 onwards, the provision prescribed the composition of the minimum seventy-five percent but said nothing expressly about the remaining members. The proviso now speaks directly to that category and removes, in express terms, the condition of employment in the establishment or industry concerned. The nature and effect of this addition must, therefore, be determined from its language and its place in the scheme of section 8(1)(d) of the IRA 2012.

27. The function of a proviso ordinarily is to act as a limitation on the effect of the main enactment. However, a proviso may not always be the qualifying clause of the main provision (**Hamdard Dawakhana v CIT** (PLD 1980 SC 84)). Sometimes, a proviso may be added to exclude a possible misinterpretation of the main provision as extending to cases not intended by the legislature (**Ibrar Hussain v Government of NWFP** (2001 SCMR 914)). It may be engrafted by an apprehensive draftsman to remove possible doubts, make matters plain, or light up ambiguous edges (**Dwarka Prasad v Dwarka Das Saraf** (AIR 1975 SC 1758)). An unnecessary proviso may be inserted by way of abundant caution (See Sarathi, *Interpretation of Statutes*, pp 294–95). It may also be used merely as an optional addendum to the enactment, with the sole object of explaining the real intendment of the statutory provision (**S. Sundaram Pillai v V.R. Pattabiraman** (AIR 1985 SC 582)). The Supreme Court in **Special Reference No. 1 of 1957** (PLD 1957 SC 219) while dilating upon the functions of a proviso, reproduced the words of Crawford as follows:

While there is considerable similarity between an exception and a proviso - each restrains the enacting clause and operates to except something which would otherwise fall within the general terms of the Statute, - there is a technical distinction between them, although even that is frequently ignored and the two terms used synonymously. The exception, however, operates to affirm the operation of the Statute to all cases not exception and excludes all other exception: that is, it exempts something which would

*otherwise fall within the general words of the Statute. A proviso, on the other hand, is a clause added to an enactment for the purpose of acting as a restraint upon, or as the qualification of the generality of the language which it follows. **Sometimes, however, as a precautionary measure, it is used to explain the general words of the Act and to exclude some ground of misinterpretation which would extend it to cases not intended to be brought within its operation or purview.***

(Bold added)

28. Seen in view of the above principles, the proviso to section 8(1)(d) of the IRA 2012 appears to be clarificatory in nature: it makes explicit what was already implicit in the main provision. Even section 7(1)(d) of the IRO 1969, despite containing no such proviso, imposed only one requirement as to the composition of the executive, namely, that not less than seventy-five percent of its members be drawn from amongst the workers actually engaged or employed in the establishment with which the trade union was connected. It imposed no corresponding requirement upon the remaining twenty-five percent that they must also be workmen. The same legislative scheme was substantially carried forward in the IRO 2002 and the IRA 2008. The proviso in the IRA 2012 does not create a new category of persons outside the minimum seventy-five percent; that category was already inherent in the main provision. What the proviso does is to make clear, in relation to that category, that the condition of employment prescribed for the minimum seventy-five percent is not applicable to them. The proviso, thus, appears to have been inserted with the object of explaining the intent behind the main enactment and guarding against an interpretation that would extend it to cases not intended to be brought within its purview, as happened in **Habib Sugar Mills Ltd (supra)**.

29. The reported Pakistani case law arising under the statutory framework obtaining from the IRO 1969 onwards, when the earlier express qualification concerning the remaining twenty-five percent was no longer retained, is limited, but the available authorities may usefully be noticed. In **Fauji Sugar Mills v Registrar of Trade Unions** (2000 PLC 616), the Sindh Labour Appellate Tribunal held that a dismissed employee could be elected as an office-bearer within the twenty-five per cent outsiders' quota as contemplated under section 7(1)(d) of the IRO 1969 and that there was no legal basis to require an outsider necessarily to be a workman. Likewise, Sindh Labour

Appellate Tribunal in **Standard Printing Press v Workers' Union** (1974 PLC 275) treated the words “actually engaged” used in section 7(1)(d) of the IRO 1969 as distinguishing those in employment from outsiders. In **Crescent Textile Mills Workers' Union v Punjab Labour Appellate Tribunal** (2000 PLC 453), the Lahore High Court drew a distinction between eligibility of outsiders to be elected and their entitlement to vote and held that in view of section 7(1)(d) of the IRO 1969, twenty-five percent office-bearers of a union can be elected even from outsiders. Most pertinently, the Sindh High Court in **Coca Cola Beverage Pakistan Ltd v Registrar Trade Unions** (2010 PLC 48) held that a former employee was not a workman for voting and referendum purposes, yet could participate in the union election if he fell within the permitted quota of outsiders. These authorities recognise a distinction, reflected in the statutory scheme, between the stipulated minimum drawn from workmen actually engaged or employed in the establishment or industry concerned and the remaining members of the executive, who may be non-workmen.

30. A contrary view was, however, taken in **Muhammad Munir v Registrar, Industry-Wise Trade Unions, NIRC** (2014 PLC 159), relied upon by the learned counsel for respondent No. 2. The Lahore High Court, while construing section 8(1)(d) of the IRA 2012, held that although the remaining twenty-five percent need not be employed in the establishment or industry concerned, they must nevertheless be workmen. The learned Single Judge proceeded on the premise that the main clause prescribed two separate and independent conditions: first, that the person must be a “workman”, and secondly, that he must be “actually engaged or employed” in the establishment or industry concerned. This premise requires closer examination. Grammatically, the words “workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed” constitute a single noun phrase: “workmen” is the head noun, while the words “actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed” restrict the class of workmen to which the provision refers. (Cambridge Dictionary defines a noun phrase as follows: “A *noun phrase* consists of a noun or pronoun, which is called the head, and any dependent words before or after the head. Dependent words give specific information about the head.”). In its expanded form, the expression would read “workmen

who are actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed”. This grammatical construction is consistent with the principle of statutory interpretation that a composite expression is to be read as a whole rather than broken into its constituent parts and each part assigned an independent meaning.

31. In **Mersey Docks and Harbour Board v Henderson Bros** ((1888) 13 App Cas 595), Lord Halsbury LC observed, “[i]t certainly is not a satisfactory mode of arriving at the meaning of a compound phrase to sever it into its several parts and to construe it by the separate meaning of each of such parts when severed”; while in **Savoy Overseers v Art Union of London** ([1896] AC 296), the legislative intention was said to be discovered from the words “*in the combination in which they are placed*”. The same principle is stated in Bennion on Statutory Interpretation (See 7th edn, pp 533–535). The linguistic basis of the principle was explained by Lord Hoffmann in **R v Brown** ([1996] 1 All ER 545), whose observations were quoted by the High Court of Australia in **Collector of Customs v Agfa-Gevaert Ltd** ([1996] HCA 36): “[t]he significance of individual words is affected by other words and the syntax of the whole.” Dixon J had similarly cautioned, in **R v Wilson; Ex parte Kisch** ((1934) 52 CLR 234), against ascertaining the meaning of a statutory expression by “*disintegrating the phrase into its component words*”.

32. Read in the light of the above, “*workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed*” is capable of being understood, not as the legislative statement of two detached qualifications, but as a composite description of the class from which not less than seventy-five percent of the executive must be drawn. This reading finds some further textual support in section 8(2)(a) of the IRA 2012, where the legislature employs the similar expression — “*workmen actually engaged or employed in the industry with which the trade union is connected*” — to describe, as a whole, the class of persons who may constitute the membership of a trade union of workmen. More importantly, it gains support from the proviso itself. Having used the fuller expression “*workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed*” in the main clause, the legislature refers back

to the requirement in the proviso in the singular as “*the condition of being employed in any establishment or an industry as aforesaid*” and expressly declares that this condition “*shall not apply to the remaining twenty-five percent*”. It would, therefore, be unsafe first to disintegrate the expression in the main clause into two independent conditions and then, on the basis of that very disintegration, conclude that the proviso removes only the latter while necessarily preserving the former. This does not mean that being a workman and being employed in the particular establishment are incapable of being distinguished. The point is that the mere possibility of distinguishing them does not establish that the legislature intended them to operate as two separate and independent qualifications under section 8(1)(d). Rather, that question must be determined from the expression as a whole, read with the proviso and the statutory scheme. So read, the words “*workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed*” appear to constitute a composite expression which must be construed as a whole. In this view, the interpretation adopted in **Muhammad Munir (supra)** does not appear convincing.

33. Likewise, **Raja Muhammad Mumtaz (supra)**, decided by a learned Single Judge of the Lahore High Court, does not advance the case of respondent No. 2. The decision proceeded substantially upon the reasoning adopted in **Habib Sugar Mills Ltd (supra)**, which, for the reasons already discussed, we do not find persuasive. It is true that the petition for leave to appeal against **Raja Muhammad Mumtaz (supra)** was dismissed by the Supreme Court. The order, however, was one declining leave to appeal and did not itself examine or determine the interpretation placed upon section 7(1)(d) of the IRO 1969 in **Habib Sugar Mills Ltd (supra)**. The precedential effect of such an order must, therefore, be considered in that context. Even otherwise, this Court is neither bound by an order declining leave to appeal nor a decision of the Supreme Court in view of Article 189(2) of the Constitution.

34. The High Court of Calcutta in **Kesoram Rayon Workmen’s Union v Registrar of Trade Unions** (AIR 1967 Cal 507), while interpreting the provisions of the Trade Unions Act 1926, observed that outsiders were not expressly disqualified from holding office, in the following words:

(viii) Lastly, it has been contended that, admittedly, the Treasurer, Kamasry Jadava is not a workman but an outsider, and that, accordingly, the constitution of the office-bearers of the union is invalid.

21. It has, however, been rightly contended on behalf of the Respondents that there is nothing in the Act which invalidates the appointment of an outsider as Treasurer. Section 2 (a) and (b) defines 'executive' and 'office bearer' as follows:

"2(a) "executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted;

(b) "office-bearer" in the case of Trade Union includes any member of the executive thereof, but does not include an auditor"

22. Section 21 A lays down certain dis-qualifications for being a member of the executive or any other office-bearer. Being an outsider is not mentioned as a disqualification in this section. Section 22 then says:--

"22. Proportion of officers to be connected with the industry.--Not less than one-half of the total number of the office-bearer of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order."

23. It is evident that the first paragraph of Section 22 would be meaningless if all the officers of members of the executive were required to be workmen of the industry to which the union relates. Of course, the definition of trade union: in Section 2(h) says that a Trade Union is the combination of the workmen engaged in an industry. But Section 22 expressly lays down that an outsider may be a member of the executive or other officer of the union, provided the specified percentage is not exceeded. The Schedule to the application does not show that this percentage has been exceeded. Of course this percentage has been reduced to 1/3 by Rule 6 of the Rules so far as the Executive Committee is concerned but, as the Addl. Registrar has pointed out, even that 1/8 limit has not been exceeded and nothing has been shown to me to the contrary.

(Bold added)

35. We are further fortified in our view by the case of **All India Rubber Board E. Union v Rubber Board** (2009 KLT SN 4 3), wherein the High Court of Kerala at Ernakulam held as under:

“The above provisions of the Trade Unions Act itself recognize the right of the workers to form association with a person in the leadership from outside the industry. The above provision of Trade Unions Act is sanctioned by the salient provisions contained in Article 19(1)(a) of the Constitution of India. The right to collective bargaining is a well recognized right of the workers in the modern industry. The provisions of the Industrial Disputes Act, 1947 and other welfare Acts also recognize collective bargaining as a right of the workman and the right to form association of workers/employees. In order to attain industrial peace, negotiation of the issue is one of the well recognized primary steps. Now in this modern era, the establishments are led by the executives, most of them being the products of world famous Universities or Academies or Institutions, who are highly trained and educated professionals with whom the workers have to negotiate and bargain for their issues. In all establishments, the workers or the staff of such establishment may not be able to bargain and negotiate their issues with the highly qualified executives of the establishments. Therefore, in order to make the negotiations and for a meaningful bargaining, well-trained, experienced and educated leaders for the Unions are also inevitable. Thus, on examining the issue under the above social and logical basis, it can be seen that the denial of the right to elect a person from outside the industry, will, in effect, amount to imposing restrictions on the right to collective bargaining. When the management is armed with the oppressive measures, the workers may not be able to press their genuine demand effectively before the management unless there is effective leadership for the Union. So the denial of the right of the employees of Rubber Board to have their Union office-bearers in accordance with their bye-laws will amount to denial of their right to form association, which is a right recognized by the Trade Unions Act, of which the source is Article 19(1)(a) of the Constitution of India”.

(Bold added)

36. Further, in the United States of American, in the case of **General Electric Company, Petitioner, v. National Labor Relations Board, Respondent, and International Union of Electrical, Radio and Machine Workers, Afl-cio, Intervenor** 412 F.2d 512 (2d Cir. 1969), the US Court of Appeals for the Second Circuit held as under:

Turning to specific policy reasons for inclusion of members of other unions on a negotiating committee, we are told that a union has an interest in using experts to bargain, whether the expertise be on technical, substantive matters or on the general art of negotiating. In filling that need, no good reason appears why it may not look to “outsiders,” just as an employer is free to do.

(Bold added)

37. There is a practical rationale for permitting persons from outside the establishment or industry concerned to form part of the executive of a trade union. The executive represents the union in its dealings with the management and may be required to negotiate on matters involving legal, financial, technical or other specialized considerations. Permitting a limited proportion of outsiders enables the members of the union, if they so choose, to draw upon persons possessing experience or expertise which may assist them in such negotiations. Such persons may include, depending upon the choice of the union and subject to its constitution and any other applicable law, lawyers, accountants, academics, retired executives, or persons having relevant experience in the same or a related industry. Being outside the employment relationship may also enable such persons to assist the union without being exposed to the same possibility of workplace pressure or reprisals as serving employees. The statutory arrangement, therefore, allows such outside assistance while at the same time ensuring, through the minimum seventy-five percent requirement, that predominant representation in the executive remains with the workmen actually engaged or employed in the establishment or industry concerned. Read in this context, section 8(1)(d) of the IRA 2012 appears to strike a deliberate balance: it secures predominant representation of the workmen actually engaged or employed in the establishment or industry concerned by prescribing a minimum of seventy-five percent, while leaving room within the remaining twenty-five percent for persons from outside that category who may be chosen in accordance with the constitution of the union and subject to any other applicable law.

38. The presence of persons from outside the workforce in trade union leadership is, moreover, not without historical explanation. Early literature on the trade union movement in the subcontinent records that outside leadership developed, amongst other reasons, because of limited literacy and organisational capacity among workers and their vulnerability to victimisation by employers. Philip Spratt, writing in 1927, referred to these considerations in explaining the role of outsiders as trade union officials and leaders (See Philip Spratt, "The Indian Trade Union Movement" (October 1927) 9(10) *Labour Monthly*, discussion of outsiders as officials and leaders).

A more recent academic account by Pravin J. Patel similarly notes the part played in the development of the trade union movement by social workers and political figures who were not themselves factory workers or employees (See Pravin J. Patel, “Full-time Trade Union Leaders & the Societal Context: The Bosses & Deputies” (2016) 52(2) *Indian Journal of Industrial Relations* 175–191, section “Full-time Trade Union Leaders”). These historical accounts show that outside leadership arose in response to practical difficulties in organising workers and representing their interests.

39. The ***Report of the Royal Commission on Labour in India 1931*** while tracing the early development of the trade union movement, noted that although the movement was influenced by the political conditions of the time, it was founded upon genuine and pressing needs of industrial labour. It was recorded that an important controversy during this period concerned the role of “outsiders”, that is, labour leaders drawn from outside the ranks of workers. While employers frequently objected to dealing with unions led by such persons, the Government of India had, by 1920, accepted the principle of the right to employ outsiders, and their subsequent legislative recognition as persons who could be employed by registered unions and included in their executives considerably diminished such objections. The Report regarded attempts to dictate to unions in the choice of their officers or leaders as unwise, observing that the difficulties confronting the trade union movement made the employment of a proportion of outsiders inevitable, while victimisation, or the fear of it, gave additional value to independent outside leadership. It was also recognised that outsiders might lack direct experience of the industry, but regarded this essentially as a matter for the unions themselves. Indeed, the unions at the time depended largely upon social workers, lawyers and other professional and public persons for leadership, whose assistance was recognised as necessary to the development of the movement and likely to remain useful for years to come. At the same time, the need to develop leadership from within the ranks of labour was emphasized. It was, therefore, recommended that the minimum proportion of officers actually engaged or employed in the relevant industry be increased from one-half to two-thirds. Since there was no limit on the size of the executive, it was contended that increasing the proportion of workers in this

manner would not reduce the number of outsiders who could be included in it.

40. The statutory question may further be examined in the light of the relevant international labour standards. Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention 1948 (Convention No. 87), as well as the Right to Organise and Collective Bargaining Convention 1949 (Convention No. 98). Their relevance to the IRA 2012 is not incidental. The Preamble to the IRA 2012 expressly notes, first, that freedom of association is guaranteed by the Constitution and, secondly, that Pakistan has ratified Conventions No. 87 and 98. Section 3(c) of the IRA 2012, correspondingly, recognises the right of a trade union to elect its representatives “in full freedom”. These factors justify recourse to the relevant instruments of the ILO and the principles developed by its supervisory bodies when the language of the IRA 2012 requires interpretation.

41. The ILO was created in 1919 as part of the Treaty of Versailles, on the premise that universal and lasting peace could be established only if based upon social justice and that conditions of labour involving injustice, hardship and privation required improvement. In 1946, the ILO became a specialized agency of the United Nations. Article 1 of the ILO Constitution establishes the Organization for the promotion of the objects set forth in its Preamble and in the Declaration of Philadelphia. The Preamble proceeds from the premise that universal and lasting peace can be established only if it is based upon social justice and identifies, amongst the conditions requiring improvement, the recognition of the principle of freedom of association. The Declaration of Philadelphia likewise reaffirms, as one of the fundamental principles upon which the ILO is based, that freedom of expression and of association are essential to sustained progress. Freedom of association thus forms part of the foundational principles through which the ILO seeks to advance social justice and improve conditions of labour.

42. Convention No. 87 gives more specific expression to that principle. Its Preamble itself recalls both the recognition of freedom of association in the ILO Constitution as a means of improving conditions of labour and establishing peace, and the affirmation in the

Declaration of Philadelphia that freedom of expression and association are essential to sustained progress. Of particular relevance to the present controversy is Article 3 of the Convention. It recognises the right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives "in full freedom", to organize their administration and activities and to formulate their programmes, and requires public authorities to refrain from any interference which would restrict that right or impede its lawful exercise.

43. The Committee on Freedom of Association ("**CFA**") is a specialized and tripartite supervisory body of the ILO, comprising representatives of Governments, employers and workers under an independent chairperson. Its Compilation of Decisions is an official, systematically arranged synthesis of the principles evolved through the examination of concrete complaints. It goes without saying that the conclusions of the CFA are not judgments of a court of law, nor can they override the express words of an Act of Parliament. Their value is nevertheless considerable as a persuasive aid in clarifying an ambiguity or resolving an uncertainty in the interpretation of a statutory provision, particularly where, as here, the Preamble records Pakistan's ratification of Conventions No. 87 and 98 and indicates that the enactment has been framed against the background of those instruments. The Sixth Edition of the Compilation of Decisions, published in 2018, is the latest consolidated edition issued by the ILO. It may, therefore, be taken into account insofar as it assists in determining the meaning of the provision without departing from the language and scheme of the IRA 2012.

44. The relevant extracts from the CFA's Compilation of Decisions are reproduced below:

606. The determination of conditions of eligibility for membership or office is a matter that should be left to the discretion of union/employer organization by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right.

609. The requirement of membership of an occupation or establishment as a condition of eligibility for union office are not consistent with the right of workers to elect their representatives in full freedom.

610. If the national legislation provides that all trade union leaders must belong to the occupation in which the

organization functions, there is a danger that the guarantees provided for in Convention No. 87 may be jeopardized. **The Committee wishes to recall that, given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that a trade union leader leaves the work that he or she was carrying out in a given undertaking, should not affect his or her trade union status or functions unless stipulated otherwise by the Constitution of the trade union in question.** In fact, in such cases, the laying off of a worker who is a trade union official can, as well as making him forfeit his position as a trade union official, affect the freedom of action of the organization and its right to elect its representatives in full freedom, and even encourage acts of interference by employers.

611. For the purpose of bringing legislation which restricts union office to persons actually employed in the occupation or establishment concerned into conformity with the principle of the free election of representatives, it is necessary at least to make these provisions more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of an organization.

(Bold added)

It may be seen that Paragraph 606 of the Compilation states the general principle that conditions of eligibility for trade-union membership or office should ordinarily be left to the union's own constitution and by-laws, without intervention by public authorities which impairs that freedom. Paragraphs 609 and 610 apply the principle specifically to occupational qualifications. They state that requiring membership of a particular occupation or establishment as a condition for holding union office is inconsistent with the right of workers to elect their representatives in full freedom. Such a requirement also exposes a union to employer interference, because the dismissal of an office-bearer could automatically deprive that person of union office. Paragraph 611, which bears directly upon the present controversy, states that legislation restricting union office to persons actually employed in the occupation or establishment concerned should, at the least, be made flexible by: (i) admitting persons previously employed in the occupation as candidates; and (ii) exempting a reasonable proportion of the officers from the occupational requirement. The two limbs are stated separately. The second is not confined to former employees; it contemplates a reasonable proportion of office-bearers who need not satisfy the

occupational requirement at all. It follows that the ILO recognises that trade unions should have the right to freely organize themselves without government interference and that members of the executive do not necessarily have to belong to the same establishment and can be outsiders.

45. Some of the decisions from which these principles are drawn may be relevant to be considered further. In **Complaint against the Government of India presented by the Garment and Allied Workers' Union (GAWU)**, Case No. 2991, the registration of GAWU had been refused, inter alia, because two applicants had been dismissed, one had resigned, and another — its President — was described by the Government as a “social activist and not a worker”. It was observed by the CFA:

With respect to the Government's statement that one applicant was rather a social activist than a worker, the Committee highlights that the requirement of membership of an occupation or establishment as a condition of eligibility for union office are not consistent with the right of workers to elect their representatives in full freedom. For the purpose of bringing legislation which restricts union office to persons actually employed in the occupation or establishment concerned into conformity with the principle of the free election of representatives, it is necessary to, at least, make these provisions more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of an organization.

The CFA was unable to accept that the altered — or, in the case of the social activist, non-worker — status of the applicants could by itself justify the denial of registration where the legislature itself permits a specified proportion of the executive to be drawn from outside the occupational category. (See 368th Report of the Committee on Freedom of Association, Case No. 2991)

46. In a case relating to **Pakistan** and brought by **United Bank Limited (UBL) Employees Union**, Case No. 2096, the CFA considered section 27-B of the Banking Companies Ordinance 1962 which excluded persons not employed by the banking company from union membership and office. The Government defended that restriction on the ground that it prevented the entry of “irrelevant workers” and outsiders as office-bearers. The CFA rejected a blanket

occupational requirement as incompatible with freedom of association and reiterated that a reasonable proportion of officers must be exempted from it.

. . . the Committee firmly expects the Government to promptly take all the necessary measures to ensure that this legislation is brought into conformity with the principles of freedom of association, by at least making it more flexible through admitting, as candidates, persons who have previously been employed in the banking company concerned and by exempting, from the occupational requirement, a reasonable proportion of the officers of an organization.

More importantly, it referred expressly to “Article 8(d)” of the IRA 2012 — actually section 8(1)(d) — and understood that provision as exempting twenty-five per cent of trade-union officers from the occupational requirement. It accordingly urged that the banking legislation be brought into line with the IRA 2012.

. the Committee notes that the 2012 Industrial Relations Act (Act No. X of 2012), which is applicable to all persons employed in any establishment or industry in the Islamabad Capital Territory or carrying on business in more than one province provides in its Article 8(d) that 25 per cent of trade union officers are exempted from the occupational requirement. The Committee encourages the Government to bring Section 27-B of the Banking Companies (Amendment) Act, 1997 in line with this legislation, so that banking sector workers employed by companies operating within a single province can benefit from an equal right to freely elect their representatives.

It may be noted that this is not an abstract comparative opinion: it is the ILO’s specialized committee’s consideration of the very provision which is before the Court and of the very objection that permitting the outside component would introduce persons unconnected with the establishment. (See 378th Report of the Committee on Freedom of Association, Case No. 2096)

47. It is settled that every statute is to be interpreted and applied, as far as its language admits, so as not to be inconsistent with the comity of nations or the established rules of international law. Statutes are not to be construed as abrogating International Law unless their language clearly leads to that result. Where two interpretations of a provision are possible, the one consistent with International Law or Pakistan’s treaty obligations is to be preferred.

Where, however, the meaning of the Municipal law is clear, it must be given effect to even though it may conflict with Pakistan's obligations under International Law. Reliance is placed on **Hanover Fire Insurance Company v Muralidhar Banechand** (PLD 1958 SC 138), **Imperial Tobacco Co of India Ltd v Commissioner of Income-Tax, South Zone, Karachi** (PLD 1958 SC 125) and **Sadia Jabbar v Federation of Pakistan** (2018 PTD 1746).

48. The Supreme Court of India in **Vishaka v State of Rajasthan** (AIR 1997 SC 3011) relied upon the General Recommendations made by the Committee on the Elimination of Discrimination against Women and observed, "*It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.*" Similarly, in **Navtej Singh Johar v Union of India** (AIR 2018 SC 4321), the Court relied on the views of the UN Human Rights Committee in *A.R. Coeriel and M.A.R. Aurik v Netherlands*, Communication No. 453/1991 and *Toonen v Australia*, Communication No. 488/1992.

49. We also note that the IRA 2012 is a piece of beneficial legislation, aimed primarily at preserving and safeguarding the interests of the labour class in its dealings with management, whose interests may not always coincide with the welfare of workers. Consistent with this beneficial character, the interpretation adopted by us preserves, within the twenty-five percent limits permitted by section 8(1)(d) of the IRA 2012, the choice of workers to include in the executive persons whom they consider suitable to represent their interests, without importing a qualification which the legislature has not prescribed and which would limit their freedom. It is well settled that such legislation is to be interpreted broadly and in a manner that advances the interests of the class for whose benefit it has been enacted. In this respect, reliance is placed on a plethora of judgments including **Ashraf Sugar Mills v Manzoor Ahmed** (2006 SCMR 1751), **Lahore Development Authority v Abdul Shafique** (PLD 2000 SC 207), **Employees Old Age Benefit Institution v Muhammed Rafique** (PLD 2026 FCC 41) and **Karachi Chamber of Commerce and Industry v Sindh Labour Court No. V Karachi** (2011 SCMR 1709) to cite but a few.

50. There is another aspect of the provision which deserves notice. Section 8(1)(d) of the IRA 2012 does not require that twenty-five percent of the executive must consist of outsiders. Its command is only that “not less than seventy-five percent” of the executive shall be drawn from amongst the workmen actually engaged or employed in the establishment, establishments or industry concerned, leaving room for the remaining up to twenty-five percent to be drawn from outsiders. It does not require that this permissible space must necessarily be filled. The provision is, therefore, enabling rather than compulsory in this respect. This construction also accords with section 3(c) of the IRA 2012, which recognises the right of workers and employers organizations to draw up their constitutions and rules to elect their representatives in full freedom, and section 7(b), which contemplates the adoption of the constitution of a trade union by a resolution of its members. **Read together, these provisions leave it ultimately to the members of the trade union, through its constitution, to determine whether and to what extent they wish to avail themselves of the latitude permitted by section 8(1)(d). They may choose an executive composed entirely of workmen employed in the establishment or industry concerned, or may, within the limit permitted by the provision, choose persons from outside that category. The law merely preserves that choice; it does not compel its exercise. Viewed thus, the provision operates for the benefit of the workers by enlarging, rather than restricting, the field from which they may choose a limited proportion of their representatives, while at the same time ensuring that at least seventy-five percent of the executive remains drawn from the workforce of the establishment or industry concerned.**

51. We, therefore, **hold** and **declare** that the remaining twenty-five percent of the members of the executive **contemplated by the proviso to section 8(1)(d) of the IRA 2012** need **not** be workmen and may include persons who are not workmen. The provision, however, does no more than permit such persons to become part of the executive; their eligibility to hold office remains subject to the constitution of the trade union and any other applicable provision of law. The individual eligibility of the petitioner to contest the election against the remaining twenty-five percent of the executive of the Union shall be determined accordingly.

52. A question was also raised regarding the maximum age of a person seeking election to the office of the executive of the trade union within the aforesaid twenty-five percent percentage, we note that no such age restriction has been prescribed by the IRA 2012. In view of the principle of separation of powers, we do not consider it appropriate for this Court to prescribe any such age limit, that being a matter for the legislature. We would, however, recommend that the legislature may consider prescribing a maximum age in the range of sixty-five to seventy years for such persons, together with an appropriate requirement as to their physical and mental fitness.

53. For the foregoing reasons, leave is granted and **the appeal is allowed**. The impugned judgment of the High Court of Sindh is set aside and the constitutional petition filed by the petitioner is allowed in the terms that the remaining twenty-five percent of the members of the executive of a trade union contemplated by the proviso to section 8(1)(d) of the IRA 2012 are **not** necessarily required to be workmen and may include persons who are not workmen.

Judge

Judge

**Announced in open Court
at Islamabad on 25.9.2026.**

Judge

APPROVED FOR REPORTING
Muhammad Ahmad