

EQUAL PROTECTION

Citation Name: 2005 SCMR 499 SUPREME-COURT

Side Appellant: TARA CHAND and others

Side Opponent: KARACHI WATER AND SEWERAGE BOARD, KARACHI

Laws Involved:

Articles 185, 188 & 25---Supreme Court Rules 1980, O.XXXIII, R.5--Civil Procedure Code (V of 1908), O.XLI, R.33

Headnote:

Review petition--Civil service---Contentions of the petitioner were that neither notice about grant of leave to appeal by the Supreme Court nor that of ex parte order by the Supreme Court was served upon him; that he was one of the petitioners who impugned the departmental orders of retrenchment and termination before the High Court, which were set aside to appeal by the Supreme Court; that the moment he came to know about the decision of the Supreme Court, he had approached the Court and filed Civil Review Petition well within time and that though he was a non-appealing party in the appeals, yet he was entitled to the same relief on the basis of principle of equality---Validity---

Held, since the services of all such persons were dispensed with by, single order, as such, there was no distinction between their case and that of the appellants and was identical on all fours--- When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum--Article 25 of the Constitution was also explicit on the point that all citizens were equal before law and were entitled to equal protection of law.

Citation Name: 2004 PLD 583 SUPREME-COURT

Side Appellant: Mian MUHAMMAD SHAHBAZ SHARIF

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Articles 184(3), 15 & 4 --- Constitutional petition under Article 184(3) of the Constitution before Supreme Court

Headnote:

Maintainability---Contentions of the petitioner were that he, being a citizen of Pakistan, had a natural and inherent right to enter and return to the country, which was guaranteed under Article 15 of the Constitution; that under Article 4 of the Constitution he had a right to be dealt with in accordance with law and was entitled to enjoy the equal protection of law; that said fundamental rights were being violated by the Authorities; that the Authorities, through the press statements (cited in the Constitutional petition) had made it clear that as soon as the petitioner landed at any airport in Pakistan he will be immediately deported; that in the recent past the family of the petitioner was not allowed to stay in Pakistan and was deported; Article 15 of the constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and reside and settle in any part thereof. The right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.

Citation Name: 2004 CLC 1353 KARACHI-HIGH-COURT-SINDH

Side Appellant: ARDESHIR COWASJEE and 11 others

Side Opponent: SINDH PROVINCE and others

Laws Involved:

Articles 8 & 25---equal protection of law and equality of citizens---

Headnote:

Article 25 of the Constitution of Pakistan, did not require all laws to apply uniformly upon all persons---Classification was always permissible provided it was reasonable and bore a direct nexus with the objects of the Legislation---No law repugnant to Article 25 of the Constitution could be made by Legislature in view of Art.8 of the Constitution.

Citation Name: 2002 PLD 521 LAHORE-HIGH-COURT-LAHORE

Side Appellant: UMAR AHMAD GHUMMAN

Side Opponent: GOVERNMENT OF PAKISTAN

Laws Involved:

Pakistan Citizenship Act 1951 ----Ss. 14(3), 14-A & 16---Pakistan Citizenship Rules, 1952, R.19-13--Constitution of Pakistan (1973), Articles 4, 25 & 199---

Headnote:

Citizenship is the most valuable right that an individual may have in a State---Due process and equality before law---Classification--- Judicial review- --Scope---Dual nationality---Declaration of intention to resume citizenship of Pakistan--Permissible dual nationality confining to the countries mentioned in S.14(3) of the Pakistan Citizenship Act, 1951 or which the Federal Government may notify---Validity--Power given in S.14(3) of Pakistan Citizenship Act, 1951 is not uniform; it has been left out to the entire discretion of the Federal Government rather to its wisdom and caprice to decide whether to issue a notification specifying a country with whom dual nationality arrangement is permissible---Neither Pakistan Citizenship Act, 1951 nor the Rules thereunder provide any guideline and the provisions are not only arbitrary on the face of it but have been proved to be so on glance of the countries with whom nationality has been made permissible and those which have been left out---Effect of provisions of Ss. 14 & 14-A, - Pakistan Citizenship Act, 1951 is that the citizens of Pakistan can retain their citizenship provided the Municipal Law of the other country, nationality of which is sought, does not prohibit dual nationality---If, however, a Pakistani citizen voluntarily renounces his citizenship of origin to acquire a foreign nationality that is his choice but no one, who is a citizen of Pakistan under Pakistan Citizenship Act, 1951 can be made to loose his citizenship unless the acquisition of foreign citizenship makes it a condition precedent and he does so or his conduct falls within the mischief of S.16, Pakistan Citizenship Act, 1951--Intention of the Legislature is to facilitate the Pakistan citizens living abroad to retain their contact with Pakistan but the language of the said provisions reflects discrimination, arbitrariness and is not in accord with the intent of the law-makers---Act of the Federal Government in not notifying a country (U.S.A.) in terms of S.14(3) of the Pakistan Citizenship Act, 1951 and thereby depriving the Pakistani expatriates of equal protection of law is discriminatory, violative of Fundamental Rights and therefore, cannot be sustained---Section 14(3) of the Pakistan Citizenship Act, 1951, insofar as same vests in the Federal Government, in absence of any guideline, the power to notify the country where citizens of Pakistan could retain their citizenship of origin notwithstanding the acquisition of foreign citizenship amounts to excessive delegation and its exercise has led to discrimination between citizens of Pakistan living in one country and the other---High Court declared S.14(3) to be violative of Arts.4 & 25 of the Constitution of Pakistan and directed that orders passed and notification issued so far shall, however, be deemed to have been issued validly and shall remain intact--High Court observed that Federal Government may have power but the law must lay down guidelines i.e. parameter within which Government may exercise its discretionary power to satisfy the considerations of due process and equality before law---Absence of such element tends to uncertainty and vagueness which are antithesis of the concept of Rule of law and citizens do not have to pay the price for such a dispensation---Pakistanis who have not renounced Pakistani citizenship shall continue to be the citizens of Pakistan and entitled to rights and liabilities accordingly---As regards Pakistani citizens who have renounced their citizenship of origin and would like to have the same resumed, law is not explicit---Facility of dual nationality is being extended to the Pakistani expatriates in U.S.A. for the first time, those Pakistanis who have renounced their original nationality under the impression that they had no option but to do that also deserve the benefit of the new deal by facilitation of resumption of the original citizenship---High Court, therefore, further directed that till such time the law and rules are suitably amended, R.19-B, Pakistani Citizenship Rules, 1952 shall be applicable mutatis

mutandis and a declaration in Form Y prescribed under the said rule shall be sufficient proof of the intent of resumption of citizenship and the declarant shall be treated as a citizen of Pakistan--Principles.

Citation Name: 2001 SCMR 1161 SUPREME-COURT

Side Appellant: ATTIYYA BIBI KHAN

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Constitution of Pakistan 1973 ----Article 25---

Headnote:

Equal protection of law and equal treatment before law--Principles stated. The following are the principles with regard to the equality of citizens:

- i. That equal protection of law does not envisage that every citizen to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- ii. That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- iii. That different laws can validly be enacted for different sexes, persons in different age groups, person having different financial standings, and person accused of heinous crimes;
- iv. That no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- v. That a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrarily and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- vi. That equal protection of law means that all person equally placed and treated alike both in privileges conferred and liabilities imposed; and

vii. That in order to make the classification reasonable, it should be.....

a. On the intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; and

b. That a differentia must be rational nexus to the object sought to be achieved by such classification