

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No.4129/2010**

**Homoeopathic Doctor Muhammad Zahir**

Versus

**Federation of Pakistan through**  
**Secretary Ministry of Health, Islamabad**

Petitioner by:	MR. AMIR ABDULLAH ABBASI, ADVOCATE
Respondent No.1 by:	MR. SHABBIR AHMED ABBASI, STANDING COUNSEL. MUHAMMAD RAFI (A.D)
Respondent No.2 by:	MR. KOSAIN FAISAL MUFTI, ADVOCATE
Date of Decision:	14-01-2011

**JUDGMENT**

**Riaz Ahmed Khan J:** Facts constituting the background of instant writ petition are that in order to promote and popularize the Unani, Ayurvedic and Homoeopathic Systems of Medicine, to regulate education and research in, and to provide for the registration of practitioners of, those systems of medicine, the Government enacted ***The Unani, Ayurvedic and Homeopathic Practitioners Act, 1965***. Section 3 of the Act *ibid* provides that the National Council for Homoeopathy would be established. Section 4 of the same Act provides for the nomination of members. Section 5 is regarding composition of the National Council for Homoeopathy, which provides that 11 members of the Council would be elected from amongst registered and listed practitioners of the Unani System of Medicine. Section 22(3) of the said Act provides that the examination shall be held under control of an examining body to be appointed by the Federal Government after consulting the council.

2- The petitioner in the instant case is a Homoeopathic Doctor and was elected member of National Council in September, 2006. The petitioner was appointed as member of Examining Body of the National Council for Homoeopathy (NCH) vide Notification dated 01-02-2007. After about three years, the petitioner alongwith another person namely Dr. Ch. Muhammad Ashraf was removed/replaced from the membership of Examining Body vide notification No.F.2-14/2006-HOMOEEO (Pt), dated 16-09-2010. The petitioner, thus, filed the present writ petition challenging the said order regarding replacement/ removal of his membership of Examining Body with the prayer that the said Notification be declared illegal, null & void, without any jurisdiction and authority and based on malafide, the same may be set aside.

3- I have heard learned counsel for the petitioner, learned D.A.G. for respondent No.1 and the learned counsel for respondent No.2 and also perused the record.

4- Learned counsel for the petitioner contended that the order of replacement/ removal of petitioner from Examining Body is illegal, as the same is in violation of law and rules.

5- On the other hand, the contention of the learned counsel for respondent is that there was a complaint against the petitioner and because of this complaint, the Council recommended to the Federal Government for removal/ replacement of petitioner. The Federal Government in accordance with the recommendation of the Council removed/replaced the petitioner from the membership of

Examining Body. The impugned order is, therefore, in accordance with law.

6- As far as the removal/replacement of a member of examining body is concerned, the procedure for the same is provided in Section 13(2) of The Unani, Ayurvedic and Homeopathic Practitioners Act, 1965, which is as follows:-

*“If at any time it appears to the Federal Government that any member of the council has failed to exercise or has exceeded or abused any power conferred upon him as a member of the council, any Committee or Examining Body appointed under sub-section (3) of section 22, may, if satisfied that such failure, excess or abuse has **adversely affected the efficient conduct of such member in achieving the objectives of this Act and after giving him an opportunity of showing cause against the action proposed to be taken,** by notification in the official gazette, disqualify him from the membership of the Council or, as the case may be, Committee or Examining Body.”*

7- Rule 11 of the The Unani, Ayurvedic and Homeopathic System of Medicine, Rules 1980 provides that a member appointed to a Examining Body under sub section 3 of the section 22 can be removed by the Federal Government on the recommendation of the Council.

8- Keeping in view the above said legal position, it becomes clear that a member of examining body can be replaced/removed by the Federal Government after consultation with the Council and after providing an

opportunity of showing cause against action proposed to be taken and notification is to be published in the official Gazette. In the instant case, no show cause notice was ever given to the petitioner and thus, the action taken against him is in violation of Section 13(2) of The Unani, Ayurvedic and Homeopathic Practitioners Act, 1965. Since no show cause notice was given to the petitioner, so the action taken against him is also in violation of natural justice, as the petitioner has been condemned unheard.

9- In the circumstances, the instant writ petition is accepted, the order of removal/replacement of petitioner dated 16<sup>th</sup> of September, 2010 is set aside. The respondents, however, would be at liberty to adopt the legal course as provided in the rules, if they wish to proceed against the petitioner. No order as to cost.

**(RIAZ AHMED KHAN)**  
**JUDGE**

Wajid