JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.143 of 2012
Homeopathic Dr. Jamil Akhtar Ghauri
Versus.
Federation of Pakistan etc

Date of Hearing:	22.06.2016
Appellant by:	M/s Aamir Abdullah Abbasi & Sher Afzal Khan, Advocates,
Respondents by:	M/s Niaz Ahmed Rathore and Muhammad Arbab Alam Khan Abbasi, Advocates, Khawaja Imtiaz, Standing Counsel.

MIANGUL HASSAN AURANGZEB, J:- These appeals involve common questions of law and fact, and are, therefore, being disposed of through this common judgment. The appellants in Intra-Court Appeals No.143, 144 & 145/2012, challenge the order dated 29.03.2012, passed by the learned Single Judge-in-Chambers. Vide the said order dated 29.03.2012, Writ Petitions No. 817, 818, 819 and 820/2012, were dismissed in *limine*.

2. In the said writ petitions, the petitioners/appellants, who are Homeopathic doctors, had challenged notification dated 22.03.2012, whereby, seven Homeopathic doctors were nominated by the Ministry of National Regulations and Services (Respondent No.1/Federal Government) as members of the National Council for Homeopathy ("NCH"), in supersession of notification dated 01.03.2012, whereby, the writ petitioners had been nominated by respondent No.1 as members of the NCH. Both these notifications were issued by respondent No.1 under Section 8 of the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965, ("UAHP Act").

3. The appellants' case is that they were lawfully nominated by respondent No.1 as members of NCH vide notification dated 01.03.2012, issued under Section 8 of the UAHP Act; that the appellants were appointed as members of the NCH for a term of five years in terms of Rule 15 of the Unani, Ayurvedic and Homeopathic System of Medicine Rules, 1980 ("UAHSM Rules"), which have been framed by the Federal Government in exercise

of powers conferred under Section 46 of the UAHP Act; that they were also asked by NCH to attend the inaugural meeting of the NCH; and that once they were nominated by respondent No.1 as members of the NCH, their appointment could not have been revoked or brought to an end prematurely by respondent No.1 through notification dated 22.03.2012.

4. Learned counsel for the appellants drew the attention of the Court to the notifications dated 01.03.2012 and 22.03.2012 as well as to NCH's letter dated 21.03.2012, and submitted that under the principle of *locus poenitentiae*, respondent No.1 could not have replaced or superseded notification dated 01.03.2012, which was in favour of the appellants. Furthermore, learned counsel read over Sections 3, 5, 8, 13 and 46 of the UAHP Act and Rule 15 of the UAHSM Rules and submitted that appellants had been nominated as members of the NCH for a period of five years, and that they could not have been removed without following the procedure set out in Section 13 of the UAHP Act. Furthermore, learned counsel for the appellants submitted that a presumption of correctness is attached to a notification published in the official gazette; that neither any notice was issued to the appellants nor were they afforded an opportunity of hearing before the issuance of the notification dated 22.03.2012; that no reasons had been furnished for the issuance of the notification dated 22.03.2012, which superseded and replaced the notification dated 01.03.2012; that the notification dated 22.03.2012, does not satisfy the requirements of natural justice or Section 24-A of the General Clauses Act, 1897; that the notification dated 22.03.2012, destroyed the vested rights created in favour of the appellants by notification dated 01.03.2012; that the UAHP Act or the UAHSM Rules do not pre-condition the assumption of responsibilities of the members of the NCH with an oath of office; that even otherwise, after the Division Bench of this Court suspended the operation of the notification dated 22.03.2012, the appellants have taken their oath as members of the NCH, hence, the irregularity, if any, stood cured. Learned counsel for the appellants prayed for the appeals

to be allowed by setting aside the impugned order dated 29.03.2012 and, consequently, the writ petitions to be allowed by declaring the notification dated 22.03.2012 issued without lawful authority and of no legal effect.

5. On the other hand, learned counsel for the private respondents, who were beneficiaries of the notification dated 22.03.2012, submitted that the appellants had been deliberately protracting the appellate proceedings, and, during this period, performing their functions as members of the NCH on the basis of the injunctive order dated 16.04.2012, passed by the Division Bench of this Court; that very little time is left in the five-year term of the members of the NCH; that under Section 21 of the General Clause Act, 1897, the Federal Government was at liberty to withdraw or supersede the notification dated 01.03.2012; that the notification dated 01.03.2012 was a fraudulent document, which had not been published in the official gazette; that the learned Single Judge had correctly held that since the notification dated 01.03.2012, had not been acted upon, no vested rights had been created in favour of the appellants; that *locus poenitentiae* was not available to the appellants, because they neither attended any meeting of the NCH, nor took their oath of office; and that the President of the NCH had been de-notified twice. At the conclusion of his arguments, learned counsel submitted that the private respondents would be satisfied if both the notifications dated 01.03.2012 and 22.03.2012, are set aside.

6. We have heard the arguments of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. Before we embark on the merits of the case, it is essential to appreciate the scheme of the UAHP Act. The power conferred on the Federal Government to nominate members of the NCH has to be understood in the light of the statutory scheme. NCH is a corporate body established under Section 3 of the UAHP Act. The NCH consists of 21 members, out of whom eight are nominated by the Federal Government under Section 5(a) and (d) of the UAHP Act. The Federal Government nominates four out of

the eight members after consulting the Provincial Governments concerned. For ease of reference Section 5 of the UAHP Act is reproduced herein below:-

> ***"5. Composition of the National Council for Homoeopathy.*** *The National Council for Homoeopathy shall consist of the following members namely:-*
> *(a) four members, being registered Homoeopaths, to be nominated by the Federal Government after consulting the Provincial Government concerned, of whom one shall be from each Province;*
> *(b) eleven members, to be elected from amongst themselves by registered and listed Homoeopaths, of whom five shall be from the Punjab, three from Sindh, two from the North-West Frontier Province and one from Baluchistan;*
> *(c) two members, to be elected from amongst themselves by the teachers of recognized institutions of Homoeopathy; and*
> *(d) four members, to be nominated by the Federal Government, of whom one shall be a scientist from the relevant field]* ***3****[and one Deputy Secretary (Budget), Ministry of Health who shall also be the Chairman of the Finance Committee."*

8. Section 8 of the said Act provides that the Federal Government shall publish in the official gazette the names of the President, the Vice President and other members of the NCH together with the dates on which such members are elected or nominated. Section 9(1) of the said Act provides that the members of the NCH shall be nominated or elected for such term as may be prescribed by the rules. Section 9(2) of the said Act provides that every member of the NCH shall hold office for the prescribed term and cease to hold office at the expiry thereof. Section 46 of the said Act provides that the Federal Government after consulting the NCH may, make rules to carry out the purposes of this Act. In exercise of the powers conferred under Section 46 of the said Act, the Federal Government (Ministry of Health, Special Education and Social Welfare) framed the UAHSM Rules. These Rules were published in the official gazette on 17.04.1980, and have been subjected to several amendments. Rule 15 of the said rules is reproduced herein below:-

> *"15. Term of office of members:*
> ***The term of office of the members of the Council shall be five years****, and the term of office of a member elected or nominated to a casual vacancy caused by the resignation, death or otherwise of a member shall be the remaining period of the term of the member in whose vacancy he was elected or nominated."*
> (Emphasis added)

9. A person may lose his position as a member of the NCH or be removed from the said position in the circumstances enumerated, and in accordance with the procedure set out in Section 13 of the UAHP Act, which is reproduced herein below:-

> ***"13. Disqualification of members:-- (1) No person shall be a member of the Council if:-***
> ***a. he is an undercharged insolvent.***
> ***b. he has been adjudicated by a competent court to be of unsound mind.***
> ***c. he has at any time been convicted of an offense which in the opinion of the Federal Government involves moral turpitude, or***
> ***d. his name has been removed from the register.***
> ***(2) 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 an 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 a 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."***

10. As mentioned above, vide notification No. F.107(1)/2012-S.O.(Admn), dated 01.03.2012, the appellants in I.C.A. Nos.143 to 145 of 2012, namely Homeopathic Doctors Jamil Akhtar Ghauri, Muhammad Aslam Khan & Khalid Mehmood, and four others were nominated by respondent No.1 as members of the NCH. After their nomination, the appellants, along with other notified members of the NCH, were requested by the NCH vide its letter dated 21.03.2012, to attend the 135th Inaugural Meeting of the NCH scheduled to be held on 30.03.2012. The agenda for this meeting included the oath taking of the newly nominated/elected members of the NCH. Thereafter, the appellants came to know about the issuance of notification dated 22.03.2012, which carries the same number as the earlier notification dated 01.03.2012. The said notification dated 22.03.2012, was issued in supersession of the earlier notification dated 01.03.2012. Under the notification dated 22.03.2012, seven Homeopathic Doctors were nominated by the Federal Government as members of the NCH. The only person whose name finds mention in both the

notifications, is Homeopathic Doctor Mehboob Ahmed. The issuance of notification dated 22.03.2012, caused the appellants to approach this Court in its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

11. Vide order dated 29.03.2012, the learned Single Judge-in-Chambers dismissed the four writ petitions filed by the beneficiaries of the notification dated 01.03.2012. Three of the writ petitioners assailed the said order dated 29.03.2012, by filing Intra-Court Appeals. Vide order dated 16.04.2012, this Court suspended the operation of the notification dated 22.03.2012. Ever since then, the appellants along with other Homeopathic Doctors nominated as members of the NCH under notification dated 01.03.2012, have been performing their functions as such. As these appeals have been pending since the past few years, very little time is left in the five-year term of the members of the NCH.

12. On 22.05.2012, respondent No.1 filed its para-wise comments to the Intra-Court Appeal. These written comments are most evasive to say the least. However, the position taken by respondent No.1, was that the order dated 29.03.2012, passed by the learned Single Bench was in accordance with law on the subject. Therefore, in essence, respondent No.1 defended the validity of the notification dated 22.03.2012.

13. The primary reason which prevailed with the learned Single Judge in dismissing the writ petitions, was that the notification dated 01.03.2012, had not been fully acted upon, and that the same had been withdrawn without being implemented.

14. It is not disputed that the notification dated 01.03.2012, was indeed issued by respondent No.1, and that the persons nominated as members of the NCH, were requested to attend the inaugural meeting of the NCH on 30.03.2012. Although, one of the agenda items of this meeting was the oath taking by the newly elected/nominated members of the NCH, the UAHP Act and the UAHSM Rules do not make the assumption of the charge/responsibilities of the members of the NCH conditional

on the taking of oath. Hence, there is no strength in the contention of the learned counsel for the private respondents that the notification dated 01.03.2012 had not taken effect, because the members nominated thereunder had not taken oath prior to the issuance of the notification dated 22.03.2012. Now, the notification dated 22.03.2012, was issued by respondent No.1 "in supersession" of earlier notification dated 01.03.2012. Therefore, the need for this supersession arose because the earlier notification was issued by the Federal Government nominating the members of the NCH under Section 8 of the UAHP Act. The record is totally silent as to the grounds or reasons which necessitated the issuance of the notification dated 22.03.2012. Under Section 24-A of the General Clauses, Act 1897, every authority, officer or person in exercise of powers conferred by or under any enactment is required to assign/record reasons for passing such an order.

15. Now the term of office of the members of the NCH was five years in terms of Rule 15 of the UAHSM Rules. It is nobody's case that the appellants suffered from any of the disabilities enumerated in Section 13(1) of the UAHP Act, or failed to exercise or have exceeded or abused any power conferred upon them as members of NCH. The respondent's case is that the Federal Government could have replaced the appellants three weeks after their nomination as members of NCH, since after the issuance of the notification nominating them, they had neither attended any meeting of NCH, nor had assumed charge of their responsibilities. The UAHP Act, or the UAHSM Rules do not make the attendance of a meeting of the NCH by a member nominated by the Federal Government a pre-requisite to the validity of such a nomination.

16. The statutory tenure of the appellants could have been curtailed without resort in a lawful manner to the provisions of Section 13 of the UAHP Act. It is nobody's case that the appellants had suffered any disability under any of the provisions of Section 13 (1) of the UAHP Act, or that they were liable to be disqualified for having failed to exercise or has exceeded or

abused any power conferred upon them as a members of the NCH. The manner for removal of the member of NCH was explicitly provided in Section 13 of the UAHP Act. Since, the provisions of Section 13 of the UAHP Act, have admittedly not been resorted, the Federal Government could not indirectly curtail the statutory tenure of the appellants by appointing their replacements. It is also an admitted position that the issuance of the notification dated 22.03.2012 had the effect of prematurely removing the appellants from their positions as members of the NCH.

17. Once the appellants were notified by the Federal Government as members of the NCH, vide notification dated 01.03.2012, the UAHP Act, did not stipulate any other condition for the assumption of their charge. There was no requirement in the statute or the rules for the nominated members of NCH to take oath. Although, Section 8 of the UAHP Act, provides that the names of the members of the NCH are to be published in the official gazette, the statute does not make the validity of their appointment conditional on the issuance of a gazette notification. In the case of Commissioner of Income Tax Vs. Media Network (PLD 2006 SC 787), it has been inter-alia held as follows:-

> ***"24....it all depends on the nature and context of statute whether the provisions requiring publication of a notification in the Official Gazette would be construed as directory only or mandatory so as to invalidate a notification or instructions on account of non-publication in the Official Gazette. The purpose of publication and the legal effect of non-publication of a Gazette Notification in the Official Gazette has been examined by the superior courts in a number of cases. In Jalal Din V. Natha Ram and another (AIR 1922 Lahore 474), a learned Division Bench of the High Court observed that a notification was a method implied for communicating orders, rules, etc. to the general public.....It was held that unless there be something in the language of a statute which showed that the person concerned would not commence to hold office till there was a notification in the Gazette, a provision for a notification should not be interpreted as a condition precedent to the holding of an office."***

18. As regards the contention of the learned counsel for the private respondents that the notification dated 01.03.2012 could have been withdrawn under Section 21 of the General Clauses Act, 1897, the same is not tenable because the UAHP Act (and

the rules made thereunder) is a special law providing for a fixed tenure for the members of the NCH. The said law also provides for the procedure (i.e. Section 13) for the removal of the members of the NCH. Without resort to such a procedure, the tenure of the members of the NCH could not be curtailed.

19. The rights of the appellants were created when the notification dated 01.03.2012 was issued, and thereafter, when they were requested to attend the inaugural meeting of the NCH. The issuance of a notification nominating some of the members of the NCH under Section 8 of the UAHP Act is a culmination of a consultative process with the provincial governments for the selection of the Homeopathic doctors for nomination as members of NCH by the Federal Government. The result of such a process cannot simply be undone by resort to Section 21 of the General Clauses Act, 1897. As mentioned above, the record is totally silent as to the reasons, let alone, justifiable reasons for prematurely curtailing the statutory tenure of the appellants as members nominated by the federal government to the NCH, by issuing notification dated 22.03.2012.

20. Reference to the following case law, at this stage, would be apposite:-

(i) In the case of Syed Mahmood Akhtar Naqvi Vs. Federation of Pakistan (PLD 2013 SC 195), popularly known as Anita Turab's case, the Hon'ble Supreme Court held that when the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable.

(ii) In the case of Moazzam Husain Khan Vs. Government of Pakistan etc (PLD 1958 (W.P.) Karachi 35), it has been held at page 40 of the report, as follows:-

> *"In the present case, keeping in view the definition of "tenure post" as given in the Fundamental Rules, the Government of Pakistan declared the post of Director of Intelligence Bureau as a tenure post and limited its period to five years. It goes without saying that the petitioner was entitled to hold the post for the whole term of five years."*

(iii) In the case of Allauddin Akhtar Vs. Government of Punjab

(1982 CLC 515), the petitioner was appointed to the statutory post of Chairman Board of Intermediate and Secondary Education, Lahore, for a period of four years under Section 14 of the West Pakistan (Board of Intermediate and Secondary Education, Lahore) Ordinance, 1961. One of the terms of the appointment of the petitioner was that the term of his office was to be for a period of four years subject to the condition that the controlling authority or the government could terminate the deputation earlier in the public interest. Fearing his removal from the said post, prior to the expiry of his tenure, he filed a petition under Article 199 of the Constitution before the Hon'ble Lahore High Court. Subsequently, the petitioner was removed by the controlling authority. The Hon'ble High Court allowed the writ petition and declared the petitioner to be the holder of a post having a statutory tenure of four years and that his tenure could not be reduced by reference to such terms and conditions of his appointment as were found to be inconsistent or mere surplusage.

(iv) In the case of Dr. Aftab Ahmad Malik Vs. University of Engineering and Technology (2005 PLC (C.S.) 80, the petitioner was appointed as Chairman of Computer Sciences and Information Technology Department in the University of Engineering and Technology, Lahore, for a period of three years, under the Statute appended with the University of Engineering and Technology Act, 1974. Before the completion of his tenure, the Syndicate of the said University decided to relieve the petitioner from his duties as Chairman of the said department. The petitioner invoked the jurisdiction of the Hon'ble Lahore High Court against his premature removal from the said post. The Hon'ble High Court accepted his writ petition and declared the order relieving the petitioner from his duties as without lawful authority and of no legal effect. Furthermore, it was held as follows:-

> *"Cumulative reading of both would leave no doubt that it was a statutory appointment with fixed term of tenure. One thing which is conspicuously noticeable is that neither the Statute nor the appointment order makes mention of any eventuality or*

situation in which the appointment could be cancelled or the term could be reduced or curtailed, therefore, the general principle governing such fixed term statutory appointments are to be kept in view."

(v) In the case of Homoeopathic Doctor Muhammad Zahir Vs. Federation of Pakistan (2011 CLC 427), the petitioner, an elected member of National Council of Homeopathy, was appointed as member of the Examining Body of the National Council for Homoeopathy. After about three years, the petitioner was removed/replaced. The petitioner filed a writ petition before this Court challenging his removal/replacement from the Examining Body. The learned Single Judge of this Court, after making reference to Section 13 of the UAHP Act, allowed the writ petition by holding as follows:-

"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."

(vi) In the case of Mrs. Jamshed Naqvi Vs. Azad Jammu & Kashmir Government (2013 PLC (C.S.) 1037, it has been held as follows:-

"In view of above, it can safely be concluded that the petitioner has been appointed for fixed period of 3 years under the Azad Jammu and Kashmir Teachers Foundation Act, 1997, therefore, she can only be removed in case of inefficiency, unsuitability and misconduct under subsection (3) of section 7 of the Azad Jammu and Kashmir Teachers Foundation Act, 1997 not otherwise before completion of her tenure."

(vii) In the case of Babar Sattar Vs. Federation of Pakistan (2015 CLD 134), this Court held that the Public Sector Companies (Corporate Governance) Rules, 2013, framed in exercise of powers conferred by Section 506 of the Companies Ordinance, 1984, read with Section 43 of the SECP Act, 1997, were mandatory and strict compliance therewith was an obligation of

every stakeholder in all Public Sector Companies and the Federal Government. Rule 5 of the Corporate Governance Rules, 2013, *inter-alia* provides that a Director appointed or elected shall hold office for a period of three years, unless he resigns or is removed in accordance with the provisions of the Companies Ordinance, 1984. Although, the Corporate Governance Rules are said to apply to public sector companies and not to statutory bodies like the NCH, the tenure for which the members of the board or a governing body are appointed, whether under a special statute or under the Corporate Governance Rules, must be respected. Such tenure cannot be prematurely curtailed by resort to Section 21 of the General Clauses Act, 1897.

(viii) In the case of P.L.Dhingra Vs. Union of India (AIR 1958 SC 36), it has been held as follows:-

> ***"12...An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from service."***

(ix) In the case of L. P. Agarwal Vs. Union of India (AIR 1992 SC 1892), it has been held as follows:-

> ***"16. ... Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever."***

(x) The case of P. Venugopal Vs. Union of India ((2008) 5 SCC 1) was also in respect of termination of appointment to the post of Director of All India Institute of Medical Sciences. Therein, the incumbent was appointed for a period of five years but had to suffer a premature termination and consequent removal by curtailing the term. The Supreme Court of India in paragraph 32 of the report held as follows:-

> ***"From the above quotation, as made in para 16 of the said decision of this Court, it is evident that this Court has laid down that the term of 5 years for a Director of AIIMS is a permanent term. Service conditions make the post of Director a tenure post and as such the question of superannuation or prematurely retiring the incumbent of the said post does not arise at all. Even an outsider (not an existing employee of AIIMS) can be selected and appointed to the post of Director. The appointment is for a tenure to which principle of superannuation does not apply. "Tenure" means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure."***

21. Therefore, going by the above dictum, if the appointment is to a tenure post, such a person will go out of the office on completion of his tenure. Rule 15 of the UAHSM Rules make the post of a member of NCH a tenure post and as such the question prematurely retiring the incumbent of the said post, without following the process envisaged by Section 13 of the UAHP Act, does not arise at all. In our view, the appointment to the post of Director is a term appointment and such term can be curtailed or tinkered with only for justifiable reasons that too in accordance with the Section 13 of the UAHP Act, and after observing the principles of natural justice.

22. In the appellate proceedings, the Secretary, Ministry of National Health Services, had appeared before the Court and taken the position that both the notifications were invalid. He also categorically stated that an inquiry had taken place to identify the persons who were instrumental in this illegality. In order to know the fate of the inquiry, we, vide order dated 09.06.2016, required the Secretary, Ministry of National Health Services to appear in person along with the relevant record on 13.06.2016.

23. The Secretary appeared before us and submitted that an inquiry committee had been constituted with a mandate to investigate the matter of issuance of the notifications dated 01.03.2012 & 21.03.2012, and to fix responsibility on the officers involved in the irregularity; that a two-member Committee had inquired into the matter and *inter alia* recommended that both the said notifications be cancelled/ withdrawn; that when the

notifications dated 01.03.2012 and 22.03.2012 were issued, the Secretary or Minister had not been appointed; that at that time, Shahzada Jamal Nazir was working as an Advisor with the rank of Minister of State, and the said notifications were issued with his approval.

24. On 13.06.2016, the Secretary filed an undated 'brief'. In this brief it is mentioned that the Cabinet Division vide office memorandum No.3-7/2011-Min.I, dated 29.02.2012, regarding the status of an Advisor, has *inter alia* opined that in *"granting the status of the Minister or Minister of State to a dignitary does not qualify him to be a Minister or Minister Incharge for a Ministry/ Division"*. Furthermore, it was mentioned that Shahzada Jamal Nazir, Advisor to the Ministry, could not be considered or deemed to be Minister Incharge in respect of the Ministry; that the Advisor could give advice or recommendations to his Ministry as and when required; that in the absence of the Minister, the Prime Minister is considered to be the Minister Incharge of a Ministry; that since notifications dated 01.03.2012 & 22.03.2012, were issued without the approval of the Competent Authority, the same were invalid – a statutory notification issued in the name of the Federal Government can only be approved by the Federal Minister or Minister of State Incharge of the Ministry/ Division concerned. It was further stated that since the said notifications dated 01.03.2012 and 22.03.2012, were issued with the approval of the Senior Joint Secretary, Mr. Javed Sarfaraz Malik, who was not competent to do so, but since he had died, therefore, the proceedings against the deceased officer abated.

25. The issue in the writ petitions before the learned Single Bench of this Court was whether notification dated 01.03.2012, could be replaced and superseded by notification dated 22.03.2012, which had the consequence of removing the appellants as members of the NCH. This contest continued during the appeal. Years after the appeals were filed, the Federal Government has taken a vault face from its original position borne out from its pleadings (i.e. that the notification dated 01.03.2012, had been correctly replaced and superseded by the

notification dated 22.03.2012), and has at a belated stage of the proceedings taken the position that both the said notifications dated 01.03.2012 & 22.03.2012, were unauthorizedly issued. We do not want to enlarge the scope of these proceedings on our own. We have confined ourselves to the issue which was before the learned Single Bench of this Court i.e. whether notification dated 01.03.2012, could have lawfully been replaced and superseded by notification dated 22.03.2012. The Federal Government may, should so desire, act upon the recommendations of the Inquiry Committee in accordance with the law, and this Court does not intend to place any obstacle in its way.

26. In view of the aforementioned, the appeals are allowed and the impugned notification dated 22.03.2012, is set aside. Consequently, the writ petition filed by the appellants are allowed and the notification dated 22.03.2012 issued by respondent No.1, which had the effect of curtailing the five-year tenure of the appellants as members of the NCH, is declared without any lawful consequence.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE) **(JUDGE)**

APPROVED FOR REPORTING

Qamar Khan*