

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.910/2019**

Amjad Ali Awan

*versus*

FOP through Secretary Establishment Division, Islamabad, etc.

&

**Crl. Org. No.89-W/2019**

Amjad Ali Awan

*versus*

Dr. Ijaz Munir, Secretary Establishment Division, Islamabad, etc.

Petitioner by:	Mr. Omair Saleem Malik and Mr. Nadir Altaf, Advocates.
Respondents by:	Raja Aftab Ahmad, AAG. Mr. Rizwan Faiz Muhammad and Barrister Afzal Khan, Advocates of respondents No.2 & 3. Mahmood Khan Lakho, Section Officer (Lit-V), Establishment Division, Islamabad.
Date of Hearing:	02.07.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this single judgment,

I intend to decide the captioned writ petition as well as contempt application for arising out of similar questions of law and facts.

2. Through the captioned writ petition, the petitioner impugns notification dated 21.01.2019, issued by Ministry of Energy/respondent No.2, whereby the Federal Government in pursuance of the Cabinet Division's decision dated 10.01.2019 has initiated recruitment process for appointment of new Chief Executive Officer of the Alternative Energy Development Board (AEDB)/respondent No.3.

3. Similarly, through the captioned contempt petition, the petitioner seeks initiation of contempt of Court proceedings against the

respondents for not complying with the order of this Court dated 13.03.2019, passed in captioned W.P. No.910/2019.

4. Brief facts referred in the instant writ petition are that petitioner has been appointed as the Chief Executive Officer of the Alternative Energy Development Board ("AEDB") on 18.05.2015 in terms of Section 5 of AEDB Act, 2010, however, Ministry of Energy/respondent No.2 issued notification dated 21.01.2019 extending therein the period of petitioner as CEO for three (03) months or till recruitment of new CEO of AEDB, pursuant to which Secretary Establishment Division, Islamabad/respondent No.1 got published advertisement in leading national daily newspapers to solicit applications for the post of CEO of AEDB. Hence, the instant writ petition and contempt petition.

5. Learned counsel for petitioner contends that terms and conditions of the employment of CEO of AEDB are governed and protected in terms of AEDB Employee Service Regulations, 2013, which is special law and overrides the general law; that the impugned notification and advertisement is the result of malafide intention on the part of respondents to imply that position of CEO of AEDB is contractual in nature, hence detrimental to the fundamental rights of petitioner; that mere issuance of notification extending therein the time period of CEO of AEDB does not change the nature of job from regular to contractual; that advertisement cannot be published to fill in position of CEO of AEDB unless it is vacant, which is duly filled by the incumbent petitioner since 2015, therefore, the acts of respondents No.2 and 3 with

respect to issuing of impugned notification and advertising the post of CEO through impugned advertisement are illegal, which are liable to be declared of no legal effect.

6. Conversely, learned AAG as well as learned counsel for respondents No.2 and 3 opposed the instant writ petition on the grounds that petitioner is neither a regular employee of AEDB, nor his employment in AEDB is governed by the AEDB Employee Service Regulations, 2013 as AEDB Act, 2010 clearly states that the CEO of AEDB will be appointed by the Federal Government on such terms and conditions as decided by the Federal Government, which otherwise have not been finalized till now and the petitioner is still getting remunerations of CEO of AEDB resulting into gross irregularity since 2015; that the normal tenure for executive posts in AEDB is three (03) years and the petitioner has already served for more than three (03) years in absence of terms and conditions of the post the petitioner holds; that pursuant to publishing of impugned advertisement for the post of CEO, the petitioner also applied for the same vide his application dated 01.03.2019, thus he has accepted the decision of Cabinet Division for announcing vacant post of CEO; that Section 5 of the AEDB Act, 2012 clearly states that appointment of CEO together with terms and conditions thereof will be determined by the Federal Government.

7. Arguments heard, record perused.

8. Perusal of record reveals that the petitioner was appointed as Chief Executive Officer in the Alternative Energy Development Board (AEDB) vide notification dated 18.05.2015 with the following effect:

**GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION**

\*\*\*

No.1/15/2015-E-6

Islamabad, the 18<sup>th</sup> May, 2015

**NOTIFICATION**

*Mr. Amjad A. Awan, is appointed as Chief Executive Officer (CEO), Alternative Energy Development Board (AEDB) under Ministry of Water and Power, in terms of Section 5 of AEDB Act, 2010, with immediate effect and until further orders.*

9. Pursuant to issuance of above notification the petitioner started performing his duties as CEO of AEDB, however dispute arose when the Federal Government issued another notification dated 21.01.2019 for recruitment of CEO of AEDB. For ready reference, the said notification is reproduced as under:

**GOVERNMENT OF PAKISTAN  
MINISTRY OF WATER AND POWER**

\*\*\*

Islamabad the, 19 May, 2015

**NOTIFICATION**

*No.Ent.9(5)/2015 Entities. In pursuance of the Establishment Division's notification number 1/15/2015-E-6 dated 18-05-2015, Mr. Amjad A. Awan is appointed as Chief Executive Officer in Alternative Energy Development Board with immediate effect and until further orders on the terms and conditions to be decided/determined by the Federal Government under the AEDB Act, 2010.*

10. In order to resolve the controversy as to whether the petitioner is continued to be a CEO till his date of his superannuation or his

appointment is for specific tenure, I have gone through the earlier advertisement dated 27.11.2014, under which the petitioner appointment has been made, and observed that the same is silent qua the tenure. However, the notifications of appointment dated 18.05.2015 and 19.05.2015 issued by Government of Pakistan clarifies the proposition as it has been stated therein that petitioner has been appointed as CEO of AEDB in terms of Section 5 of AEDB Act, 2010 with immediate effect and *until further order*.

11. The above referred connotation "*until further order*" used by the Federal Government in the notification clarifies the proposition that it is subject to decision of the competent authority. To further clarify the said phrase, references can be made to celebrated dictionaries i.e. Collins Dictionary and Macmillan Dictionary, whereby the said connotation of "*until further order*" has respectively been defined as "*If a situation is said to exist until further notice, it will continue for an uncertain length of time until someone changes it*" and "*until someone announces that a situation has changed or no longer exists.*" Taking into account the said unambiguous definitions, it is clear that the word "someone" used therein refers to "Federal Government" in this case, which, at relevant time, can make desirable changes with respect to act done with the pre-condition of "*until further order*" or otherwise set the said act ceased to exit.

12. I have also gone through Section 5 of the AEDB Act, 2010, which deals with terms and conditions of CEO. The relevant Section is reproduced as under:

*"Terms and conditions of office of the Chief Executive Officer CEO).---(1) The Chief Executive Officer shall be appointed by the Federal Government and the terms and conditions of the*

*Chief Executive Officer, his remuneration and privileges shall be such as may be determined by the Federal Government."*

13. The above referred provision of law imposes a duty and obligation upon the Federal Government to appoint a CEO of AEDB as well as to settle terms and conditions, remuneration and privileges thereto. In the aforesaid Section, the legislature has used word "**determined**", whereas the ordinary meaning of the term "**determined**" as referred in the Oxford English of Thesaurus is "**to control, decide, regulate, direct, rule, dictate, govern, condition, resolved.**" On the other hand, no specific order has been placed on record through which the terms and conditions of the petitioner as CEO have been determined. However, Section 18 of the AEDB Act, 2010 extends powers to the Federal Government on the recommendation of AEDB to make rules to carry out purposes of this Act, whereas Section 19 of the AEDB Act, 2010 provides powers to the AEDB to make regulations not inconsistency with the Act and Rules to carry out the purposes of the Act. However, the specific provision dealing with the terms and conditions of officers staff, members, experts, advisors and consultants is Section 19(2)(b), which is exclusive jurisdiction of the AEDB in terms of the Regulations. However, as per stance of both the parties, no rules have been formulated till date and the regulations in terms of Section 19 of the Act has been placed on record, known as AEDB Employee Service Regulations, 2013, whereby Regulation 6 defines the CEO meaning thereby an officer appointed by the Federal Government under Section 5 of the AEDB Act, 2010. Similarly, Regulation 3.4 defines the Federal Government as an appointing authority of the CEO of AEDB, while the concept of superannuation has been referred in Regulation 3.16,

whereby the age for retirement has been fixed as 60 years. The concept of resignation and termination from service has been defined in Chapter 17 and it has specifically been referred in Regulation 17.4 that any matter not covering under these Regulations will be decided in the light of Rules/Instructions on the subject issued and amended from time to time by the Federal Government.

14. The above referred discussion of the law and Regulations does not confer any concept of permanent employment in any circumstance in favour of the petitioner, even otherwise, the terms used in the appointment notification i.e. "*till further order*" conveys a meaning contingent to prospective decision of the Federal Government or the doctrine of pleasure comes into play.

15. The notification impugned by the petitioner dated 21.01.2019 further confirms that the Cabinet Division pursuant to its decision dated 10.01.2019 regularized the tenure of petitioner as CEO of the AEDB w.e.f. 20.05.2018 to 09.01.2019, which clearly shows that the Federal Government determined the tenure of petitioner's services as CEO for 03 years from date of his appointment till 20.05.2018 and the tenure has further been regularized for three (03) months with a condition that his position is intact w.e.f. 10.01.2019 or till recruitment of new CEO, whichever is earlier. There is no denial to proposition that the Federal Government can determine the rights and privileges relating to appointment and termination of the CEO of AEDB under Section 5(1) of the AEDB Act, 2010. Even, the very appointment of petitioner in the year 2015 was made in exercise of powers under Section 5(1) of the Act and at this stage the new recruitment process has also been commenced by the

Federal Government while exercising the same powers available under Section 5(1) of the Act.

16. Keeping in view the above discussion, petitioner has failed to make out his case, as he has completed his tenure of service, which has been determined by the Federal Government in terms of Section 5 of the AEDB Act, 2010, therefore, the instant writ petition is misconceived and the same is hereby is **DISMISSED**.

17. Likewise, the captioned criminal original petition filed by the petitioner for issuance of contempt of court proceedings against respondents for not complying with the order of this Court dated 13.03.2019 is hereby **DISMISSED** having become infructuous firstly for the reason that the instant writ petition of the petitioner has been dismissed and secondly that no contempt with respect to direction of this Court passed vide order dated 13.03.2019 is visible on the part of respondents as respondents have merely initiated recruitment process, rather appointed a new CEO of AEDB, as directed by this Court in the said order.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.