JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4149 of 2018
Vadiyya S. Khalil and others
Versus
Federation of Pakistan through Secretary, Cabinet Division and others

Dates of Hearing:	16.10.2019 & 30.01.2020
Petitioner by:	Mr. Jahanzeb Sukhera, Advocate
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Mr. Khurram M. Hashmi, Advocate for respondent No.4 Mr. Noman A. Farooqi, Chief Prosecutor General, C.C.P. Syed Farhan Shah, Deputy Prosecutor, C.C.P. Mr. Aish K. Khan, Management Executive, C.C.P. Mr. Sajeel Sheryar Swati and Ch. Hassan Murtaza Mann, Advocates/*Amici Curiae*

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners impugn the notifications dated 15.10.2018 issued by the Government of Pakistan (Finance Division) whereby petitioner No.1's appointment as Member as well as Chairperson, Competition Commission of Pakistan **("C.C.P.")**, and petitioners No.2 and 3's appointments as Members, C.C.P. were terminated with immediate effect. The said notifications were issued pursuant to the decision taken by the Federal Cabinet on 04.10.2018.

2. Vide Finance Division's notification dated 14.12.2017, the Federal Government, in exercise of the powers conferred by Section 17 of the Competition Act, 2010 **("the 2010 Act")**, re-appointed petitioner No.1 as the Chairperson, C.C.P. for a second term of three years with effect from 17.12.2017. Additionally, vide Finance Division's notification dated 04.12.2017 issued in terms of Sections 14(2) and 17 of the 2010 Act, petitioners No.2 and 3 were appointed as Members, C.C.P. for a period of three years with immediate effect.

3. Mr. Jahanzeb Sukhera, Advocate, learned counsel for the petitioners, submitted that the petitioners' appointments could

have been revoked by the Federal Government only in the manner and for the reasons prescribed in the 2010 Act; that the impugned notifications dated 15.10.2018 are devoid of reasons; that neither has any inquiry been conducted against the petitioners nor has any show cause notice been issued to them at any stage; that the posts against which the petitioners were appointed were tenure posts; that the statutory tenure of three years for which the petitioners were appointed could not have been arbitrarily curtailed at the whims of the Federal Government; that the impugned notifications have been issued in violation of the principles of natural justice and Section 19 of the 2010 Act; that the petitioners do not suffer from any of the disabilities enumerated in Section 14(6) of the 2010 Act; and that at no material stage was any allegation leveled against the petitioners that they suffered from any of the said disabilities. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

4. Barrister Khurram M. Hashmi, learned counsel for respondent No.4/C.C.P. submitted that the Chairman and Members of the C.C.P. could only be removed in accordance with the procedure prescribed in Section 19 of the 2010 Act; that the appointments of the Chairman and Members of the C.C.P. are tenure-based and not at the pleasure of the Federal Government; that the said appointments had been made tenure-based so that the Chairman and Members of the C.C.P. could take decisions without any fear of being victimized by the Federal Government; that the Chairman and Members of the C.C.P. in furtherance of the objectives of the 2010 Act take decisions to inhibit cartels, abuse of dominant position and deceptive marketing practices; that they take decisions to promote competition and introduce a system of checks and balances so that the economy flourishes in a manner that is beneficial for the people of Pakistan; that the notification for the petitioners' appointments was issued after the judgment of the Hon'ble Supreme Court in the case of Mustafa Impex Vs. Government of Pakistan (PLD 2016 SC 808); that the petitioners were not associated in the process for their appointments; and that the petitioners could not be penalized for any irregularity

committed by the Federal Government in their appointment process. Learned counsel for the C.C.P. prayed for the passing of an order as this Court deems appropriate.

5. Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General submitted that the mistake committed by the Federal Government in making the petitioners' appointments was rectified with the issuance of the impugned notifications dated 15.10.2018; that in the case of Mustafa Impex Vs. Government of Pakistan *(supra),* it has been held that the *"Federal Government is the collective entity described as the Cabinet constituting the Prime Minister and the Federal Ministers";* that in the said case, it was also held that where a statutory power exercisable by the Federal Government is exercised by a Secretary, a Minister or the Prime Minister, especially in relation to fiscal matters, it would be constitutionally invalid and a nullity in the eyes of the law; that under Section 14(2) of the 2010 Act, the Members of the C.C.P. are to be appointed by the Federal Government whereas under Section 17(1) of the said Act, the Chairman of the C.C.P. is also to be appointed by the Federal Government; that the notifications for the petitioners' appointments were issued after the approval of the Prime Minister and the Finance Minister in exercise of the powers delegated by the Federal Cabinet on 07.02.2017; that the provisions of the 2010 Act do not empower the Federal Government to delegate its powers to appoint the Chairman and Members of the C.C.P. to the Prime Minister or the Finance Minister; that since the petitioners' appointments were not made with the approval of the Federal Cabinet (i.e. the Prime Minister and the Federal Ministers), the same were unlawful and were therefore correctly recalled vide the impugned notifications dated 15.10.2018; and that even otherwise under the provisions of Section 21 of the General Clauses Act, 1897, the notifications for the appointment of the Chairman and Members of the C.C.P. could have been rescinded or undone by the Federal Government. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

6. Messrs Hassan Murtaza Mann and Sajeel Sheryar Swati, the learned *Amici Curiae,* came up with a well prepared brief on the

subject and submitted that a tenure post was defined by Fundamental Rule 9(30-A) to mean a permanent post which an individual government servant may not hold for more than a limited period; that the petitioners had been appointed against tenure posts for a period of three years; that the period of their appointments could not be arbitrarily reduced by the executive; that since the Members and Chairman of the C.C.P. have to perform *quasi judicial* functions, it was imperative for their tenure to be protected by Statute; that under Section 14(2) of the 2010 Act, the Members and Chairman, C.C.P. are to be appointed by the Federal Government; that there is no provision in the 2010 Act under which the powers of the Federal Government can be delegated; that although the notifications whereby the petitioners were appointed as Members of the C.C.P. clearly provide that their appointments had been made by the Federal Government but in fact the said notifications had been issued after the Federal Cabinet had delegated its power to appoint the Members of the C.C.P., vide its decision dated 07.02.2017, to the Finance Minister and the Prime Minister; that the impugned notifications whereby the petitioners' appointments had been terminated were not in consonance with Section 19(1) of the 2010 Act; that it is an admitted position that the petitioners had not become disqualified under Section 14(6) of the 2010 Act; that even where the disqualification of a Member arises under Section 14(6) of the 2010 Act, a Member cannot be removed or his appointment revoked without an inquiry by an impartial person or body of persons constituted in accordance with such procedure as may be prescribed by Rules made by the Federal Government; and that Section 19(2) of the 2010 Act provides *inter alia* that a Member or a Chairman of the C.C.P. shall not be removed unless he/she is provided a reasonable opportunity of being heard in his/her defence. The learned *Amici Curiae* referred to catena of case law in support of their submissions.

7. I have heard the contentions of the learned counsel for the contesting parties, the learned Deputy Attorney-General as well as the learned *Amici Curiae* and have perused the record with their able assistance.

8. Before I embark on the merits of the case, it is essential to appreciate the scheme of the 2010 Act *qua* the appointments of the Members and Chairman, C.C.P. The C.C.P. was established under the provisions of the 2010 Act with the aim to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. It is not disputed that the C.C.P. is a special *quasi*-judicial law enforcement authority entrusted with a special mandate and special powers under the provisions of the 2010 Act.

9. Section 15(1) of the said Act provides that the Chairman shall be the Chief Executive of the C.C.P. and shall, together with the other Members, be responsible for the administration of the affairs of the C.C.P. Section 14(2) of the 2010 Act provides that the Members shall be appointed by the Federal Government and from amongst the Members of the C.C.P. the Federal Government shall appoint the Chairman. Additionally, Section 14(5) of the said Act provides that no person shall be recommended for appointment as a Member unless that person is known for his integrity, expertise, eminence, and experience for not less than ten years in any relevant field including industry, commerce, economic, finance, law, accountancy, or public administration, provided that the Federal Government may prescribe qualifications and experience and mode of appointment of such Members in such manner as it may prescribe.

10. The period for which the Chairman and Members of the C.C.P. can be appointed has been fixed by Section 17(1) of the 2010 Act to be three years. In this regard, the said Section and its *proviso* are reproduced herein below:-

> ***"17. Term of office.—(1) The Chairman and Members of the Commission shall be appointed for a term of three years on such salary, terms and conditions of service as the Federal Government may by rules prescribe:***
> ***Provided that the Chairman and Members shall be eligible for re-appointment for such term or terms but shall cease to hold office on attaining the age of sixty-five years or the expiry of the term whichever is earlier."***
> **(Emphasis added)**

11. Section 14(6) of the 2010 Act provides that no person shall be appointed or continued as a Member if he (a) has been convicted

for an offence involving moral turpitude; (b) has been or is adjudged insolvent; (c) is incapable of discharging his duties by reason of physical, psychological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government; (d) absents himself from three consecutive meetings of the C.C.P. without obtaining leave of the C.C.P.; (e) fails to disclose any conflict of interest at or within the time provided for such disclosure under the 2010 Act or contravenes any of the provisions of the said Act pertaining to unauthorized disclosure of information; or (f) is deemed incapable of carrying out his responsibilities for any other reason.

12. The procedure for the removal of any Member or the Chairman of the C.C.P. is provided in Section 19 of the 2010 Act. Section 19(1) of the said Act provides *inter alia* that the appointment of any Member or the Chairman may, at any time, be revoked and he may be removed from his office by order of the Federal Government *"if it is found that such person has become disqualified under sub-section (6) of section 14"*. Section 19(1) of the said Act has been made subject to subsection 19(2) which provides *inter alia* that unless a disqualification referred to in Section 19(1) of the said Act arises from the judgment or order of a Court or Tribunal of competent jurisdiction under any relevant provision of applicable law, a Member or the Chairman of the C.C.P. shall not be removed or his appointment revoked without an inquiry by an impartial person or a body of persons constituted in accordance with such procedure as may be prescribed by rules made by the Federal Government. Furthermore, it is provided that such rules shall provide for a reasonable opportunity for the Member or the Chairman to be heard in defence. Till date, the rules providing for a procedure for holding an inquiry have not been framed. Such rules are yet to be framed. The Competition Commission (Salary, Terms and Conditions of Chairman and Members) Rules, 2009 do not prescribe the procedure for holding an inquiry against any Member or Chairman of the C.C.P.

13. Having discussed the statutory scheme for the appointment of the Chairman and Members of the C.C.P. and the circumstances

in which their appointments can be discontinued, it is apt to mention that vide notification dated 14.12.2017, petitioner No.1 was re-appointed as a Member as well as Chairperson of the C.C.P. for a term of three years with effect from 17.12.2017. The said notification was issued in exercise of the powers conferred by Section 17 of the 2010 Act. Petitioners No.2 and 3 had also been appointed for a period of three years vide notification dated 04.12.2017.

14. It was also not disputed that the petitioners' appointments were made after they emerged as successful in a competitive process pursuant to advertisements issued by the Finance Division inviting applications for appointments against the post of Member, C.C.P. The advertisements required an applicant to have at least a master's degree in the relevant field from a recognized institution, and a minimum of ten years of professional experience in the areas of accountancy, commerce, economics, finance, industry, law or public administration. It is nobody's case that the petitioners did not meet the criteria for the appointment as Chairman and Members of the C.C.P. set out in the said advertisements or Section 14(5) of the 2010 Act.

15. Vide Finance Division's notifications dated 15.10.2018, petitioner No.1's reappointment as Chairperson, C.C.P. through notification dated 14.12.2017, and petitioners No.2 and 3's appointments as Members, C.C.P. through notification dated 04.12.2017, were terminated with immediate effect. The said notifications dated 15.10.2018 were assailed by the petitioners in the instant writ petition.

16. Since the period for which petitioner No.1 had been re-appointed and petitioners No.2 and 3 had been appointed as Chairperson and Members, C.C.P., respectively, had been fixed by statute, I am of the view that this period could not have been curtailed or the appointments discontinued by the Federal Government in the absence of any of the reasons enumerated in Section 14(6) of the 2010 Act or without resort to the procedure for their removal envisaged by Section 19 of the said Act. The para-wise comments filed on behalf of the Federal Government and the

C.C.P. show that the petitioners did not suffer from any of the disabilities enumerated in Section 14(6) of the 2010 Act so as to discontinue their appointments.

17. In the said para-wise comments, the termination of the petitioners' appointments was being justified on the ground that their appointments had not been in accordance with the requirements of Section 14(2) of the 2010 Act inasmuch as their appointments had been approved by the Prime Minister whereas Section 14(2) of the said Act required the appointments to be made by the Federal Government, which according to the law laid down in the case of M/s Mustafa Impex Vs. Government of Pakistan (PLD 2016 SC 808) is *"the collective entity described as the Cabinet constituting the Prime Minister and Federal Ministers."* It was also pleaded that in the said case, it had been held that *"neither a Secretary, nor a Minister and nor the Prime Minister are the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, is constitutionally invalid and a nullity in the eyes of the law."*

18. After examining the implications of the said judgment, the Finance Division moved a summary dated 06.02.2017 before the Federal Cabinet, proposing that for the sake of expeditious disposal of official work, the Federal Cabinet may delegate its authority with regard to matters, including the appointments of Chief Executive Officers of all corporations, statutory bodies, autonomous, and semi-autonomous bodies attached to the Finance Ministry to the Finance Minister with the concurrence of the Prime Minister. It is not disputed that the said summary was considered by the Federal Cabinet and approval was accorded to the proposals made in the said summary on 07.02.2017. The Federal Government was conscious as to the import of the *dictum* in the case of Mustafa Impex Vs. Government of Pakistan *(supra)* when it took the decision dated 07.02.2017.

19. The notifications dated 04.12.2017 and 14.12.2017 for the petitioners' appointments had been issued by the Finance Division. It is not disputed that these notifications had been issued after the

Finance Minister and the Prime Minister had approved the petitioners' appointments. The Ministry of Finance, in its written comments, had explicitly pleaded that *"the appointments of the petitioners were made with the approval of the Prime Minister and the Finance Minister in exercise of the powers of the Federal Government delegated by the Federal Cabinet in February, 2017."* It is not the respondents' case that the Finance Minister or the Prime Minister had not been delegated this power, but they assert that such a power could not have been delegated. There is nothing on the record to show that the delegation of powers made to the Finance Minister and the Prime Minister had been recalled by the Federal Cabinet. The Finance Division, in its summary for the Cabinet dated 27.09.2018, had proposed that the appointments made in the regulatory bodies, including the C.C.P., to be regularized from the date of their respective terms. There was no proposal in the said summary to remove the petitioners from their positions. However, the Cabinet, vide its decision dated 04.10.2018, *inter alia* decided to terminate the petitioners' appointments with immediate effect. What prevailed over the Cabinet to take a decision contrary to the proposal made by the Finance Division is nowhere to be found.

20. The notifications whereby the petitioners were appointed clearly provide that the appointments had been made by the Federal Government in exercise of the powers conferred by the provisions of the 2010 Act. Now that the petitioners' appointments have been made for the period fixed by statute, the Federal Government is estopped from taking a position that since the Federal Cabinet should not have delegated the power to appoint the petitioners, the appointments should be terminated. There is an age-old maxim that no one can derive an advantage from his own wrong *(nullus commodum capere potest de sua iniuria propria).* In holding that the petitioners' appointments could not have been recalled on the ground that they had been made in exercise of delegated power when such delegation of power by the Federal Cabinet has been admitted and not recalled at any stage, reliance is placed on the following case law:-

(i) In the case of District Coordination Officer, District Dir Lower Vs. Rozi Khan (2009 SCMR 663), it was held that if it occurs to the department that it had committed irregularities in making appointments, the appointees could not be harmed, damaged or condemned subsequently.

(ii) In the case of Federation of Pakistan Vs. Gohar Riaz (2007 PLC (C.S.) 727), it has been held that the appointing authority cannot be allowed to take the benefit of its own lapses, irregularities and violation of the prescribed procedure in making appointments. Furthermore, it was held that an employee could not be punished or terminated for any act or an omission of the employer in making an appointment.

(iii) In the case of Province of Punjab Vs. Zulfiqar Ali (2006 SCMR 678), it has been held that where an appointment of an employee is sought to be cancelled by the employer on the ground that it had been illegally appointed, it would be more appropriate if action was taken against the appointing authority which had committed misconduct by making an appointment illegally. In the said judgment, it was observed by the Hon'ble Supreme Court that the Chief Secretary of the Government of Punjab had a legal burden to take action against the officer/appointing authority for making the illegal appointment and for engaging the Provincial Government in litigation at the cost of the public exchequer.

(iv) In the case of Collector of Customs and Central Excise, Peshawar Vs. Abdul Waheed (2004 SCMR 303), it has been held that where the prescribed procedure was not followed by the competent authority in making appointments, the appointees could not be blamed for what was to be performed or done by such authority before issuing the appointment orders.

(v) In the case of Abdul Hafeez Abbasi Vs. Managing Director, Pakistan International Airline Corporation (2002 SCMR 1034), it was held that where appointments had been made contrary to the law as well as the prevalent rules and regulations, besides proceeding against the beneficiaries of the illegal

appointments, the officers who were responsible for making the illegal appointments or for implementing illegal directives should also be held responsible and severe actions should be taken against them so that in the future it may serve as a deterrent for other like-minded persons.

(vi) In the case of Secretary to the Government of N.-W.F.P, Zakat/Social Welfare Department, Peshawar Vs. Saadullah Khan (1996 SCMR 413), it was held as follows:-

> ***"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described 'purely temporary basis' The petitioners have now turned around and terminated his services irregularity and violation of rule 10(2) ibid. The premise, the least, is utterly untenable. The case of the petitioner was that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in reinstating the respondent."***

Law to the said effect was also laid down in the cases of Managing Director, Public Procurement Regulatory Authority Vs. Muhammad Zubair (2019 PLC (C.S.) 1348), Muhammad Jameel Vs. Taluka Nazim, Taluka Municipal Administration, Khairpur (2014 PLC (C.S.) 479), Noor Zeb Khan Vs. Government of Khyber Pakhtunkhwa (2014 PLC (C.S.) 1007), Ghazanfar Abbas Vs. District Education Officer (Colleges) Sialkot (2011 PLC (C.S.) 331), Muhammad Shoaib Vs. Government of N.-W.F.P (2005 SCMR 85), Muhammad Akhtar Shirani Vs. Punjab Text Book Board (2004 SCMR 1077), Water and Power Development Authority Vs. Abbas Ali Malano (2004 SCMR 630) and Managing Director, Sui Southern Gas Company Ltd. Vs. Ghulam Abbas (PLD 2003 SC 724).

21. Section 17(1) of the 2010 Act provides *inter alia* that the Chairman and Members, C.C.P. shall be appointed for a term of three years but shall cease to hold office on attaining the age of sixty-five years or the expiry of the term, whichever is earlier. A Member of the C.C.P. cannot continue in office if he/she suffers any of the disabilities enumerated in Section 14(6) of the 2010 Act.

Since the tenure for which the petitioners were appointed were fixed by statute, I am of the view that their appointments can be revoked and they can be removed from their office by the Federal Government if it is found that they had become disqualified under Section 14(6) of the 2010 Act. As regards the case at hand, it is nobody's case that the petitioners suffered from any of the disabilities enumerated in Section 14(6) of the 2010 Act, or failed to exercise or exceeded or abused any powers conferred on them by the said Act.

22. The issuance of the impugned notifications dated 15.10.2018 had the effect of prematurely cutting short the petitioners' tenure for which they were appointed under Section 14(2) of the 2010 Act. The tenure of three years for which the petitioners were appointed has been fixed by statute. Such a statutory tenure could not have been curtailed by the Federal Government by terminating the petitioners' appointments.

23. As regards the contention of the learned Deputy Attorney-General that the petitioners' appointments could have been terminated under Section 21 of the General Clauses Act, 1897, the same is not tenable because the 2010 Act is a special law providing for a fixed tenure for the Members and Chairman, C.C.P. The said law also enumerates the circumstances in which a Member can be removed (i.e. Section 14(6) of the 2010 Act). Without resort to Section 14(6) of the 2010 Act, the statutory tenure of the Members and Chairman, C.C.P. could not be curtailed. Furthermore, strong vested rights were created in the petitioners' favour after they were appointed as Members, C.C.P. through a competitive process. Petitioner No.1 was appointed as Chairperson, C.C.P. after she was appointed as Member, C.C.P. The petitioners had worked for more than ten months before their appointments were terminated. In a summary for the Cabinet dated 27.09.2018, the Finance Division had remarked that the petitioners had *"rendered services and taken numerous decisions in the public interest,"* and that their performance had also been satisfactory. The petitioners' appointments being a culmination of a competitive process could

not simply be undone by resort to Section 21 of the General Clause Act, 1897.

24. The manner in which the petitioners' appointments could have been revoked was explicitly provided in Section 19 of the 2010 Act. Their removal through a mode not contemplated by the provisions of the 2010 Act would be without lawful authority. It may also be noted that the Cabinet, in its decision dated 04.10.2018, did not hold that the petitioners' appointments were unlawful, but had decided to terminate their appointments with immediate effect. In the impugned notifications, it is also not stated that the petitioners' appointments had been made unlawful. By prematurely terminating the petitioners' appointment, the Federal Government has in effect curtailed their statutory tenure without resort to the procedure provided in Section 19 of the 2010 Act. In holding that the petitioners' statutory tenure of three years as Members and Chairperson, C.C.P. could not have been curtailed by the issuance of the impugned notifications, which have no reference to Section 14(6) of the 2010 Act, reliance is placed on the following case law:-

(i) In the case of Homeopathic Dr. Jamil Akhtar Ghauri Vs. Federation of Pakistan Etc. (2017 CLC 575), the Division Bench of this Court held as follows:-

> ***"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."***

(ii) 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 S.E.C.P. 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 N.C.H., 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.

(iii) 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."***

(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 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.**

(vi) **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."***

(vii) **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."***

(viii) 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."***

(ix) 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."***

25. In view of the aforementioned, the instant writ petition is allowed and the impugned notifications dated 15.10.2018 which had the effect of curtailing the three-year tenure for which petitioner No.1 was appointed as the Chairperson, C.C.P. and petitioners No.2 and 3 were appointed as Members, C.C.P., are

declared without any lawful consequence, and are therefore set aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**