

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3636 of 2021
Prof. Dr. Qazi Tahir Uddin

Versus

The Secretary, Pakistan Medical Commission and others

Date of Hearing: 01.11.2021
Petitioner by: M/s Isaac Ali Qazi, Shazia Malik and Rabia Habib, Advocates.
Respondents by: M/s Taimoor Aslam Khan and Mudassar Abbas, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Professor Doctor Qazi Tahir Uddin, impugns the letter dated 13.09.2021, whereby his appointment as Member (Examinations) of the National Medical Authority (“NMA”) was terminated with immediate effect by the Medical and Dental Council (“Council”), which is one of the component bodies of the Pakistan Medical Commission (“PMC”). In the said letter issued by the Secretary of the PMC, it was also mentioned that the petitioner would be paid salary for two months in lieu of the notice period.

2. The record shows that vide letter dated 30.11.2020, the PMC offered the petitioner appointment to the post of Member (Examinations), NMA for a period of four years pursuant to Section 15 of the Pakistan Medical Commission Act, 2020 (“the PMC Act”). The terms and conditions of the offer were set out in the said letter. Paragraph (f) of the said letter provided that the contract may be terminated either by the petitioner or by the Council subject to a two-month prior notice.

3. After the petitioner accepted the terms and conditions on which the offer of the appointment was made, he joined his duties as Member (Examinations), NMA with effect from 03.12.2020. Vide letter dated 13.09.2021, the PMC terminated the petitioner’s appointment pursuant to paragraph (f) of the letter dated 30.11.2020. Apparently, an amount equivalent to the petitioner’s two months’ salary has been remitted into his bank account. The

said letter dated 13.09.2021 has been assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner drew the attention of the Court to Section 15(2) of the PMC Act and submitted that the Members of the NMA are appointed through a competitive process for a fixed term of four years. He further submitted that a Member of the NMA can only be removed from his office in accordance with Section 15(7) of the PMC Act, which provides *inter alia* that a Member of the NMA may be removed from his office if, on an inquiry by the Council, he is found unable to perform the functions of his office because of mental or physical disability or on account of misconduct, including corruption and dishonesty or having been convicted of a criminal offence; that perusal of the impugned letter dated 13.09.2021 shows none of the grounds recognized by Section 15(7) of the PMC Act for the removal of a Member of the NMA were in existence; that the petitioner had been appointed for a fixed statutory tenure of four years, and his premature removal from the office of Member (Examinations), NMA is in derogation of the requirements of Section 15(7); and that the petitioner's appointment through contract was a device to circumvent the mandate of Section 15(2) and (7) of the PMC Act. Learned counsel for the petitioner prayed for the impugned letter dated 13.09.2021 to be set-aside.

5. Furthermore, learned counsel for the petitioner submitted that the petitioner does not press his prayer for an inquiry to be conducted to ascertain whether the provisions of the PMC Act and the Public Procurement Rules, 2004 had been violated in the process for the award of the contract to a private company for conducting the Medical and Dental Colleges Admission Test ("MDCAT").

6. On the other hand, learned counsel for the PMC raised objections to the maintainability of the instant petition on the ground that since the petitioner's employment with the PMC was contractual in nature, this Court does not have the jurisdiction to issue a writ of *mandamus* to the PMC directing it to take the petitioner back in service. He further submitted that the petitioner

had the alternative remedy of filing an appeal under Section 37(1) of the PMC Act against the termination of his appointment to the Medical Tribunal, which was established under the provisions of the Medical Tribunal Act, 2020; and that the said Tribunal is functional and can entertain and decide the petitioner's grievance. Furthermore, it was submitted that the petitioner's appointment was terminated after the Council considered the petitioner's performance assessment and came to a conclusion that he was unable to perform the duties of Member (Examinations), NMA; that the reasons for terminating the petitioner's appointment were not communicated to him so as not to stigmatize him or cause any prejudice to his future employment prospects; that the terms of the petitioner's appointment unequivocally empowered the Council to terminate the same on two months' notice; that the impugned termination letter dated 13.09.2021 does not, in any manner, stigmatize the petitioner; that the PMC (Service) Regulations, 2020 were non-statutory in nature and were meant for the internal use of the Council; and that the said Regulations were applicable to all employees of the PMC including Member (Examinations), NMA. Learned counsel for the PMC prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

8. In the first instance, I deem it appropriate to deal with the learned counsel for the PMC's objection to the maintainability of this petition on the ground that the petitioner had the alternative remedy of an appeal to the Medical Tribunal under Section 37(1) of the PMC Act. For the purposes of clarity, Section 37(1) of the said Act is reproduced herein below:-

“37. Appeals to the Medical Tribunal. – (1) Any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or disciplinary committee, under any provision of this Act, or rules or regulations may prefer an appeal only before the Medical

Tribunal within thirty days of the date of communication of the impugned order or direction.”

9. In another case *i.e.*, writ petition No.1380/2021 titled “Syed Muhammad Hassan Raza Rizvi Vs. Federation of Pakistan,” an objection was raised on behalf of the PMC as to the maintainability of the said petition on the ground that the petitioners in the said petition had the alternative remedy of filing appeals before the Medical Tribunal constituted under the provisions of the Medical Tribunal Act, 2020. The petitioners in the said case had obtained undergraduate medical qualifications from colleges / institutions abroad and had challenged PMC’s decision not to grant them provisional licences to undertake their house job in Pakistan without having passed the National Licencing Examination. Vide judgment dated 20.08.2021 (which has not been reported as yet), this Court turned down the PMC’s objection to the maintainability of the petition in the following terms:-

“24. The Medical Tribunal was constituted pursuant to the provisions of the Medical Tribunal Act, 2020 (“MT Act”). Vide notification dated 31.12.2020, the Prime Minister has, in exercise of the powers conferred under Section 4(1) of the MT Act, established the Medical Tribunal at Islamabad to exercise jurisdiction under the said Act. Vide another notification dated 31.12.2020, the Prime Minister has, in exercise of the powers conferred under Section 4(2) of the said Act, appointed the Chairman of the Medical Tribunal for a period of three years. The Member of the Medical Tribunal has also been appointed vide notification dated 17.02.2021. The Medical Tribunal has been made functional in Islamabad, and can take cognizance in any matter over which its jurisdiction extends.

25. Section 8 of the MT Act provides inter alia that any person aggrieved by any order or direction of the authorities pursuant to (i) the PM&DC Ordinance, (ii) the PMC Ordinance, (iii) the Pakistan Nursing Council Act, 1973, (iv) the Pakistan Health Research Council Act, 2016, (v) the Unani Ayurvedic and Homeopathic Practitioners Act, 1965, (vi) the Pharmacy Act, 1967 (vii) or any other law as may be notified by the Federal Government may prefer an appeal before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction.

26. Section 3(1) of the MT Act provides that no court shall take cognizance in any matter to which jurisdiction of the Medical Tribunal extends. The MT Act is a special law, Section 6 whereof circumscribes the jurisdiction that can be exercised by the Medical Tribunal. Section 6 of the said Act titled “jurisdiction and powers of Medical Tribunal” explicitly provides for the matters over which the Medical Tribunal has jurisdiction. In particular, under Section 6(2) of the MT Act, the Medical Tribunal has been empowered to hear and decide appeals against decisions, orders and acts of the authorities formed pursuant to (i) the PM&DC

Ordinance (ii) the PMC Ordinance (iii) the Pakistan Nursing Council Act, 1973, (iv) the Pakistan Health Research Council Act, 2016, (v) the Unani Ayurvedic and Homeopathic Practitioners Act, 1965, (vi) the Pharmacy Act, 1967 (vii) or any other law as may be notified by the Federal Government.

27. It is no longer res integra that unless a statute specifically ousts Courts' jurisdiction, ouster of jurisdiction cannot be readily inferred. The jurisdiction of a special tribunal cannot be inferred by implication. Ouster of jurisdiction is to be found only if the Court finds that the provisions of a statute excluding the jurisdiction of the Court are unequivocal, explicitly expressed and definitive. To hold that the jurisdiction of the Courts has been ousted it must be found from the language of the statute that there is an express ouster of jurisdiction of the Courts as well as an express conferment of such jurisdiction upon a special tribunal set up under the Act. In the case of Additional Collector-II Sales Tax Vs. Messrs Abdullah Sugar Mills Ltd. (2003 SCMR 1026), it was held that "ouster of jurisdiction is always through express words and can never be implied." In the case of Maula Dad Khan Vs. West Pakistan Bar Council (PLD 1975 SC 469), it was held that "it was a well-settled principle of interpretation that there cannot be an implied ouster of the jurisdiction of the Superior Courts so as to be inferentially spelt out from vaguely worded and imprecise expressions on the basis of a priori reasoning." In the case of Abbasia Cooperative Bank Vs. Muhammad Ghaus (PLD 1997 SC 3), it was held that "the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to."

28. Section 6(2) of the MT Act also provides that appeals against decisions, orders and acts of the authorities formed pursuant to any other law as may be notified by the Federal Government can be heard and decided by the Medical Tribunal. Till date the PMC Act has not been notified by the Federal Government so that appeals against the decisions, orders and acts of the authorities formed pursuant to the said Act could be filed before the Medical Tribunal. Since the PMC Act was not enacted prior to the MT Act but on the very same day (i.e. 22.09.2020), this is perhaps the reason why the PMC Act was not included in the list of statutes with respect to which the Medical Tribunal could exercise jurisdiction. Learned counsel for the PMC confirmed that a notification by the Federal Government providing for appeals, claims, complaints etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act to be filed before the Medical Tribunal is awaited. Section 3(1) of the MT Act does not oust the jurisdiction of a Court to take cognizance in a matter to which the jurisdiction of the MT does not extend. Therefore, unless and until the PMC Act is notified by the Federal Government pursuant to the provisions of Sections 6 and 8 of the MT Act, it cannot be held that the Medical Tribunal has the exclusive jurisdiction to decide appeals, claims, complaints etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act, or that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021.

29. Section 37(1) of the PMC Act provides that any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or Disciplinary Committee, under any provision of the said Act, or rules or regulations may prefer an appeal only before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction. Now, the Medical Tribunal has not been constituted pursuant to the provisions of the PMC Act but under the provisions of the MT Act, Section 37(1) of the PMC Act does not start with a non-obstante clause and therefore does not have an overriding effect over the provisions of the MT Act. Had it had an overriding effect, then it could have been held that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021. But Section 37(1) of the PMC Act cannot apply proprio vigore (by its own force) to enlarge the scope of Sections 6 and 8 of the MT Act by investing the Medical Tribunal with the jurisdiction to hear and decide appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act.

30. Had Section 6 of the MT Act not restricted the jurisdiction and powers of the Medical Tribunal only to appeals against decisions, orders, and acts of the authorities formed pursuant to the provisions of the statutes mentioned in the said Section, it could have been argued that appeals against decision, orders and acts of the authorities formed pursuant to the provisions of the PMC Act could have been filed before the Medical Tribunal. But Section 6 of the MT Act does not include the PMC Act amongst the statutes listed in the said Section. The literal interpretation of Section 6 of the MT Act would lead this Court to hold that the jurisdiction and powers of the MT Act does not extend to hearing appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act. Therefore, on the above grounds, the objection taken by the learned counsel for the PMC to the maintainability of the instant petitions is dismissed. I now proceed to decide these petitions on merits.”

10. For the reasons mentioned in the aforementioned judgment, I hold that the Medical Tribunal does not have the jurisdiction to hear appeals against decisions taken or orders passed or acts done by authorities formed pursuant to the provisions of the PMC Act, unless the Federal Government issues a notification under Section 6(2) of the Medical Tribunal Act, 2020, making such decisions, orders and acts of the authorities formed under the PMC Act appealable before the Medical Tribunal.

11. After the judgment of this Court in the aforementioned case, the Federal Government, in exercise of the powers conferred by Section 6 of the Medical Tribunal Act, 2020, issued a notification dated 15.09.2021 whereby offences provided under the PMC Act were made triable by the Medical Tribunal. For the purposes of

clarity, the operative part of the said notification is reproduced herein below:-

“In exercise of the powers conferred by section 6 of the Medical Tribunal Act, 2020 (XXXIV of 2020), the Federal Government is pleased to notify that all offences provided for under the Pakistan Medical Commission Act, 2020 (XXXIII for 2020), shall be triable by the Medical Tribunal established under the Medical Tribunal Act, 2020 (XXXIV of 2020).”

12. The said notification makes only the offences provided for in the PMC Act to be triable by the Medical Tribunal. It does not confer on the Medical Tribunal the jurisdiction to hear all appeals against decisions, orders and acts passed by authorities formed under the provisions of the PMC Act. Therefore, the contention of the learned counsel for the PMC that the petitioner could have preferred an appeal before the Medical Tribunal is not tenable.

13. Even if it were to be assumed that there was no need for a notification to have been issued by the Federal Government under Section 6(2) of the Medical Tribunal Act, 2020 to make decisions, orders and acts passed by authorities formed pursuant to the provisions of the PMC Act to be appealable before the Medical Tribunal, Section 37(1) of the PMC Act makes orders and directions of the Commission passed *“under any provision of”* the PMC Act or rules or regulations appealable before the Medical Tribunal. The PMC, in its written comments, has explicitly admitted that the order for the termination of the petitioner’s appointment *“was not passed by the Council in exercise of discretion vested in it under Section 15(7) of the Act, rather was passed in terms of Clause (f) of the Offer Letter dated 30.11.2020, which was accepted by the petitioner willfully and on his own volition.”* Since the removal or termination of the petitioner’s appointment was admittedly not *“under any provision of”* the PMC Act but purportedly pursuant to the termination clause in the “offer letter” dated 30.11.2020, I hold that the said decision was not appealable before the Medical Tribunal.

14. In paragraph 32 of this judgment, I have dealt with the learned counsel for the PMC’s objection that the petitioner could not have invoked the Constitutional jurisdiction of this Court since

his appointment was contractual. I now endeavor to decide the case on merits.

15. Section 2(1)(iv) of the PMC Act defines a “Commission” to mean Pakistan Medical Commission established under Section 3 of the said Act whereas Section 2(1)(vi) defines a “Council” to mean Medical and Dental Council. Section 3(4) provides that the Pakistan Medical Commission shall consist of (a) the Medical and Dental Council; (b) the National Medical and Dental Academic Board; and (c) the National Medical Authority consisting of Members provided for under Section 15 of the said Act.

16. As per Section 15(1) of the PMC Act, the NMA consists of seven Members, including Member (Examinations). Section 15(2) of the said Act requires the Council to appoint the Members of the NMA through a transparent process on merit *“for a term of four years.”*

17. It is not disputed that the petitioner was appointed as Member (Examinations), NMA after he emerged as the most meritorious candidate in a transparent competitive process. Vide letter dated 30.11.2020, the PMC offered the petitioner appointment to the post of Member (Examinations), NMA pursuant to Section 15 of the PMC Act.

18. The grounds on which a Member of the NMA can be removed from his office, and the procedure for such removal is provided in Section 15(7) of the PMC Act, which is reproduced herein below:-

“A member of the Authority may resign from his office by writing under his hand addressed to the President of the Council, or may be removed from his office if, on an inquiry by the Council, he is found unable to perform the functions of his office because of mental or physical disability or on account of misconduct, including corruption and dishonesty or having been convicted of a criminal offence.”

(Emphasis added)

19. It is an admitted position that at no material stage was any notice issued to the petitioner alleging that he had committed misconduct or indulged in corruption or had been dishonest. It is also admitted that till date, the petitioner has not been convicted of a criminal offence. It is also undisputed that the petitioner has not been “found”, as a result of an inquiry, to be unable to perform

the functions of his office because of mental or physical disability. In fact, the petitioner has not been subjected to any inquiry by the Council at any material stage.

20. It was asserted on behalf of the PMC that since paragraph (f) of the letter dated 30.11.2020 whereby the petitioner was offered appointment as Member (Examinations), NMA, provides that the contract may be terminated either by the petitioner or by the Council subject to a two-month prior notice, the termination of the petitioner's appointment did not suffer from any legal infirmity. Since the PMC in its written comments has admitted that the petitioner was not removed from the office of Member (Examinations), NMA, in accordance with the procedure prescribed in Section 15(7) of the PMC Act, the vital question that needs to be answered is whether the petitioner could be removed from the said office in a manner otherwise than provided in Section 15(7) *ibid*.

21. Indeed, the petitioner had accepted the terms and conditions on which he was appointed as Member (Examinations), NMA. These terms and conditions are set out in the "offer letter" issued to the petitioner by the Council on 30.11.2020. Paragraph (f) of the said letter provides that the contract may be terminated either by the petitioner or by the Council subject to two months' prior notice.

22. The petitioner's appointment letter dated 30.11.2020 specifically mentions that the appointment is being made pursuant to Section 15 of the PMC Act. As mentioned above, Section 15(2) of the PMC Act mandates that the appointment of a Member of the NMA is to be made "*for a term of four years.*" The said provision contemplates an appointment for a fixed tenure. This fixed tenure can be curtailed by removing a Member of the NMA only in accordance with the process and the grounds set out in Section 15(7) of the PMC Act and none other. This causes me to take the view that the inclusion of a termination clause in the terms and conditions of the petitioner's appointment is paradoxical to security of tenure and the protection against arbitrary or premature removal afforded to a Member of the NMA

by Section 15(2) and (7) of the PMC Act. In the event of a conflict between the requirements of Section 15(2) and (7) of the PMC Act on the one hand and the terms and conditions of the petitioner's appointment on the other, the statutory provisions are to prevail.

23. One of the powers of the Council under Section 8 of the PMC Act is to appoint the Members, officers and employees of the Commission on such terms and conditions as the Council deems necessary to carry out the purposes of the said Act and to provide for all matters relating to welfare, terms and conditions of service of the Members, officers and employees of the Commission in accordance with the Regulations framed by the Council.

24. In exercise of the powers conferred in Section 8(2)(a) of the Act, the Council made the Pakistan Medical Commission (Service) Regulations, 2020. These Regulations define an "employee" and a "member" separately. The preamble of the said Regulations read with Regulation 2 show that the said Regulations apply only to *"employees in the service of the Council"* whenever appointed or to be appointed. These Regulations do not apply to Members of the NMA or provide for the terms and conditions of their appointment. Presently, there are no regulations providing for the terms and conditions of appointment of Members of the NMA.

25. The power of the Council to prescribe terms and conditions of appointment of the Members has to be consistent and not in derogation of the provisions of the PMC Act. These terms and conditions have to be such as would be *"necessary to carry out the purposes of the"* PMC Act. The provision in the petitioner's letter of appointment empowering the Council to terminate his appointment on a two-month notice cannot be treated as *"necessary to carry out the purposes of the"* PMC Act but is mutually exclusive to not just Section 15(2) of the said Act which makes the appointment of a Member of the NMA for a fixed term of four years but also Section 15(7) which provides for the mechanism and grounds for the removal of a Member of the NMA.

26. It is an admitted position that the terms and conditions contained in the offer letter dated 30.11.2020 were authored by the PMC, and the petitioner was required to convey his

acceptance to the same. The execution of an employment contract (which contains a termination clause) for appointment against a statutory post is nothing but a design by the regulator of the medical profession to undo the effect of statutory protection afforded to a Member of the NMA by Section 15(7) of the PMC Act. Furthermore, by not resorting to the procedure for the removal of the Member of the NMA prescribed in Section 15(7) of the PMC Act, the Council has done indirectly what it was not authorized to do directly.

27. For the purposes of this case, “termination” would be a euphemism of “removal”. The effect of both on the petitioner would be the same viz. he would not be holding the office of the Member (Examinations), NMA. The distinction between “removal” under Section 15(7) of the PMC Act and “termination” under clause (f) of the petitioner’s appointment letter is nothing more than a smokescreen that the PMC, *albeit* unsuccessfully, has tried to create. The PMC’s obvious object being to get rid of the Member of the NMA by issuing a simple termination letter without resorting to the requirements of due process contemplated by Section 15(7) of the PMC Act. Any provision in the petitioner’s appointment letter not envisaged by any of the provisions of Section 15 of the PMC Act, for instance the termination clause, would be treated as mere surplusage and liable to be ignored.

28. 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. Paragraph 8 of the said judgment is reproduced herein below:-

“8. It follows therefore that while a power to make an appointment carries, in this case as well, a power to remove in view of the tenure fixed by the Legislature under subsection (2) of section 14, such a power cannot be exercised by recourse to expressions “officiating,” “deputation,” “reversion to his parent department,” which are in the context of this case are surplusage. Nor is the appointing authority free to assign residuary cause of public interest as an ordinary transfers and postings as a reason justifying interference with the tenure fixed by the statutes. Therefore, in view of the statutory tenure the Government cannot have recourse to the surplusage for interfering with the legislative will. The act, therefore, of terminating the petitioner’s tenure by reference to the terms and conditions of his appointment being officiating, on deputation or from a parent department or in public interest cannot hold good.”

29. The said judgment was authored by none other than the great jurist, the Hon'ble Mr. Justice Shafi-ur-Rehman, who rose to grace the Hon'ble Supreme Court. Hence the said judgment deserves reverence and respect.

30. Law to the said effect has also been laid down in the following cases:-

- (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 UAHS Rules make the post of a member of NCH a tenure post and as such the question of 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 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 the 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 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.”

(vi) 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.”

(vii) 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."

(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."

31. The aforementioned judgments were relied upon by this Court while allowing writ petition No.4149/2018 filed by the Chairperson of the Competition Commission of Pakistan against the notification issued by the Federal Government, whereby her appointment for a fixed tenure had been prematurely terminated. This judgment is reported as Vadiyya S. Khalil Vs. Federation of Pakistan (2020 PLC (C.S.) 460). Although vide judgment dated 23.04.2020, the Division Bench of this Court allowed intra Court appeal No.36/2020, titled "Federation of Pakistan Vs. Vadiyya S. Khalil" against the said judgment but the law laid down with respect to the termination of a fixed term appointment was not interfered with. In this regard, paragraph 8 of the judgment passed by the Division Bench of this Court is reproduced herein below:-

"8. The admitted facts are that Respondent no.1 was appointed as Member and later Chairperson of the CCP in 2014 for a fixed term of three years. On expiry of her fixed term she was reappointed for another term of three years vide notification, dated 17.12.2017. Respondent no. 2 and Respondent no. 3 were appointed as Members of the CCP vide notification, dated 14.12.2017. After enunciation of the law by the august Supreme Court in the "Messrs Mustafa Impex" case, supra, the Finance Division had solicited the delegation of powers vested in the Federal Government under various statutes in the context of making appointments against statutory posts. Perusal of the summary shows that the proposal regarding delegation of powers was general in nature and not specific to any particular statute or post. The proposal was accepted by the Federal Cabinet in its meetings held on 02.11.2016 and 07.02.2017, respectively. The reappointment of Respondent no. 1 and the

initial appointments of Respondent no. 2 and Respondent no. 3 had not been placed before the Federal Cabinet for consideration, rather, pursuant to the delegated powers, the Prime Minister of Pakistan had approved the recommendations made by the then Finance Minister. The Federal Cabinet was obviously bypassed. The prayers sought in the constitutional petition by the Respondents have been reproduced above and they had, inter-alia, explicitly sought a declaration regarding the validity of their appointments and reappointment which had purportedly been made by the Federal Government under the Act of 2010. The learned Single Judge in Chamber has eloquently dealt with the issues raised by the parties during the proceedings and in relation to the prayers sought in the petition. We have not been able to find any infirmity with the judgment of the learned Single Judge insofar as the question of termination of a fixed term appointment is concerned. However, the law laid down by the august Supreme Court in the “Messrs Mustafa Impex” case, supra, does not appear to have been properly pleaded before the learned Single Judge. The learned Single Judge has referred to the precedent law in paragraph twenty of the impugned judgment in support of the proposition that the reappointment or appointments, as the case may be, of the Respondents could not have been recalled merely on the ground of irregularity in delegating the powers which otherwise vest in the Federal Government and could only have been exercised by the Federal Cabinet i.e the Federal Ministers and the Prime Minister.”
(Emphasis added)

32. Indeed, it is a master’s prerogative to terminate a servant’s contractual appointment if the former does not find the latter’s performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. A contractual employee cannot insist for a regular inquiry to be held regarding the employer’s satisfaction with the employee’s performance. The contractual nature of a person’s employment makes his relationship with his employer that of master and servant. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of an employee’s contractual employment to be unlawful, nor hold that the employment contract continues to subsist. These principles, however, will not apply where a statute, in explicit terms, requires an appointment to be made for a fixed tenure and also prescribes a process and grounds for the removal of the appointee. The appointment by contract containing a termination clause which enables the employer to terminate the employment without assigning any reason and on the payment of a salary in *lieu* of notice would amount to circumventing the

statutory mandate of the appointment being made for a fixed tenure.

33. A Member of the NMA cannot be left at the mercy of the Council by permitting it to get rid of him prematurely or without adopting the procedure prescribed in the statute for his removal. The legislative intent behind the requirement of the appointment of a Member of the NMA to be made for a fixed tenure is to enable him to discharge his duties and make decisions independently even though such decisions may not find favour with the Members of the Council. In the case of Karamat Ullah Khan Vs. Government of West Pakistan (PLD 1966 Lahore 811), the Hon'ble Mr. Justice Sardar Muhammad Iqbal speaking for the Hon'ble Lahore High Court held that *"it is the security of tenure which creates honesty of purpose amongst the officers and makes them efficient in the discharge of their duties."*

34. By including a termination clause in the petitioner's terms and conditions of appointment, the PMC has rendered the requirements in Section 15(7) of the PMC Act virtually redundant. I say so because the PMC in its written comments has asserted that the termination of the petitioner's appointment as Member (Examinations), NMA does not suffer from any legal infirmity since the terms of his employment contract entitled the PMC to terminate the same on two months' prior notice. This means that the PMC's position is that a Member of the NMA can be removed by adopting a process other than the one envisaged by Section 15(7) of the PMC Act. It also means that the PMC's position is that by entering into a contract which contains a termination clause, the petitioner has contracted out of the protection given to a Member of the NMA by Section 15(2) and (7) of the PMC Act.

35. Section 15(2) of the PMC Act, by making the appointment of a Member of the NMA for a fixed term of four years, affords protection and security of tenure to such a Member. This statutory protection cannot be whisked away by a condition in the letter of appointment. The conditions in the petitioner's appointment letter dated 30.11.2020 (what the PMC calls an employment contract) cannot override or circumvent the statutory protection afforded to

the petitioner by Section 15(2) of the PMC Act. It is well settled that parties cannot contract out of the beneficial provisions in a statute. Reference in this regard may be made to the law laid down in the case of E.A. Evans Vs. Muhammad Ashraf (PLD 1964 SC 536).

36. Learned counsel for the PMC submitted that an inquiry on the allegation of misconduct in terms of Section 15(7) of the PMC Act was not conducted against the petitioner in order to save him from being stigmatized. He submitted that a performance assessment of the petitioner had been carried out, which caused the Council to decide to terminate his employment contract. He submitted that the said performance assessment was confidential in nature, and therefore had not been annexed with the parawise comments filed by the PMC. He submitted a copy of the petitioner's performance assessment across the rostrum in a sealed envelope.

37. I have gone through the said performance assessment which is marked as "*confidential*" and contains damning and derogatory allegations against the petitioner. The first complaint against the petitioner was that he was absent from office for seven weeks because his father had contracted COVID-19 and subsequently, the petitioner had also contracted the said virus. There are also allegations to the effect that the petitioner had addressed a letter to the Registrar of Khyber Medical University directing the latter to cancel the admission of two students admitted on backward area quota seats without having referred the matter to the "*relevant departments.*" He is also said to have addressed a letter to the Registrar of Khyber Medical University alleging that the said University had acted fraudulently and with *malafide* intent by admitting two students against the quota seats for backward areas. The petitioner is alleged to have directed the Vice Chancellor of Khyber Medical University to conduct a special examination of students of the IIOJK scholarship program in response to a letter from the Economic Affairs Department that some students may be delayed in returning. While issuing the said directions, the petitioner is said to have acted unauthorizedly. The

petitioner has also been alleged to have written letters to the Principal, Ayub Medical College referring applications of two students seeking conversion of tuition fee to Pak Rupees on the ground of being returning overseas Pakistanis. This letter is said to have contained a direction to proceed in accordance with the Council's policy on conversion of fee for overseas Pakistanis. It is alleged that the petitioner had no authority to write such letters. The petitioner was alleged to have issued letters to 28 colleges stating that the lowest fee charged by grade-A colleges was Rs.738,500 and US Dollars 11,000 for foreign students. The petitioner is said to have directed the colleges to charge tuition fee 10% lower than the noted fee of grade-A colleges. The letters written by the petitioner had not been copied internally in the PMC or to the education department. Apparently, such letters written by the petitioner were withdrawn. It is also alleged that the petitioner unauthorizedly issued a letter to the Registrar of the Khyber Medical University directing him to admit a student under the Higher Education Commission project for FATA and Balochistan. The petitioner is said to have misbehaved with the legal counsel and the representatives of colleges during a hearing pertaining to admission irregularities. It was alleged that the petitioner failed to initiate the exercise of verification and clearance of all students admitted to medical and dental colleges for the 2021 session to ensure that they had qualified in the MDCAT and fulfilled all other requirements for the purposes of registration with the PMC as admitted students to public and private colleges. It is alleged that as a result of this lapse, PMC was unable to charge a registration fee for admitted students amounting to approximately Rs.65 million. It is also asserted that the petitioner was advised to refrain from actions beyond his authority or conducting himself in a manner which was in conflict with the PMC's policies or interests. It is also alleged that the petitioner verbally advised and enticed students to approach the Courts for their grievances against the PMC. Finally, the petitioner is alleged to have acted in a grossly negligent manner.

38. At no material stage was the petitioner confronted with the aforementioned allegations. The PMC has filed detailed written comments but has not filed a single document showing that the petitioner had been notified as to the said allegations. The canons of due process demand that the petitioner should have been confronted with the said allegations in an inquiry contemplated by Section 15(7) of the PMC Act. If as a result of an inquiry in accordance with the law, the said allegations are proved against the petitioner, and if the petitioner is to be stigmatized by his removal from his office, then so be it. The PMC's magnanimity to the petitioner by not subjecting him to an inquiry is not commensurate to the allegation that he had *inter alia* caused a loss of approximately Rs.65 million to the PMC.

39. Without having given an opportunity to the petitioner to rebut or give an explanation with respect to the allegations against him in the performance assessment, such allegations cannot be treated as substantiated and could not form the basis for a decision to terminate his appointment. It can only be in an inquiry under Section 15(7) of the PMC Act that it would be determined whether the allegations made against the petitioner in the performance assessment, if substantiated, would amount to misconduct or result in a finding that he was unable to perform his functions so as to furnish a just cause to remove him from the office of Member (Examinations), NMA. Any other mode or manner of removal of a Member of the NMA from his office is not contemplated by the provisions of the PMC Act. The requirement to hold an inquiry under section 15(7) of the PMC Act could not have been lightly dispensed with on the *ipse dixit* of those in the PMC who decided to terminate the petitioner's appointment on the basis of his performance assessment.

40. The provisions of the PMC Act do not contemplate the removal of a Member of the NMA from his office on the basis of confidential performance assessments. The veracity of the allegations hurled by the PMC against the petitioner could only be gauged in an inquiry. It is in such an inquiry that the petitioner could be given an opportunity to establish the inaccuracy or

falsity of the allegations against him. There is nothing preventing the Council from acting in accordance with the law by initiating an inquiry under Section 15(7) of the PMC Act as that is the only mode through which a member of the NMA can be removed from his office.

41. In view of the above, the instant petition is allowed; the impugned letter dated 13.09.2021 whereby the petitioner's appointment as Member (Examinations), NMA was terminated, is set-aside; and the petitioner shall forthwith resume the duties of the office to which he was appointed for a fixed term of four years under Section 15(2) of the PMC Act. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 17.01.2022.

(JUDGE)

Ahtesham*

APPROVED FOR REPORTING