

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

W.P.No.882 of 2019  
Dr. Sheikh Akhtar Hussain  
Versus  
Federation of Pakistan and others

<b>Dates of Hearing:</b>	19.08.2020 & 03.09.2020
<b>Petitioner by:</b>	Barrister Haroon Dugal, Muhammad Shah Rukh Sheikh, Salman Saeed Sheikh, Muhammad Aftab Alam Rana and Hafiz Muhammad Mazhar, Advocates
<b>Respondents by:</b>	Mr. Khurram Ibrahim Baig, Advocate for H.E.C./respondent No.2 Mr. Muhammad Wasiq Hassan Kiani, Advocate for respondents No.9 to 11. Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. Hafiz Bilal Bin Akbar, Assistant Director (Legal) and Mr. Ulfat Rasool, Assistant Director (Admin), D.R.A.P.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Dr. Sheikh Akhtar Hussain, impugns the order dated 07.03.2019 issued by the Ministry of National Health Services, Regulations and Coordination (“Ministry of N.H.S.R.&C.”), whereby he was called upon to stop working as the Chief Executive Officer (“C.E.O.”) of the Drug Regulatory Authority of Pakistan (“D.R.A.P.”). The basis for the issuance of the said order was that the Open International University of Colombo, which issued a Ph.D degree to the petitioner, was not listed amongst chartered universities/ institutions of Sri Lanka and that degrees awarded by non-chartered universities/institutions cannot be recognized by the Higher Education Commission (“H.E.C.”).

2. The facts essential for the disposal of this petition are that on 01.02.2018 the position of C.E.O. of D.R.A.P. fell vacant upon completion of the three-year tenure of the former C.E.O. On 05.03.2018, an advertisement was published at the instance of the Ministry of N.H.S.R.&C. inviting applications for appointment to the position of C.E.O. of D.R.A.P. The applicants were required to hold a post-graduate degree in Pharmacy or Medicine and have twenty years of experience in management or pharmaceutical field or in regulatory affairs in the public sector. If no applicant with the said experience in the public sector was available, then a person possessing the said qualifications

and experience from the private sector was also eligible. The tenure of the C.E.O. was to be for three years extendable on the recommendations of the Policy Board of D.R.A.P. for one year.

3. The qualifications and experience for appointment as C.E.O. of D.R.A.P. required in the said advertisement as well as the tenure of the appointment of C.E.O. are in consonance with the provisions of Section 5(1) of the Drug Regulatory Authority of Pakistan Act, 2012 (**"the D.R.A.P. Act"**).

4. Vide office order dated 06.04.2018, the Ministry of N.H.S.R.&C. constituted a four-member committee for scrutinizing the suitability of the candidates who had applied for appointment to the position of C.E.O. of D.R.A.P. This committee was required to complete its assignment by 10.04.2018. It shortlisted twelve candidates. Vide letter dated 11.04.2018, the Ministry of N.H.S.R.&C. constituted a six-member Interview Committee to select a suitable panel of candidates for appointment as C.E.O. of D.R.A.P. amongst the twelve shortlisted candidates. Ten out of the twelve candidates who had been shortlisted appeared for an interview before the Interview Committee.

5. In response to the said advertisement dated 05.03.2018, the petitioner had participated in the competitive process for appointment as C.E.O. of D.R.A.P. Each member of the Interview Committee gave 8 marks to the petitioner for his Ph.D degree. In the competitive process, the petitioner was able to secure 501 marks, being the highest. The second position was secured by Mr. M. Asim Rauf who was given 492 marks.

6. It was not until 19.12.2018 that a summary was submitted to the Cabinet along with the recommendations of the Interview Committee. The Cabinet, in its meeting dated 20.12.2018, decided to appoint the petitioner as C.E.O. of D.R.A.P. Consequently, vide notification dated 27.12.2018 issued by the Ministry of N.H.S.R.&C., the petitioner was appointed the C.E.O. of D.R.A.P. on contract basis for a period of three years in terms of Section 5 of the D.R.A.P. Act.

7. Complaints were filed before the Ministry of N.H.S.R.&C. alleging therein that the petitioner's Ph.D. degree was not genuine. This caused the Ministry of N.H.S.R.&C. to obtain the views of the H.E.C. on the matter. The H.E.C., in its letter dated 26.02.2019, informed the Ministry of N.H.S.R.&C. that the Open International University, Colombo was not

listed amongst the chartered universities/institutions of Sri Lanka and that degrees awarded by non-chartered universities/institutions cannot be recognized by the H.E.C. Consequently, vide impugned office order dated 07.03.2019, the Ministry of N.H.S.R.&C. stopped the petitioner from working as C.E.O. of D.R.A.P. with immediate effect.

8. The said order dated 07.03.2019 was assailed by the petitioner in the instant writ petition. Along with the petition, the petitioner also filed an application for interim injunction seeking the suspension of the said order. Vide ad interim order dated 11.03.2019, this Court suspended the operation of the said order until the next date of hearing. After an inter-parte hearing this Court, vide order dated 28.03.2019, dismissed the petitioner's application for interim injunction. The said order dated 28.03.2019 was assailed by the petitioner in Intra Court Appeal No.164/2019, which was dismissed as not maintainable by the Division Bench of this Court vide order dated 30.04.2019, which was not challenged any further.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that in 1985, the petitioner was awarded a bachelor degree in Pharmacy and in 1989, he did his M.Phil from the University of the Punjab; that in 1991, the petitioner was employed as Assistant Drug Controller and during his service he acquired considerable experience in the field of Pharmacology; that during the petitioner's service he was awarded a Ph.D degree by the Open International University for Complementary Medicine, Sri Lanka; that the petitioner had done his Ph.D through 'distance learning process' on the pattern as the one offered by Allama Iqbal Open University since 1974; that the petitioner's research was published in the Pakistan Journal of Pharmacy, University of the Punjab in the year 2016; that the petitioner's Ph.D thesis had been approved for publication; that the petitioner's thesis is backed by Bibliography and has been approved by his Supervisor and defended before a body of external examiners; that the petitioner's viva took place at the campus of the Sri Lankan University at Karachi; that the petitioner's Ph.D degree could not be termed as fake simply because the H.E.C. had not accorded recognition to the awarding university.

10. Learned counsel for the petitioner further submitted that the Secretary, Ministry of N.H.S.R.&C., had harbored malice against the

petitioner since the latter had refused the former's request to go easy on Dr. Kamran Qureshi and Everest Pharmaceutical Company against whom a probe had been launched on the orders passed by the Hon'ble Supreme Court in Human Rights Case No.5845/2018 for manufacturing unregistered and spurious medicines; and that the Secretary, Ministry of N.H.S.R.&C. wanted the petitioner to submit to his will to which the petitioner did not yield.

11. Furthermore, it was submitted that the petitioner had emerged successful in the competitive process for the appointment of C.E.O. of D.R.A.P. by obtaining the highest marks amongst the candidates for the said position; that in the competitive process, the petitioner was interviewed by an Interview Committee constituted by the Policy Board; that the Secretary, Ministry of N.H.S.R.&C. was also a member of the committee which had recommended the petitioner's selection; that under Section 9 of the D.R.A.P. Act, the Executive Authority over D.R.A.P. vests with the Policy Board and not with the Secretary; that the petitioner could not have been stopped from working as C.E.O. of D.R.A.P. without the approval of the 'Federal Government' as defined by the Hon'ble Supreme Court in the case of Mustafa Impex Vs. Government of Pakistan (PLD 2016 SC 808); that the order to stop the petitioner from working was without jurisdiction; that the award of the highest marks to the petitioner by the Interview Committee was a past and closed transaction and could not be re-opened for reasons not attributable to the petitioner; that there was no requirement in Section 5 of the D.R.A.P. Act or the advertisement for the candidate for the position of C.E.O. of D.R.A.P. to possess a Ph.D. degree; that the petitioner's appointment as C.E.O. of D.R.A.P. had been duly approved by the Cabinet; and that the said appointment vested the petitioner with valuable rights which could not have been taken away under the principle of *locus potentiate*. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

12. On the other hand, learned counsel for the H.E.C. submitted that the H.E.C. recognizes academic degrees of all the universities and degree awarding institutions which are listed with the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); that as per the information contained in the International Directory published by UNESCO, the Open International University, Colombo is not listed

amongst the chartered universities of Sri Lanka; that as per H.E.C.'s policy, degrees awarded by the Open International University, Colombo, being a non-chartered university, cannot be recognized by the H.E.C.; and that vide letter dated 20.03.2019, the H.E.C. has already informed the Ministry of N.H.S.R.&C. that the Open International University, Colombo is not listed amongst the chartered universities of Sri Lanka and therefore the degrees awarded by such a university cannot be recognized by the H.E.C.

13. Learned Deputy Attorney-General submitted that as per Section 9 of the D.R.A.P. Act, the Policy Board is chaired by the Secretary, Ministry of N.H.S.R.&C. and its Secretary is the C.E.O. of D.R.A.P.; that as per Section 10 of the D.R.A.P. Act, the meetings of the Policy Board are to be convened by the Secretary of the Board with the prior approval of the Chairperson; that since the passing of the order dated 28.03.2019 (i.e. one year and five months ago) by this Court, five officers had been appointed to the post of Secretary, Ministry of N.H.S.R.&C.; that since 28.03.2019, there have been five meetings of the Policy Board out of which in three meetings, the matter regarding the removal of the petitioner from the position of C.E.O. of D.R.A.P. had not even been included in the agenda items; that the matter regarding the removal of the petitioner from the C.E.O. of D.R.A.P. was taken-up by the Policy Board in its meeting held on 30.10.2019; that in the said meeting, the Chairperson of the Policy Board informed the members that the matter was *subjudice* before this Court and that the decision of this Court should be awaited and that this was not a matter of a fake degree but a matter regarding the recognition of the institution which had awarded the degree; that in the said meeting, it was decided *inter alia* that the agenda item was not correct and that the case was of non-recognition of the petitioner's Ph.D degree by the H.E.C.; that furthermore, it was decided that the case be submitted to the Policy Board for consideration with the complete record and the Court decision in writ petition No.882/2019; that the Law and Justice Division had advised the Ministry of N.H.S.R.&C. that the C.E.O. of D.R.A.P. could only be removed through the process prescribed in the regulations framed by D.R.A.P.; that the Policy Board, in its 33<sup>rd</sup> meeting held on 17.08.2020, decided to recommend the termination of the petitioner's services; that the Policy Board recommended that the services of Mr. M. Asif Rauf being the next

best candidate be regularized as C.E.O. of D.R.A.P. till the appointment of a regular incumbent and the process for appointing a new C.E.O. of D.R.A.P. be initiated; and that since the Policy Board had recommended the petitioner's services be terminated, the instant writ petition merits dismissal.

14. I have heard the contentions of the learned counsel for the contesting parties and the learned Deputy Attorney-General 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 to 8 above and need not be recapitulated.

15. D.R.A.P. is an autonomous body which was established by the Federal Government pursuant to Section 3(1) of the D.R.A.P. Act to carry out the purposes of the said Act. Section 4(1) of the said Act provides *inter alia* that D.R.A.P. shall consist of a full time C.E.O. and thirteen Directors who shall be appointed by the Federal Government on the recommendations of the Policy Board. Section 5(1) of the said Act provides that the Federal Government may, on the recommendations of the Policy Board, appoint a person as the C.E.O. who has a post graduate degree in Pharmacy or Medicine and has a minimum of twenty years of experience in management or pharmaceutical field or regulatory affairs in the public sector. It is also provided that if no person with the said qualifications is available in the public sector, then a person possessing the said qualifications and experience in the private sector may be appointed. In order to be eligible for the appointment of C.E.O. of D.R.A.P., a candidate is required to be not less than forty-five years and not more than fifty-six years of age. Section 5(1)(b) of the said Act provides that the tenure of appointment of the C.E.O. shall be three years extendable on the recommendations of the Policy Board for one year only. Section 5(1)(c) of the said Act provides that the C.E.O. shall exercise general control and supervision over the affairs of D.R.A.P. and shall ensure that the provisions of the said Act, the rules, regulations, policies and directions of the Policy Board are properly executed. The specific powers and functions of the C.E.O. are set out in Section 5(2) and (3) of the said Act.

16. In exercise of the powers conferred by Section 24 of the D.R.A.P. Act, the Drug Regulatory Authority of Pakistan Employees Service

Relegations, 2015 ("the 2015 Regulations") were framed by D.R.A.P. with the approval of the Federal Government.

17. As mentioned above, vide notification dated 27.12.2018 issued by the Ministry of N.H.S.R.&C., the petitioner was appointed the C.E.O. of D.R.A.P. on contract basis for a period of three years in terms of Section 5 of the D.R.A.P. Act. The said notification was issued after the petitioner was awarded the highest marks (i.e. 501 marks) by the Interview Committee in the competitive process for the appointment of the C.E.O. of D.R.A.P.

18. Neither did Section 5(1) of the D.R.A.P. Act nor the advertisement dated 05.03.2018 require a candidate for appointment to the position of C.E.O. of D.R.A.P. to hold a Ph.D degree. It is no one's case that the petitioner did not have the prescribed qualifications to make him eligible for appointment to the said position. Since each of the six members of the Interview Committee had given eight marks to the petitioner for his Ph.D. degree from a non-chartered foreign university and since such marks caused the petitioner to be at the top of the merit list, the vital question that needs to be determined is whether it was lawful for the Interview Committee to have awarded such marks to the petitioner for his Ph.D degree which had not been accorded recognition by the H.E.C.

19. Under Section 10(1)(o) of the Higher Education Commission Ordinance, 2002, one of the powers and functions of the H.E.C. is to *inter-alia* "determine the equivalence and recognition of degrees, diplomas and certificates awarded by Institutions within the country and abroad." Now, it is an admitted position that the petitioner's Ph.D. degree (annexed at page 54 of this petition) awarded by the Open International University, Colombo in December 2000, has, till date, not been accorded recognition by the H.E.C. The position taken by the H.E.C. is that it recognizes academic degrees of all those universities/degrees awarding institutions which are listed with UNESCO and that the Open International University, Colombo is not listed amongst the chartered universities/institutions in Sri Lanka. The H.E.C. has taken an unequivocal position, in its pleadings, that the degrees awarded by the Open International University, Colombo, Sri Lanka, being a non-chartered university, cannot be recognized by the H.E.C. The H.E.C., in its letter dated 26.02.2019 had informed the

Ministry of N.H.S.R.&C. that the Open International University, Colombo, which is said to have awarded the Ph.D degree to the petitioner, was not listed amongst the chartered universities/institutions of Sri Lanka and that as per the H.E.C.'s policy, degrees awarded by non-chartered universities cannot be recognized by the H.E.C.

20. The petitioner has not challenged the H.E.C.'s letter dated 26.02.2019. There is nothing on the record to show that the petitioner had applied to the H.E.C. to accord recognition to his Ph.D. degree from the Open International University, Colombo.

21. There is no denying the fact that each of the six members of the Interview Committee had awarded eight marks to the petitioner for his Ph.D degree. Since the Open International University, Colombo is not listed amongst the chartered universities /institutions of Sri Lanka and since the petitioner's Ph.D. degree has not been recognized by the H.E.C., I am of the view that the petitioner ought not to have been awarded marks for his Ph.D. degree from the said university. If the forty-eight marks awarded to the petitioner by all the members of the Interview Committee are deducted from the petitioner's total marks (i.e. 501 marks), his marks would be reduced to 453 and he would lose his first position in the merit list to Mr. M. Asif Rauf who had been awarded 492 marks. In other words, the petitioner would rank below Mr. M. Asim Rauf, who having obtained the highest marks amongst the ten contenders, deserved to be recommended for appointment as C.E.O. of D.R.A.P. But for the award of marks for such a degree the question of appointing the petitioner to the position of C.E.O. of D.R.A.P. would not have arisen. This is because exclusion of the marks awarded by the six members of the Interview Committee to the petitioner for his Ph.D. degree would result in Mr. Asim Rauf being the candidate with the highest marks.

22. In the case of Haji Nasir Mehmood Vs. Mian Imran Masood (PLD 2010 SC 1089), the Hon'ble Supreme Court, while interpreting Section 99(1)(cc) of the Representation of People Act, 1976 and Section 8-A of the Conduct of General Elections Order, 2002, held as follows:-

*"It may not be out of place to mention here that the question of recognition of a degree is equally important because the degree which is not recognized by the Higher Education Commission would be worthless like a piece of paper, cannot be equated to that of a "Degree" because every degree is subject to recognition which provides sanctity to a degree. (Muhammad Nasir Mahmood and*



*another v. Federation of Pakistan through Secretary Ministry of Law Justice and Human Rights Division Islamabad, C.P. No.1 of 2008, Sana Ullah Khan v. District Returning Officer PLD 2005 SC 858, Maulana Abdullah v. Returning Officer and others 2003 SCMR 195, Munir Ahmed v. Returning Officer 2008 CLC 1111, Rao Tariq Mehmood v. Election Commission of Pakistan PLD 2003 Lah. 165). A “degree” which is not recognized by the Higher Education Commission cannot be declared as a valid “degree”.*

*10. The words “Bachelor’s Degree” as used in section 99(cc) would mean a degree which is valid one and recognized by the Higher Education Commission. The question of recognition does fall within the jurisdictional domain of Higher Education Commission. In our view validation of a degree depends upon its recognition.”*

23. Furthermore, in the said case, it was held that one of the functions of the H.E.C. under Section 10(1)(o) of the Higher Education Commission Ordinance, 2002 was to *“determine the equivalence and recognition of degrees, diplomas and certificates awarded not only by the institutions within the country but as well as the institutions functioning abroad.”*

24. Regulation 3(9) of the 2015 Regulations provides that all appointments shall be subject to the submission of verified decrees/certificates at the time of joining from the respective Board / Authority / Organization. For degrees awarded by foreign universities / educational institutions the authority competent to accord recognition is the H.E.C. Since recognition had not been accorded by the H.E.C. to the petitioner’s Ph.D. degree from Open International University, Colombo, this degree could neither have formed the basis for the award of marks to the petitioner nor could have placed the petitioner in an advantageous position vis-à-vis his competitors in the process for appointment to the position of C.E.O. of D.R.A.P. This dispute would not have arisen had the Ministry of N.H.S.R.&C. and/or D.R.A.P. shown diligence expected of responsible public functionaries by requiring candidates for the position of C.E.O. of D.R.A.P. to produce their academic testimonials duly recognized by the H.E.C. during the competitive process.

25. As for the contention of the learned counsel for the petitioner that after the Cabinet decided to appoint the petitioner as C.E.O. of D.R.A.P. and on the basis of this decision, notification dated 27.12.2018 was issued whereby he was appointed to the said position, valuable rights had accrued in his favour which could not be undone due to the

principle of *locus poenitentiae*, suffice it to say that rights could not be created on the basis of an illegal order. The decision of the Cabinet was based on information in the summary that the petitioner stood at number one on the merit list amongst the competing candidates. But for having been given marks by the Interview Committee for his Ph.D degree, the petitioner would not have stood at number one on the merit list. The grant of marks for a Ph.D. degree not recognized by the H.E.C. cannot be termed as lawful. The law laid down by the Hon'ble Supreme Court in the case of Haji Nasir Mehmood Vs. Mian Imran Masood (*supra*) leaves no room for doubt that a degree not recognized by the H.E.C. cannot be termed as a valid degree. Appointment to a public or a statutory post, like the C.E.O. of D.R.A.P., can most certainly not be made on the basis of a degree not recognized by the H.E.C. In holding so, I derive guidance from the law laid down in the following judgments:-

- (i) In the case of The Engineer-in-Chief Branch Vs. Jalaluddin (PLD 1992 SC 207), it was held as follows:-

*“Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field.”*

- (ii) In the case of Shahid Masood Nadeem Vs. DY. C.A.A.F. Lahore Cantt. (2003 PLC (CS) 1262), it has been held as follows:-

*“It is settled proposition of law that no right can be claimed on the basis of an illegal order and such an order despite having taken effect, neither would change its status nor create any right enforceable in law and in the light of principle that the authority which possesses the power of passing an order is also empowered to vary, amend or rescind, the said order can be undone with no legal bar.”*

- (iii) In the case of Nazir Ahmad Panhwar Vs. Government of Sindh (2005 SCMR 1814), it was held that the principle of *locus poenitentiae* “can be invoked only in respect of an order which is legal and not in respect of an order which is contrary to and in contravention of any provision of law or the rules made thereunder or a settled provision of law.”

- (iv) In the case of Muhammad Sadiq Vs. Punjab Service Tribunal, Lahore (2007 SCMR 318), it was held as follows:-

*“It is a settled proposition of law that if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order and in such situation principle of locus poenitentiae is not attracted as the law laid down by this Court in Abdul Haque Indhar's case 2000 SCMR 907.”*

- (v) In the case of Senate through Chairman Vs. Shahiq Ahmed Khan (2016 SCMR 460), it has been held that the principle of *locus poenitentiae* is meant to condone a bonafide mistake and not to be pressed into service for ripping the benefit of any fraud or to camouflage the same.

- (vi) Recently in the case of Government of the Punjab Vs. Muhammad Imran (2019 SCMR 643), it has been held as follows:-

*“None can retain the benefits of a withdrawn order, claiming the protection of having taken a decisive step, when the very order passed by the authority is illegal, void or without lawful authority. In such circumstances, it would not matter, even if decisive steps have been taken by the person in pursuance of the illegal order passed by the authority. However, the pecuniary benefit accrued and already received by a person in pursuance of an illegal order passed by the competent authority cannot be recovered from him unless the benefiting order was obtained by the person through fraud, misrepresentation or concealment of material facts.”*

26. The assertion of the learned counsel for the petitioner that the Secretary, Ministry of N.H.S.R.&C. or companies engaged in the business of pharmaceuticals against whom the petitioner had taken action harboured an ill-will against the petitioner becomes immaterial when the Court comes to the conclusion that an illegality had been committed in the process for the appointment of the C.E.O. of D.R.A.P.

27. The provisions of the D.R.A.P. Act do not prescribe the procedure for the removal of the C.E.O. of D.R.A.P. However, Regulation 10(1) of the 2015 Regulations provides that the Federal Government may remove the C.E.O. or any Director of D.R.A.P. on the recommendations of the Policy Board with two-third majority for the C.E.O. and simple majority for Directors, after serving ninety days' notice.

28. As mentioned above, vide order dated 28.03.2019, this Court dismissed the petitioner's application for interim injunction. At that stage the process for the petitioner's removal in terms of Regulation 10(1) of the 2015 Regulations had not been initiated. After making

reference to the law laid down in the cases of Moazzam Husain Khan Vs. Government of Pakistan (PLD 1958 (W.P.) Karachi 35), Allauddin Akhtar Vs. Government of Punjab (1982 CLC 515), Dr. Aftab Ahmad Malik Vs. University of Engineering and Technology (2005 PLC (C.S.) 80), Homoeopathic Doctor Muhammad Zahir Vs. Federation of Pakistan (2011 CLC 427), Mrs. Jamshed Naqvi Vs. Azad Jammu & Kashmir Government (2013 PLC (C.S.) 1037), Babar Sattar Vs. Federation of Pakistan (2016 CLD 134), P.L.Dhingra Vs. Union of India (AIR 1958 SC 36), L. P. Agarwal Vs. Union of India (AIR 1992 SC 1872), and P. Venugopal Vs. Union of India ((2008) 5 SCC 1) this Court, in the said order, held that a person appointed for a fixed tenure against the post created by statute could only be removed by adopting the procedure for the removal prescribed in the Statute or the Rules/Regulations made thereunder. Furthermore, it was held that petitioner could be removed only through the process prescribed in Regulation 10(1) of the 2015 Regulations.

29. The Policy Board, in its 33<sup>rd</sup> meeting held on 17.08.2020, reconsidered the case of the C.E.O. of D.R.A.P. under Regulation 10(1) of the 2015 Regulations and unanimously decided to recommend the termination of the petitioner's services on the ground that he was awarded eight additional marks by each member of the Interview Committee on the basis of his unrecognized Ph.D degree and that after the deduction of these additional marks, he would lose his first position in the merit list. It is noted with dismay that the said recommendations were given by the Policy Board one year and five months after the passing of the impugned order dated 07.03.2019. Ever since the passing of this Courts order dated 28.03.2019 whereby the petitioner's application for interim injunction was dismissed, there had been five meetings of the Policy Board but ironically in three of the meetings, the matter regarding the removal of the petitioner from the position of C.E.O. of D.R.A.P. had not even been included as an agenda item. Although in the said order dated 28.03.2019, this Court had not fixed a time limit within which the Policy Board was to initiate or complete the process for the petitioner's removal under Regulation 10(1) of the 2015 Regulations, this did not give *carte blanche* to the Ministry of N.H.S.R.&C. and/or the Policy Board to keep the petitioner in a state of

suspension and let the affairs of D.R.A.P. be run by adhocism beyond a reasonable time.

30. Vide office order dated 07.03.2019, the Ministry of N.H.S.R.&C. assigned the work of the C.E.O. of D.R.A.P. on “look after basis” to Mr. Asim Rauf. According to the said office order, Mr. Asim Rauf was to dispose of “day to day business.” This manner of running the affairs of the office of the C.E.O. of D.R.A.P. is in violation of the law laid down by the Superior Courts in the cases of Secretary to Government of the Punjab Vs. Muhammad Khalid Usmani (2016 SCMR 2125), Al-Jehad Trust Vs. Federation of Pakistan (PLD 2011 S.C. 811), Naveeda Tufail Vs. Government of Punjab (2003 SCMR 291), Pakistan Railways, through GM, Lahore Vs. Zafarullah, Assistant Electrical Engineer (1997 SCMR 1730), Javed Nawab Vs. Chief Secretary, Government of Balochistan (1998 SCMR 2337), and Rab Nawaz Dhadwana Vs. Muhammad Akram (PLD 2014 Lahore 591) wherein the practice of making appointments on ad hoc or temporary basis for long periods was deprecated. Furthermore, in O.M. No.8/3/2020-R-3 dated 20.03.2020 issued by the Establishment Division on the subject of “*exercise of administrative / financial powers while holding look after charge*,” it was explained that the look after charge had not been defined in the A.P.T. Rules and that it is a temporary stopgap arrangement to cater for the day to day affairs of the organization on honorary basis. It was also explained that the officers entrusted with look after charge are not empowered to take policy decisions. It was also clarified that regarding a decision-making process, there are certain orders which are of quasi-judicial nature and cannot be taken by an officer not formally designated to exercise those powers. Likewise, it was clarified that certain financial and administrative powers can only be exercised by the competent authority and an officer looking after the work cannot exercise such powers as he has not been delegated with such powers by the competent authority.

31. It remains to be seen whether or not the recommendations of the Policy Board prevail over the Federal Government, which is expected to decide the matter expeditiously bearing in mind that the Policy Board gave its recommendations one year and five months after the passing of the impugned order.

32. In view of the above, I hold that the instant petition is misconceived and is hereby dismissed with no order as to costs. Before

parting with this judgment, I deem it appropriate to observe that the officer who has been assigned the work of the C.E.O. of D.R.A.P. on “*look after basis*” through notification dated 07.03.2019 cannot exercise powers or perform functions beyond the parameters laid down in the Establishment Division’s O.M. No.8/3/2020-R-3 dated 20.03.2020.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2020**

**(JUDGE)**

**APPROVED FOR REPORTING**

*Qamar Khan\**

*Uploaded By : Engr. Umer Rasheed Dar*