

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2454 of 2016
All Pakistan ZTBL Workers Union (CBA) and others
Versus
Federation of Pakistan through Secretary, Law and
Justice
Division and others

Dates of Hearing:	24.08.2020 and 08.09.2020
Petitioners by:	Dr. G.M. Chaudhary, Advocate
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. Mr. Muhammad Ibrar, Deputy Registrar, N.I.R.C. Mr. Ijaz Ahmad, Section Officer, Ministry of Overseas Pakistanis and Human Resource Development. Mr. Muhammad Abdullah, Assistant Director (Legal), F.P.S.C.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition filed in the public interest, the petitioners (All Pakistan ZTBL Workers Union and others) seek a direction to the respondents to take immediate steps for the appointment of a Registrar Trade Unions (“R.T.U.”) under Section 4 of the Industrial Relations Act, 2012 (“I.R.A.”). Furthermore, the petitioner seeks a direction to the respondents to make arrangements for the establishment of the office of the R.T.U. with the necessary infrastructure in the Islamabad Capital Territory.

2. Dr. G.M. Chaudhry, learned counsel for the petitioners, submitted that the petitioners are industry-wise trade unions; that petitioners No.1 and 2 had filed applications under Section 19 of the I.R.A. for a referendum to be held for the determination of a collective bargaining agent; that these applications could not be decided due to the office of the R.T.U. being vacant; that when the said applications were filed the office of the R.T.U. had been vacant for a long time; that the National Industrial Relations Commission (“N.I.R.C”), in Case No.19(03)/2013, held that the R.T.U. is not a part and parcel of N.I.R.C.; that the fundamental right to form associations and trade unions enshrined in Article 17

of the Constitution cannot be exercised effectively without the R.T.U. having been appointed on a regular basis; that it is incumbent on the respondents to appoint the R.T.U. on a regular basis at the earliest; that since the R.T.U. and the Joint Registrars perform specialized functions under Section 5 of the I.R.A., it is necessary to provide an independent secretariat for the R.T.U.; that there are important functions that are required to be performed by the R.T.U. under several other provisions of the I.R.A.; that due to the R.T.U. not having been appointed on a regular basis, the administration of the office of the R.T.U. has been impaired; that the appointment of the R.T.U. on an ad hoc basis over a long period of time is in violation of the law laid down by the Superior Courts; and that even if the R.T.U. has to be appointed on an ad hoc basis, the incumbent must be well-versed with the subject of labour administration. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, the learned Deputy Attorney-General, in reiteration of the written comments filed on behalf of the Ministry of Overseas Pakistanis and Human Resource Development (“Ministry of O.P.&H.R.D.”) on 08.05.2017, submitted that the necessary infrastructure for the office of the R.T.U. has already been provided in the N.I.R.C. Building; that the support staff and equipment are also available for the office of the R.T.U.; that the rules for the recruitment of the R.T.U. has already been framed by the Ministry of O.P.&H.R.D. and notified in the official Gazette; that under the said rules, appointment to the post of the R.T.U. is to be made 75% by promotion and 25% by direct recruitment; that the post of Joint Registrar (BPS-19) has already been advertised by the Federal Public Service Commission (“F.P.S.C.”); that for appointment to the post of the R.T.U., the N.I.R.C. has already been requested to prepare a working paper for submission to the Central Selection Board (“C.S.B.”); that the F.P.S.C. has also initiated a process for the appointment of the R.T.U.; and that for the post of the R.T.U., a stop-gap arrangement will continue to be made until the appointment of a regular incumbent. The learned

Deputy Attorney-General produced the notifications issued by the Ministry of O.P.&H.R.D., whereby officers were appointed on a temporary basis to the post of the R.T.U.

4. The position taken by the N.I.R.C., in its report and para-wise reply filed on 02.03.2019, is that when this writ petition was filed, the post of the R.T.U. was vacant but subsequently since appointment to the said post was made on a temporary basis, the instant petition is liable to be dismissed as having become infructuous; that in the meeting dated 15.05.2017 chaired by the Secretary, Ministry of O.P.&H.R.D., an objection had been raised by the Senior Joint Secretary, Ministry of Law and Justice to the recruitment rules for the post of the R.T.U. on the ground that the same had been framed pursuant to the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (“A.P.T. Rules”); that he had suggested that rules governing the appointment of the R.T.U. should be framed under the provisions of the I.R.A.; that the draft rules were prepared and after the Establishment Division concurred with the draft rules, they were sent to the Ministry of Law and Justice; that the opinion of the Ministry of Law and Justice was that since the post of the R.T.U. is related to the affairs of the Federation, consultation with the F.P.S.C. was necessary; that the opinion of the F.P.S.C. was that the existing rules (i.e. set out in the notification dated 01.12.2016) should be kept intact or amendments may be made in such rules; that subsequently, the Ministry of Law and Justice took the view that the objection raised by the Senior Joint Secretary in the meeting dated 15.05.2017 was his personal opinion; and that since there is no one eligible for promotion to the post of R.T.U., the process for direct appointment under the existing rules has been initiated.

5. Furthermore, the position of the N.I.R.C. is that appointment to the post of R.T.U. on temporary basis had been made as a stop-gap arrangement for the efficient performance of the functions of the R.T.U.’s office; that the appointment to the said post on a regular basis had been delayed due to the rule-making process; that this Court, in the judgment reported as 2017 PLC 115, has

held that the R.T.U. and the N.I.R.C. have concurrent jurisdiction under Sections 5 and 54 of the I.R.A.; and that presently, the officer appointed as the R.T.U. on temporary basis has extensive experience in the field of Labour Administration. The N.I.R.C. prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the petitioners as well as the learned Deputy Attorney-General and have perused the record with their able assistance.

7. Article 240(a) of the Constitution provides that subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Parliament. The Civil Servants Act, 1973 was enacted by Parliament to regulate by law, the appointment of persons to and the terms and conditions of service of persons in the service of Pakistan, and to provide for matters connected therewith or ancillary thereto. Section 25(1) of the Civil Servants Act, 1973 provides that the President or any person authorized by the President in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of said Act. In exercise of the powers conferred by Section 25(1) of the Civil Servants Act, 1973, the President made the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (**A.P.T. Rules**). The methods of appointment to posts prescribed by Rule 3(1) of the said Rules are (i) by promotion, (ii) by transfer, and (iii) by initial appointment. Rule 3(2) of the said Rules provides that the method of appointment and the qualifications and other conditions applicable to a post shall be as laid down by the Ministry or Division concerned in consultation with the Establishment Division.

8. Rule 4(4) of the Rules of Business, 1973 provides that the attached departments as allocated to the various Divisions are shown in Schedule III. As per Schedule III to the Rules of Business, 1973, the N.I.R.C. has been declared by the Federal Government to be an attached department of the Overseas

Pakistanis and Human Resource Development Division. Rule 3(3) of the Rules of Business, 1973 provides that the business of government shall be distributed among the Divisions in the manner indicated in Schedule II. The entry at Serial No.13, Item No.27 in Schedule II to the Rules of Business, 1973 shows that the *“administration of the Industrial Relations Act, 2012, keeping a watch on labour legislation from international perspective, coordination of labour legislation in Pakistan and the Industrial Relations Commission”* comes within the purview of the Overseas Pakistanis and Human Resource Development Division. (Earlier this Division was split into the Overseas Pakistanis Division and the Labour Division). Hence, the “Division concerned” for laying down the method of appointment and the qualifications and other conditions applicable to posts under the I.R.A. is the Overseas Pakistanis and Human Resource Development Division.

9. Vide notification dated 12.03.1990 (S.R.O. 263(I)90.) issued by the erstwhile Labour Division pursuant to Rule 3(2) of the A.P.T. Rules, the method, qualifications and other conditions were laid down for appointment to the posts of (i) Registrar (BPS-19), (ii) Deputy Registrar (BPS-17), (iii) Administrative Officer (BPS-17), and (iv) Reader to Chairman (BPS-16).

10. In order to consolidate and rationalize the law relating to formation of trade unions and improvement of relations between employers and workmen in the Islamabad Capital Territory and in trans-provincial establishments and industry, the I.R.A. was enacted by Parliament on 14.03.2012. Section 4 of the said Act is reproduced herein below:-

“Registrar of trade unions. – For the purpose of this Act, the Government shall, by notification in the official Gazette, appoint the Registrar of Trade Unions who shall be assisted by one or more Joint Registrars.”

11. The said notification dated 12.03.1990 was amended by notification dated 01.12.2016 (S.R.O. 1128(I)/2016.) issued by the Ministry of O.P.&H.R.D. This notification shall hereinafter be referred to as **“notification dated 01.12.2016.”** This notification lays down the method, qualifications and other conditions for appointment to the post of the R.T.U. (BPS-20). It provides for the

method of appointment to the post of R.T.U. (BPS-20) to be 75% by promotion and 25% by initial appointment. The persons eligible for appointment as R.T.U. are Registrar/Joint Registrar (BPS-19) provided they fulfill the eligibility criteria of 17 years of service in BPS-17 and above or 5 years of service in BPS-19, in the case of initial appointment in BPS-19. The qualifications and experience required for appointment to the said post are (i) second class or Grade "C" L.L.B. degree or equivalent qualification from a university recognized by the Higher Education Commission, and (ii) 17 years of experience in BPS-17 and above in the field of Labour Administration or 5 years experience in BPS-19 in case of initial appointment in BPS-19 in the field of Labour Administration.

12. Ever since the enactment of the I.R.A., an R.T.U. has not been appointed on a regular basis. The instant writ petition was filed on 20.06.2016 (i.e. prior to the issuance of the notification dated 01.12.2016 by the Ministry of O.P.&H.R.D. providing for the conditions of eligibility, qualifications and method of appointment for the R.T.U.). When the instant writ petition was filed, the office of the R.T.U. was vacant. On 21.06.2016, this Court issued notices to the respondents. I deem it appropriate to give relevant details of the proceedings of this Court as discerned from the order sheet as well as the developments that took place during the pendency of the said writ petition.

13. The relevant portion of the order dated 18.04.2017 passed by this Court reads thus:-

"Learned counsel for the petitioners submits that the office of the Registrar, Trade Union has now been vacant since past two years. This bespeaks of a sorry state of affairs at the end of the respondents. Public offices of importance ought not to keep vacant and the responsibilities of such offices cannot exercised by adhocism. The Secretary, Ministry of Human Resource Development/respondent No.2 is directed to explain, by the next date of hearing, as to why an appointment in terms of Section 4 ibid has not been made as yet.

Learned Assistant Attorney-General shall communicate this order to respondent No.2 for compliance. If at all any process has been initiated for appointment in terms of Section 4 (ibid), the same shall also be intimated, on the next date of hearing.

Re-list on 27.04.2017.

(Emphasis added)

14. Since no plausible explanation for not appointing the R.T.U. in accordance with Section 4 of the I.R.A. was given, this Court, vide order dated 27.04.2017, directed the Ministry of O.P.&H.R.D. to depute a responsible officer to attend the Court on 09.05.2017 and explain as to why the R.T.U. has not been appointed. On 09.05.2017, this Court passed the following order:-

“Mr. Mukhtar, Senior Assistant Chief (Legal), has tendered appearance on behalf of respondent No.2, and submitted that as a stopgap measure, the Registrar, Trade Union, has been appointed on current charge basis.

This is the second phase of three months for which, the Registrar, Trade Union has been appointed on current charge basis. This sort of adhocism shall not be tolerated. The Registrar of Trade Union, has to be appointed strictly in accordance with the provisions of the Statute.

Mr. Mukhtar, Senior Assistant Chief (Legal), further submitted that the post of the Registrar, Trade Union, is to be filled through promotion; and that the next meeting of the Central Selection Board, is scheduled to be held in the month of June this year, in which, the matter regarding the promotion to the post of the Registrar, Trade Union, will be considered/decided. This matter needs to be considered/decided. This matter needs to be resolved expeditiously. Therefore, this case is being adjourned to next Friday i.e. 19.05.2017.”

(Emphasis added)

15. On 15.05.2017, a meeting was held under the chairmanship of the Secretary, Ministry of O.P.&H.R.D. and was attended by (i) the Chairman, N.I.R.C., (ii) Senior Joint Secretary, Ministry of Law and Justice, (iii) Senior Joint Secretary, Ministry of O.P.&H.R.D., and (iv) Deputy Secretary (Regulation), Establishment Division. The purpose of this meeting was to discuss the issue of the appointment of the R.T.U. The minutes of this meeting show that the Senior Joint Secretary, Ministry of O.P.&H.R.D., informed the participants *inter alia* that for the appointment of the R.T.U. and Joint Registrar, rules had been framed under the Civil Servants Act, 1973 and for the appointment of Chairman and Members of N.I.R.C., rules have to be framed under the I.R.A. The Senior Joint Secretary, Ministry of Law and Justice, had objected to the mode of appointment of the R.T.U. under the A.P.T. Rules. He had suggested that rules governing the appointment of the R.T.U. and the Joint Registrar should be framed under the I.R.A. and not under the A.P.T. Rules. He had also suggested that a Joint Registrar appointed pursuant to the rules framed under the I.R.A.

should also be made eligible for promotion to the post of the R.T.U. His view was that the Registrar of N.I.R.C. appointed under the A.P.T. Rules could not be promoted against the statutory post of the R.T.U. The views of the Senior Joint Secretary, Ministry of Law and Justice were endorsed by the Deputy Secretary (Regulation), Establishment Division, who was also of the view that rules for the appointment to the posts of the R.T.U. and the Joint Registrar should be separately framed. The Chairman, N.I.R.C. had pointed out that Section 86 of the I.R.A. was the relevant provision for the making of rules for carrying out the purposes of the said Act. The decisions taken in the said meeting are reproduced herein below:-

- “i. Due to discrepancy in appointment/promotion Rules of Registrar Trade Unions, the promotion process may be withheld and Rules for appointment of Registrar Trade Unions and Joint Registrar should be framed under the Industrial Relations Act, 2012.*
- ii. Similarly promotion of Registrar NIRC to the post of statutory post of Member, NIRC may also be reviewed as Registrar NIRC is appointed under Civil Servants (APT) Rules, 1973, while Member, NIRC is appointed under Industrial Relations Act, 2012.*
- iii. Chairman, NIRC will initiate a case for extension of additional charge of Mr. Ghulam Nabi Deeshak for the post of Registrar Trade Unions for further three months or till appointment of permanent Registrar Trade Unions whichever is earlier.*
- iv. Fresh recruitment rules under Section 86 of Industrial Relations Act, 2012 for appointment of Registrar Trade Unions and Joint Registrar will be framed as well as appropriate amendments in Chairman and Members (Qualification) Rules, 2016 will be made to remove the discrepancy of putting Civil Servant as feeding post for promotion to the post of Member, NIRC.”*

16. The minutes of the said meeting dated 15.05.2017 were brought to the notice of this Court on 19.05.2017, whereon the following order was passed:-

“Through the instant writ petition, the petitioners, All Pakistan ZTBL Workers Union (CBA) and others, primarily seek the appointment of a suitable person against the post of the Registrar of Trade Union strictly in accordance with Section of the Industrial Relations Act, 2012 (“the 2012 Act”) which is reproduced herein below:-

“4. Registrar of trade unions.- For the purpose of this Act, the Government shall, by notification in the official Gazette, appoint the Registrar of Trade Unions who shall be assisted by one or more Joint Registrars.”

2. Furthermore, no regular appointment against the said post has been made. It is a matter of concern to this Court, that the Federal Government has not paid due regard to the mandate of law i.e. Section 4 *ibid*, and has not made the regular appointment against the said post. From time to time Members of the National Industrial Relations Commission ("N.I.R.C.") have been appointed on current charge basis. The Registrar of Trade Union primarily discharges executive responsibilities under the provisions of the 2012 Act, and to appoint a Member of the N.I.R.C. on ad-hoc/current charge basis as Registrar of Trade Union is a stark violation of the doctrine of separation of powers as enshrined in Article 175 of the Constitution of the Islamic Republic of Pakistan.

3. This Court *vide* orders dated 18.04.2017, 27.04.2017 and 09.05.2017, had required the respondents to expeditiously make an appointment against the said post in discharge of their statutory obligations.

4. Today, learned Additional Attorney-General, has brought on record minutes of the meeting dated 15.05.2017, attended by the following persons:-

- i. Mian Shakerullah Jan, Chairman, NIRC.
- ii. Mr. Haider Ali Sheikh, Senior Joint Secretary, Ministry of Law & Justice.
- iii. Mr. Noor Zaman, Senior Joint Secretary, Ministry of OP & HRD.
- iv. Mr. Zulfiqar Shah, Deputy Secretary (Regulation), Establishment Division.

5. It appears that a decision has been made to make Rules regulating the appointment process of the Registrar of Trade Union. The position is that until and unless these Rules are made (for which no period has been indicated), the appointment of the Registrar Trade Union on ad-hocism shall continue. This position cannot be tolerated by a Court of constitutional jurisdiction. Statutory provision i.e. Section 04 of the 2012 Act, does not pre-condition the appointment of the Registrar of Trade Union on the framing of the Rules which is left at the mercy of the executive, however, giving a benefit of the doubt to the respondents, let the appointment process against the post of the Registrar of Trade Union, be immediately initiated and the same be completed within a period of two months, failing which this Court will be left with no other option but to restrain the incumbent working on the current charge basis to act as the Registrar of Trade Union.

6. Office is directed to communicate this order directly to the Secretary, Establishment Division, Islamabad as well as the other respondent for compliance.

7. The respondents shall intimate compliance through the Additional Attorney-General to his Court, on the next date of hearing.

*Re-list on **31.07.2017.***"

17. On 12.07.2017, another meeting was held under the chairmanship of the Secretary, Ministry of O.P.&H.R.D. and attended by (i) the Chairman, N.I.R.C., (ii) Legislative Advisor, Ministry of Law and Justice, and (iii) Senior Joint Secretary, Ministry of O.P.&H.R.D. to *inter alia* discuss the different judgments of the Islamabad High Court regarding the appointment

of R.T.U., and the discrepancies in the appointment/promotion rules for the R.T.U. The minutes of this meeting show that the view of the Ministry of O.P.&H.R.D. was that the appointment rules for the post of R.T.U. had to be framed under the I.R.A. instead of the A.P.T. Rules. These minutes also show that an impression was projected as to a conflict in the judgment dated 21.03.2017 rendered by another Bench of this Court in writ petition No.101/2017 and the interim order passed in this writ petition (i.e. W.P.No.2454/2016) directing the respondents to appoint the R.T.U. In the said meeting, the following decisions were taken:-

“(i) Draft Rules for the posts of RTU and Joint RTU and amendments in the Chairman and Members (Qualification) Rules, 2016 will be prepared by this Ministry in consultation with NIRC within 10 days.

(ii) The Ministry in consultation with Chairman, NIRC will prepare statement for Hon’ble Islamabad High Court, Islamabad illustrating position regarding provisions of IRA, 2012 in respect of appointment of Registrar Trade Unions alongwith the Judgment of Hon’ble Mr. Justice Ather Minallah, to be submitted in the Islamabad High Court, Islamabad before 31.07.2017. The Chairman, NIRC has also stated that recently Hon’ble Islamabad High Court, Islamabad has delivered a Judgment pertaining to the judicial allowance of the employees of NIRC and if anything relevant to the point involved found, may be considered while framing rules for the post of RTU and Joint RTUs.

(iii) The rules pertaining to the qualification of the civil servants regarding their appointment as Member, NIRC shall also be appropriately amended i.e., the serving or retired civil servant in BS-20 or above, having law degree with at least two years experience in legal matters shall be eligible for appointment as a Member, NIRC.”

18. As an excuse for not initiating the process for the appointment of an R.T.U., the Ministry of O.P.&H.R.D. took refuge behind the decisions taken in the said meeting dated 12.07.2017. The minutes of the said meeting were produced before this Court on 31.07.2017.

19. On 14.09.2017, the Deputy Chief (Legal), Ministry of O.P.&H.R.D. appeared before this Court and brought on record office memorandum (“O.M.”) dated 05.09.2017 issued by the Ministry of O.P.&H.R.D., according to which the additional charge of the post of R.T.U. had been given to an existing member of N.I.R.C. for a period of ninety days as a stop-gap arrangement.

20. On 18.02.2019, the Joint Secretary, Ministry of Law and Justice tendered appearance and submitted that the

responsibility for making the appointment of the R.T.U. under Section 4 of the I.R.A. is that of the Ministry of O.P.&H.R.D. and not that of the Ministry of Law and Justice. He had referred to Entry No.67 in Schedule III to the Rules of Business, according to which, N.I.R.C. is an attached department of the Ministry of O.P.&H.R.D.

21. On 05.03.2019, Ms. Atifa Raffat, Joint Secretary, Ministry of O.P.&H.R.D., who had been mandated to *“look after the post of”* R.T.U., tendered appearance and submitted that the Ministry of O.P.&H.R.D. had, vide letter dated 04.03.2019, asked the F.P.S.C. to initiate the process for the appointment to the post of the R.T.U. on priority basis.

22. It would be tedious to detail the events on every date of hearing over the past four years but suffice it to say that till date an R.T.U. has not been appointed on a regular basis in terms of Section 4 of the I.R.A.

23. Now, as mentioned above, the Ministry of O.P.&H.R.D. had, vide notification dated 01.12.2016, prescribed the method, qualifications and other conditions for appointment to the post of the R.T.U. But for the objection by the Senior Joint Secretary, Ministry of Law and Justice, in the meeting dated 15.05.2017, to the mode of appointment of the R.T.U. prescribed in the notification dated 01.12.2016, the R.T.U. would probably have been appointed a long time ago in accordance with the said mode. The view of the Senior Joint Secretary of the Ministry of Law and Justice was that for the appointment of Joint Registrar and R.T.U., Rules have to be framed under the I.R.A. instead of A.P.T. Rules. This became the primary reason for the appointment of the R.T.U. on a regular basis being stalled since the past few years.

24. The draft rules for the appointment of the R.T.U. and the Joint Registrar under I.R.A. had been sent by the Ministry of O.P.&H.R.D. to the Establishment Division vide O.M.No.1(12)/2014-NIRC dated 11.09.2017 for vetting. Reminders were also sent to the Establishment Division on 26.09.2017 and 06.10.2017 with a request to submit the draft rules to the Cabinet Committee for Disposal of Legislative Cases. Vide O.M. dated

08.03.2018, the Establishment Division gave its comments and suggestions regarding the draft rules.

25. Vide O.M. dated 12.07.2018, the Ministry of O.P.&H.R.D. sent the draft rules to the Ministry of Law and Justice for vetting and concurrence. The Ministry of Law and Justice examined the draft rules and made certain amendments therein. Importantly, the Ministry of Law and Justice, on 03.08.2018, observed that there were discrepancies and inconsistencies in the draft rules which needed to be clarified. The Ministry of Law and Justice observed that the draft rules were proposed to be made in exercise of the powers conferred by Section 86(1) read with Section 4 of the I.R.A. whereas the Registrar and Joint Registrar were civil servants within the meaning of Section 2(1)(b) of the Civil Servants Act, 1973 as such the said posts were posts in connections with the affairs of the Federation. The Ministry of O.P.&H.R.D. was advised by the Ministry of Law and Justice to consult with the F.P.S.C. before finalizing the draft rules.

26. Apparently, on 13.12.2018, the draft rules were sent by the Ministry of O.P.&H.R.D. to the F.P.S.C. along with the observations of the Ministry of Law and Justice on the draft rules. Vide letter dated 03.01.2019, the F.P.S.C. informed the Ministry of O.P.&H.R.D. that it had already given concurrence to the recruitment rules for the posts of the R.T.U. and Joint Registrar set out in the notification dated 01.12.2016. The Ministry of O.P.&H.R.D. was advised to keep the said rules intact. Furthermore, the Ministry of O.P.&H.R.D. was advised that amendments, if so desired, may be carried out in the said notification in accordance with the prescribed procedure.

27. Vide letter dated 07.01.2019, the Ministry of O.P.&H.R.D. informed the Ministry of Law and Justice about the position taken by the F.P.S.C. Paragraph 4 of the said letter is reproduced herein below:-

“4. It is pertinent to mention here that these two adverse opinions conveyed to this Ministry by Law & Justice Division, have created a difficult situation for this Ministry to adopt a way forward. The Ministry of Law & Justice is therefore requested to furnish considered opinion to be followed in order to prevent a possible miscarriage of justice.”

28. The copy of the Note-File produced by the Ministry of O.P.&H.R.D. shows that the Ministry of Law and Justice, on 29.01.2019, took the position that in the meeting held on 15.05.2017, the Senior Joint Secretary of the Ministry of Law and Justice had rendered his personal opinion that the posts of R.T.U. and Joint Registrar are not civil posts in connection with the affairs of the Federation. The Ministry of Law and Justice took a definitive position that the posts of R.T.U. and Joint Registrar are civil posts in connection with the affairs of the Federation and the terms and conditions thereof are required to be regulated under the Civil Servants Act, 1973. For the purposes of clarity, paragraphs 63 and 64 of the Note File are reproduced herein below:-

“63. The MOPHRD has now sought opinion of this Division on the two adverse opinions conveyed to that Ministry, one during the meeting by individual opinion of the then Senior Joint Secretary of this Division and one in writing and that Ministry has requested to clarify the position.

64. In view of above, the referring Division may be informed that the Industrial Relations Act, 2012 (X of 2012) nowhere mentions that the Civil Servants Act, 1973 (LXXI of 1973) shall not be applicable to the appointment of persons to the posts of Registrar Trade Unions and Joint Registrar Trade Unions, therefore, these posts are civil posts in connection with the affairs of the Federation.”

29. The position that emerges from the above referred correspondence and documents is that the posts of the R.T.U. and Joint Registrar are civil posts in connection with the affairs of the Federation, and appointments against the said posts are to be regulated by rules made in exercise of the powers conferred by the Civil Servants Act, 1973. The I.R.A. does not require appointment under the said law to be made for a fixed tenure. Rules providing for the method of appointment of the R.T.U. are set out in the notification dated 01.12.2016.

30. As mentioned above, the reason why the appointment of the R.T.U. on regular basis has been stalled for years is that a Senior Joint Secretary of the Ministry of Law and Justice had, in the meeting dated 15.05.2017, objected to the mode of appointment of the R.T.U. prescribed in the notification dated 01.12.2016 which was made in exercise of the powers conferred by Rule 3(2) of the

A.P.T. Rules and Section 7(1)(b)(i)&(ii) of the Federal Public Service Commission Ordinance, 1977 (“F.P.S.C. Ordinance”). This objection of the Senior Joint Secretary, Ministry of Law and Justice was virtually overruled by the said Division on 03.08.2018 and 29.01.2019. The matter is now back to square one.

31. Even though after an unambiguous opinion of the Ministry of Law and Justice that the appointment of the R.T.U. is to be governed by rules made under the Civil Servants Act, 1973 and even though the method of appointment of the R.T.U. had been explicitly set out in the notification dated 01.12.2016 issued pursuant to the A.P.T. Rules, the inaction for several months on the part of the Ministry of O.P.&H.R.D. to make the appointment strictly in accordance with the method of appointment prescribed in the said notification is inexplicable.

32. Vide letter dated 04.03.2019, the Ministry of O.P.&H.R.D. requested the F.P.S.C. to initiate the process for filling up the post of R.T.U. on priority basis. In the said letter, it was also mentioned that “*as per recruitment rules*” the post of R.T.U. is to be filled 75% by promotion and 25% through direct recruitment. It was also pointed out that since there was no eligible candidate in N.I.R.C. for promotion against the post of the R.T.U., the said post was to be filled by direct recruitment. O.M. dated 21.02.2019 from the Ministry of O.P.&H.R.D. to the Establishment Division shows that it was the N.I.R.C. which had informed the Ministry of O.P.&H.R.D. that there was no eligible candidate in N.I.R.C. for promotion to the post of the R.T.U.

33. On 03.06.2019, an advertisement was published by the F.P.S.C. inviting applications for appointment to the post of the R.T.U. The qualifications for the said appointment given in the advertisement were exactly the same as the ones set out in the notification dated 01.12.2016. This process did not culminate in an appointment of the R.T.U. through direct recruitment.

34. On 30.06.2020, another advertisement was published by the F.P.S.C. inviting applications for appointment to the post of the R.T.U. Again the qualifications for the said appointment given in the advertisement were exactly the same as the ones set out in

the notification dated 01.12.2016. The closing date for the submission of applications was 20.07.2020. Till date the process initiated through advertisement dated 30.06.2020 has not culminated in the appointment of the R.T.U. In the said advertisement, it is provided that the test/examination will tentatively be held from 15.11.2020 onwards and that such test/examination can be conducted earlier in case of a limited number of applicants. Be that as it may, the contents of the aforementioned letter dated 04.03.2019 from the Ministry of O.P.&H.R.D. to the F.P.S.C. and the advertisements dated 03.06.2019 and 30.06.2020, leave no room for doubt that the appointment of the R.T.U. is to be made in accordance with the notification dated 01.12.2016 and that there was no need for framing rules under Section 86 of the I.R.A. for making an appointment to the post of the R.T.U.

35. The vital question that needs to be answered is whether the Ministry of O.P.&H.R.D. was justified in deferring the appointment of the R.T.U. either by promotion or by direct recruitment in accordance with Section 4 of the I.R.A. on the pretext that rules governing the appointment of the R.T.U. had not been framed under Section 86 of the said Act and that the method of appointment to the post of R.T.U. provided in the notification (SRO 1128(I)/2016) dated 01.12.2016 is inapplicable having been issued under the provisions of the Civil Servants Act, 1973/A.P.T. Rules.

36. Once power is conferred by statute on a particular authority, here the Federal Government, in the matter of appointment, that power cannot be rendered redundant on the pretext that rules for exercising such power had not been framed. There is no inviolable position that a post could be filled up only after framing rules therefor. A simple reading of Section 4 of the I.R.A. makes it clear that the Federal Government can appoint an R.T.U. The substantive power to appoint an R.T.U. given to the Federal Government by Section 4 of the I.R.A. has not been made subject to framing of rules. The framing of rules is not a condition precedent to the exercise of the power to appoint an R.T.U. expressly and unconditionally conferred by Section 4 of the I.R.A.

on the Federal Government. If rules are not framed providing for the method of appointment of an R.T.U., there is no void and the Federal Government is not precluded from exercising the power conferred by Section 4 *ibid*.

37. Even if it is assumed for the sake of argument that rules governing the appointment of the R.T.U. had to be made under Section 86 of the I.R.A., or that the method of appointment of the R.T.U. prescribed in the notification dated 01.12.2016 was inapplicable, I am of the view that the process for the appointment of the R.T.U. could not be stalled on this pretext. The words “*the Government may make rules*” employed in the said Section only indicate that in case rules are made by the Federal Government, the purposes of the said Act should be effected in accordance with the rules and, if no rules are framed, the substantive power conferred on the Federal Government by the said Act will not become redundant and the Federal Government can exercise the powers conferred by the said Act, including the power to appoint an R.T.U. The word used in respect of framing of rules in Section 86 of the I.R.A. is “*may*” but not “*shall*.” After all, making the rules is only to avoid confusion or ambiguity in carrying out the purport of the Act more effectively. In other words, it is a procedural or internal regulation as to how authorities have to discharge their powers and by whom the power has to be exercised. When the appointment of an R.T.U. is within the ambit of the power of the Federal Government, the absence of rules dealing with the method of appointment will not make an appointment of an R.T.U. made by the Federal Government in terms of Section 4 of the I.R.A. illegal.

38. It is not desirable to keep a statutory post vacant for a long time or to make appointment against such a post on an acting or look-after charge or provisional basis. There is a public duty cast on the concerned authorities to fill up the vacancy on regular basis within the shortest possible time. Not initiating a process for the appointment of an R.T.U. on a regular basis ever since the enactment of the I.R.A. on 14.03.2012 and to make appointments on ad hoc basis over a period of eight years is a breach of

statutory duty cast on the Federal Government under Section 4 of the I.R.A. Since under the Rules of Business, 1973, the N.I.R.C. is an attached department of the Ministry of O.P.&H.R.D., it was the said Ministry which should have initiated the process for the appointment of the R.T.U. on a regular basis strictly in accordance with the method of appointment provided in the notification dated 01.12.2016. The said Ministry acted with reckless indifference to the consequences of their inaction in the matter of undertaking the process for such appointment. Such conduct of the said Ministry was not just arbitrary but violative of fundamental rights of others who would have otherwise had an opportunity to be considered for promotion or to compete for selection. In the case of Karamat Ali Vs. Federation of Pakistan (PLD 2018 Sindh 8), the Division Bench of the Hon'ble High Court of Sindh gave a direction to the Government to initiate the process for making a permanent appointment against the post of Inspector General of Police immediately and to make the permanent appointment in the prescribed manner within a period of 21 days, failing which the post of Inspector General of Police was to be considered as vacant and the officer in temporary charge of the said post was not to act as such. The Hon'ble Judge who authored the said judgment rose to grace the Hon'ble Supreme Court. Therefore, the said judgment deserves reverence and respect.

39. Whenever employees are appointed on ad hoc or temporary basis to meet an emergent situation, every effort should be made to replace them by employees appointed on regular basis in accordance with the relevant rules as expeditiously as possible. Where no rules have been framed, it is open to the employees eligible for promotion or selection to the relevant post to show that they have been dealt with arbitrarily and their weak position has been exploited by keeping such post occupied by a person appointed on ad hoc or temporary basis for a long spell of time. The process for an employee to be appointed on a regular basis cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. An ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee.

He must be replaced only by an employee appointed on a regular basis. To make an appointment of an R.T.U. on ad hoc or temporary basis over a period of several years cannot be overlooked or excused as a genuine administrative exigency. Such appointments are in stark violation of the law laid down by the Superior Courts in the following cases:-

- (i) In the case of Secretary to Government of the Punjab Vs. Muhammad Khalid Usmani (2016 SCMR 2125), the Hon'ble Supreme Court deprecated the practice of making appointments on officiating basis against regular vacancies. It was held in no uncertain terms that in no circumstance should a stop-gap arrangement be allowed to continue for years on end. In the said case, Executive Engineers had been appointed in the Communication and Works Department on officiating basis even though vacancies were available for their appointment through promotion on regular basis. In the said report, it was held as follows:-

“20. The record produced before us including the working paper produced before the DPC held on 11.08.2008 shows that the sanctioned strength of XENs in the appellant-Department at the relevant time was 151; out of which 112 were working on regular basis and 47 on officiating basis. It is also evident that 39 Executive Engineers’ posts were available for regular promotion. This clearly shows that 39 Executive Engineers were working on officiating basis against regular vacancies. We have asked the learned Law Officer to justify such a practice. He has submitted that this modus operandi is adopted by most Government Departments to ensure that corruption and unprofessional conduct is kept under check. We are afraid the justification canvassed before us is not only unsupported by the law or the rules but also lends ample support to the observations made in the Jafar Ali Akhtar’s case reproduced above. Further, keeping civil servants on officiating positions for such long periods is clearly violative of the law and the rules. Reference in this regard may usefully be made to Sarwar Ali Khan v. Chief Secretary to Government of Sindh (1994 PLC (CS) 411), Punjab Workers’ Welfare Board v. Mehr Din (2007 SCMR 13), Federation of Pakistan v. Amir Zaman Shinwari (2008 SCMR 1138) and Government of Punjab v. Sameena Parveen (2009 SCMR 1).

21. During hearing of these appeals, we have noted with concern that the device of officiating promotion, ad hoc promotion/appointment or temporary appointment etc. is used by Government Departments to keep civil servants under their influence by hanging the proverbial sword of Damocles over their heads (of promotion ‘on officiating

basis' liable to reversion). This is a constant source of insecurity, uncertainty and anxiety for the concerned civil servants for motives which are all too obvious. Such practices must be seriously discouraged and stopped in the interest of transparency, certainty and predictability, which are hallmarks of a system of good governance. As observed in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530) "a tamed subservient bureaucracy can neither be helpful to the Government nor it is expected to inspire public confidence in the administration".

- (ii) In the case of Al-Jehad Trust Vs. Federation of Pakistan (PLD 2011 S.C. 811), the Hon'ble Supreme Court deprecated the practice of the Deputy Chairman, National Accountability Bureau exercising the powers of the Chairman for a protracted and an indefinite period while the office of the Chairman was vacant. The observations of the Hon'ble Supreme Court in paragraph 6 of the said report are reproduced herein below:-

"It seems to us to be preposterous and outrageous if in the garb of a statutory delegation of some of his powers by a Chairman, National Accountability Bureau in favour of a Deputy Chairman, National Accountability Bureau the Deputy Chairman may be permitted to keep on exercising the powers of the Chairman for a protracted and indefinite period of time while the office of the Chairman remains, or is deliberately kept, vacant for months at an end. Such clothing of the Deputy Chairman, who is otherwise not even qualified to be appointed as Chairman, with a valid authority of the Chairman would, virtually and practically, amount to permitting him to act as the Chairman during such period whereas it has already been clearly held by this Court in the case of The Bank of Punjab v. Haris Steel Industries, (Pvt.) Ltd. and others (supra) that there cannot be an Acting Chairman, National Accountability Bureau at a time when the office of the Chairman, 'National Accountability Bureau is vacant. It is by now a settled proposition of law that what cannot be achieved directly under the law cannot be permitted or allowed to be achieved indirectly."

- (iii) In the case of Naveeda Tufail Vs. Government of Punjab (2003 SCMR 291), the Hon'ble Supreme Court deprecated the practice of making appointments on ad hoc basis for long periods in the following terms:-

"The ad hoc appointment by its very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the

authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. We may observe that practice of making appointments on ad hoc basis for continuous period without taking steps for fulfilling the vacancies through the process of selection in the, prescribed manner amounts to misuse the authority and this Court at more than one occasions observed that the appointments on ad hoc basis should be discouraged and except in exceptional circumstances, it should not be allowed to continue beyond the period for which the appointment was initially made. The appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete transparency as per requirement of law so that no person who is eligible to hold such posts, is excluded from the process of selection and is deprived of his right of appointment in service.”

- (iv) In the case of Pakistan Railways, through GM Lahore Vs. Zafarullah, Assistant Electrical Engineer (1997 SCMR 1730), the Hon'ble Supreme Court, after making reference to the instructions contained in Office Memorandum No.112/76-AR I/R-II dated 18.06.1980 as amended by office memorandum dated 10.04.1981 printed at serial No.137 of the Esta Code, held as follows:-

“We would like to observe that appointments on current or acting charge basis are contemplated under the instructions as well as the Rules for a short duration as a stop-gap arrangement in cases where the posts are to be filled by initial appointments. Therefore, continuance of such appointees for a number of years on current or acting charge basis is negation of the spirit of the instructions and the Rules. It is, therefore, desirable that where appointments on current or acting charge basis are necessary in the public interest, such appointments should not continue indefinitely and every effort should be made to fill posts through regular appointments in shortest possible time. A copy of this judgment be sent Establishment Division for future guidance.”

- (v) In the case of Javed Nawab Vs. Chief Secretary, Government of Balochistan (1998 SCMR 2337), the petitioner's grievance was that despite the recommendations made by the competent authority for his promotion, he had not been considered for the same on one pretext or the other and that whenever any vacancy occurred, the same was filled on current or acting charge basis or by transfer from other departments. The Hon'ble Supreme Court directed the authorities to consider the

petitioner for promotion against a specified post and until his case was finalized on merits, no other incumbent would be promoted to the post in question either temporarily or on current charge basis, acting charge basis or by transfer or promotion etc.

- (vi) In the case of Rab Nawaz Dhadwana Vs. Muhammad Akram (PLD 2014 Lahore 591), the office of the Advocate General, Punjab had remained vacant for two years in a period of six years. The decision of the Provincial Government to appoint a person to look after the work of the Advocate General was held to be a circumvention of the Constitution. The Hon'ble Lahore High Court directed the Provincial Government to appoint the Advocate-General for Punjab in terms of Article 140 of the Constitution within a fortnight. In paragraph 49 of the said report, it was held as follows:-

“Adhocism is an organizational philosophy or style characterized by (1) aversion to planning, (2) tendency to respond only to the urgent, as opposed to the important, (3) focus on ‘fire fighting,’ than on establishing systems and procedures through goal setting and long term planning. Adhocism is a mindset or a tendency to establish temporary, chiefly improvisational policies and procedures to deal with specific problems and tasks. Adhocism is a malaise, which exploits the system and weakens institutions and is, therefore, abhorred.”

- (vii) In the case of Chandgi Ram Vs. University of Rajhistan (2001 (10) SCC 566), the Supreme Court of India gave a critique on appointments made on ad hoc basis against posts created by the statute in the following terms:-

“We find such problems, as in the present case, arise quite often when delay is made in making the regular selection. If the authorities fill up these vacancies at the earliest, this culture of ad hocism could not develop. This deteriorates the fibre of the institution affecting the very foundation of our culture specially when it is in the educational field. Even Section 3(3) of the Act does permit ad hoc appointment but only for a short period, not to continue for years. Institutions not filling vacancies for a long time develop the culture of ad hocism. Sometimes not filling is for a coloured purpose to favour one or the other. This has to be denounced. This not only permits irregular appointees to continue for a long time but thwarts a regularly competent appointee to come in, deteriorating the very standard of the institution. This brings in internal struggle to appoint or continue one or the other ad hoc

appointees leading to inter se contest in courts, as in the present case taking large cake of time in the courts.”

40. An officer who is appointed as an R.T.U. on a temporary basis or by whatever other synonym it is called is not appointed through a competitive process or through a process akin to a promotion process where the eligibility and fitness of a person under consideration is gauged and assessed. A temporary appointment is made due to exigencies of a particular situation without considering the respective merits of all those who are eligible. A temporary appointment is made for a particular period and of a person whose service could be terminated with the maximum of ease. The record shows that the method of appointment by promotion or initial appointment prescribed in the notification dated 01.12.2016 had not been followed while appointing persons against the post of the R.T.U. on temporary basis. It bespeaks of a sorry state of affairs at the end of all those public functionaries who were responsible to make a timely appointment to the post of the R.T.U. in accordance with Section 4 of the I.R.A. by making the appointments of officers on temporary basis for years on end. Details of the temporary appointments made to the post of the R.T.U. are given herein below:-

Sr. No.	Date of Notification	Name and Designation of Appointee	Status of Appointment
1.	02.01.2014	Mr. Baqir Ali Rana, Member N.I.R.C.	To perform duties of R.T.U.
2.	29.07.2016	Mr. Manzoor Ahmed Kiyani, Joint Secretary (Emigration)	Additional Charge for three months
3.	23.02.2017	Mr. Ghulam Nabi Deeshak, Registrar N.I.R.C.	Additional Charge for three months
4.	06.07.2017	Mr. Ghulam Nabi Deeshak, Registrar N.I.R.C.	Additional Charge extended for three months w.e.f. 23.05.2017
5.	06.10.2017	Mr. Saeed Ahmed Khan, Secretary (O.S.D.) (BS-20) of Worker Welfare Fund	Look After Charge
6.	22.12.2017	Mr. Noor Zaman, Sr. Joint Secretary (Admn) (BS-21)	Look After Charge
7.	23.11.2018	Mr. Saleem Jan, Member N.I.R.C.	Look After Charge
8.	11.02.2019	Ms. Atifa Raffat, Joint Secretary (H.R.D.)	Look After Charge till posting of an officer
9.	27.07.2019	Mr. Tassaduq Hussain, Joint Secretary (E)	Look After Charge during leave of Ms. Atifa Raffat or till posting of an officer

41. The Federal Cabinet, in its meeting held on 09.07.2019 under Case No.627/28/2019, decided *inter alia* to reiterate its earlier decision whereby it had desired that the existing practice to entrust additional charge to officers be discontinued and the process to fill the vacant positions in the Federal Government be completed at the earliest. 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.

42. The organization adversely affected by the inaction on the part of the Federal Government to make an appointment of the R.T.U. on regular basis was the N.I.R.C. Instead of calling upon the Federal Government to appoint the R.T.U. on a regular basis, it accepted the status quo for years which was in stark contrast with the observations of the Hon'ble Supreme Court in the judgments referred to herein above to continue because the Secretary, Ministry of O.P.&H.R.D., in the meeting dated 12.07.2017, had said that “*we have to make rules for the posts of R.T.U. and Joint R.T.U. sooner or later.*”

43. The scheme envisaged by the provisions of the I.R.A. entrusts specialized responsibilities on the office of the R.T.U. The Establishment Division, in its letter dated 22.02.2019, while informing the Ministry of O.P.&H.R.D. that there was no need for obtaining a no objection certificate from the said Division for

initiating the process of appointment of an R.T.U., had taken the position *inter alia* that the post of the R.T.U. was a specialized post. Conscious of the fact that the post of the R.T.U. is a specialized post, the Ministry of O.P.&H.R.D., in its notification dated 01.12.2016, required candidates to have seventeen years of experience in the field of Labour Administration in order to be eligible for appointment to the said post. There are a range of specialized administrative powers and functions that the R.T.U. has to exercise under the provisions of the I.R.A. For instance under Section 5 of the I.R.A., the R.T.U. has the following powers and functions:-

- "(a) The registration of trade unions under this Act and the maintenance of a register for the purposes;*
- (b) To lodge, or authorize any person to lodge, complaints with the Commission for action, including prosecution, against trade unions, employers, workers or other persons for any alleged offence or any unfair labour practice or violation of any provision of the Act or for expending the funds of a trade union in contravention of the provisions of its constitution;*
- (c) The determination of the question as to which one of the trade unions in an establishment or an industry is entitled to be certified as the collective bargaining agent in relation to that establishment or industry;*
- (d) To inspect the accounts and record of the registered trade unions, or investigate or hold such inquiry in the affairs of the trade unions as he deems fit either by himself or through any officer subordinate to him and to authorize him in writing in this behalf; and*
- (e) Such other powers and functions as may be prescribed."*

44. Now, the notification dated 01.12.2016 clearly provides that the method of appointment of the R.T.U. shall be 75% by promotion and 25% through initial appointment. Given the said ratio, the appointment of the R.T.U. on regular basis for the first time after the enactment of the I.R.A. or the issuance of the notification dated 01.12.2016 has to be made by promotion provided there is a person eligible for appointment by promotion to the said post. In the case of Islamic Republic of Pakistan Vs. Muhammad Zafar (1986 SCMR 898), the Hon'ble Supreme Court, after making reference to the policy set out in the memorandum dated 22.06.1953, held that the said policy had the force and effect of a rule and that appointment of direct recruits had to

follow and not precede the promotion. The relevant provision of the said policy is reproduced herein below:-

“(i) Where a cadre has definite quotas reserved for departmental promotions and direct recruitment, promotions against the departmental quota should be made first and the posts reserved for direct recruitment filled later. These orders, however, will have no effect on those cadres where recruitment is made solely by direct recruitment or where all promotions are made only by promotions.”

45. The Ministry of O.P.&H.R.D. requested the F.P.S.C., vide letter dated 04.03.2019, to initiate the process for filling up the post of the R.T.U. This letter was sent after the Ministry of O.P.&H.R.D. was informed by the N.I.R.C. that there was no person eligible for promotion to the post of the R.T.U. The process for the direct appointment to the post of the R.T.U. initiated by the F.P.S.C. through advertisement dated 30.06.2020 has, till date, not culminated in the appointment of a regular incumbent. Since the position that there was no one in the N.I.R.C. eligible for promotion to the post of the R.T.U. was taken by the N.I.R.C. more than one year ago, I am of the view that the process for direct recruitment should be halted until it is determined whether there is any person eligible under the recruitment rules set out in the Ministry of O.P.&H.R.D.’s notification dated 01.12.2016 for promotion to the post of R.T.U. The process for direct recruitment may resume once it is determined that there is no person eligible under the said recruitment rules for promotion to the post of the R.T.U.

46. An application under Order I Rule 10 C.P.C. (C.M. No.4029/2018) was filed on 03.10.2018 by Zaka Ullah Khan Khalil, Registrar (BPS-19), N.I.R.C. praying for his impleadment as a respondent in this petition. In the said application, it was pleaded *inter alia* that the applicant had a vested right to be promoted to the post of the R.T.U. in accordance with the method of appointment prescribed in the notification dated 01.12.2016. This application was strongly opposed by the N.I.R.C. In its written reply to the said application, the N.I.R.C. pleaded *inter alia* that promotion to a higher grade was not a vested right, and that the applicant was not eligible for promotion to the post of R.T.U. (BPS-

20) as he had not satisfactorily completed the mandatory Senior Management Course ("S.M.C.") from the designated institutions. It was also pleaded that since the applicant's Performance Evaluation Reports were not complete, his promotion was to be deferred in accordance with the promotion policy contained in the Establishment Division's O.M. dated 24.10.2007.

47. Perusal of the N.I.R.C.'s reply shows that it is inimical to the applicant. The N.I.R.C. has embarked on the applicant's character assassination by alleging that he was instrumental in the framing of the draft recruitment rules for the post of the R.T.U. to suit himself. For the purposes of clarity, the relevant portion of the pleadings in the N.I.R.C.'s reply is reproduced herein below:-

"... the applicant who was holding the post of Registrar of the Commission temporarily, had managed the framing of rules for appointment to the post of Registrar Trade Unions only to fit himself in the frame and substituted the same with the draft recruitment rules under Civil Servants (APT) Rules, 1973 and sent to the Ministry even without approval of the Chairman NIRC, against the discipline of the organisation. The said draft rules were processed by the Ministry and ultimately notified vide SRO. 1128(I)/2016 dated 01.12.2016."

48. Through such pleadings, the N.I.R.C. has projected an impression that the applicant was all-powerful and could dominate the Ministry of O.P.&H.R.D. in formulating the method of appointment of the R.T.U. through the notification dated 01.12.2016. If there was any truth to this untenable allegation, the said notification would have long been withdrawn or rescinded. It is an admitted position that till date the notification dated 01.12.2016 which lays down the method of appointment to the post of the R.T.U. has not been modified, withdrawn or rescinded by the Ministry of O.P.&H.R.D. This fact by itself belies the said allegation made by the N.I.R.C. against the applicant. Such pleadings are akin to alleging malice against the applicant and warrant condemnation. The N.I.R.C.'s pleadings are silent as to how exactly the applicant was in a position to cause the Ministry of O.P.&H.R.D. to make rules that favoured him. It is well-settled that general allegations of malice are not sustainable in the eyes of law. Reference in this regard may be made to the law laid down in the cases of The Federation of Pakistan Vs. Saeed Ahmed Khan

and others (PLD 1974 SC 151), Aman Ullah Khan Vs. Lahore Development Authority and another (2004 YLR 1038), Ahmed Khan Vs. Mst. Naziran Bibi and others (2003 YLR 1028), and Province of Punja Vs. Messrs Industrial Machine Pool, Lahore (PLD 1978 L 829). No party should be allowed to indulge in wild and reckless allegations besmirching the character of others, especially in pleadings. In the case of Akhtar Hussain Shah Vs. Oil and Gas Development Company Limited(2020 PLC (C.S.) 573), this Court had the occasion to hold as follows:-

“Public sector organizations ought to be careful in the selection of words employed in their written comments with respect to any contesting party. Pleadings in a lis become public documents and false insinuations against a party in such pleadings can defame and lower such a party in the estimation of all those who read such pleadings. The privilege with respect to pleadings must not be abused by any party. Unnecessary and false accusations like the ones made by O.G.D.C.L. against the petitioner in the written comments must be met with the imposition of costs under Section 35(1)(iii) of the Code of Civil Procedure, 1908.”

49. Since the N.I.R.C. is a quasi-judicial body, I am of the view that the imposition of costs on it for such pleadings would not be in order. However, I deem it appropriate to observe that the insinuations made by the N.I.R.C. against the applicant ought not to operate to his detriment as and when he is considered for promotion.

50. As regards the merits of application under Order I Rule 10 C.P.C., the applicant is seeking to become a party to this writ petition so that he could agitate his personal grievance. This petition has been filed in the public interest. The petitioners have not prayed for any specific relief in their own favour. The petitioners seek a direction to the Federal Government to perform its public duty under Section 4 of the I.R.A. to appoint an R.T.U. on regular basis and to stop the practice of appointing R.T.U.s on temporary basis and for short durations. Resort to public interest litigation can be made to obtain judicial redress for public injury arising from a breach of public duty. It cannot be resorted to obtain a personal advantage. Therefore, the application (C.M.No.4029/2018) is dismissed.

51. In view of the above discussion, the instant writ petition is allowed in the following terms:-

- (i) The respondents are directed to complete the process for the appointment to the post of the R.T.U. in terms of Section 4 of the I.R.A. strictly in accordance with the method of appointment set out in the Ministry of O.P.&H.R.D.'s notification dated 01.12.2016 within a period of three months from today, i.e. by 15.12.2020, subject to paragraphs (ii) and (iii) below.
- (ii) The process for the direct recruitment to the post of the R.T.U. initiated by the F.P.S.C. shall be halted until the Ministry of O.P.&H.R.D. determines whether there is any person in the N.I.R.C. eligible for promotion to the said post in terms of the eligibility criteria set out in the said notification dated 01.12.2016. The N.I.R.C. is directed to complete this process within one week from today, i.e. by 22.09.2020. In the event the Ministry of O.P.&H.R.D. determines that there is a person who meets the eligibility criteria for promotion to the post of the R.T.U., his case shall be forwarded to the C.S.B. for consideration for promotion to the said post in a special meeting of the C.S.B. to be convened within a period of one month from today, i.e. by 15.10.2020. In the event the Ministry of O.P.&H.R.D. determines that there is no person in the N.I.R.C. eligible for promotion to the said post, or the person eligible for promotion is not recommended to be promoted by the C.S.B., the process for the direct recruitment to the said post initiated by the F.P.S.C. shall resume and be completed by 15.12.2020.
- (iii) Drawing wisdom from the law laid down in the cases of Javed Nawab Vs. Chief Secretary, Government of Balochistan (supra) and Karamat Ali Vs. Federation of Pakistan (supra), it is directed that the incumbent who has been tasked to look after the post of the R.T.U. on temporary / look after basis vide Ministry of O.P.&H.R.D. shall cease to perform the duties of the R.T.U. on the date when the C.S.B.

recommends the promotion of the eligible person to the post of R.T.U. However, if there is no person in the N.I.R.C. eligible for promotion to the said post, or the person eligible for promotion is not recommended to be promoted by the C.S.B., the incumbent who has been tasked to look after the post of the R.T.U. on temporary / look after basis shall cease to perform the duties of the R.T.U. by 15.12.2020. After the said dates, as the case may be, no other officer shall be appointed as the R.T.U. on temporary, ad hoc, acting charge, additional charge, current charge or look after charge basis other than on regular basis in accordance with Section 4 of the I.R.A. read with the method of appointment prescribed in Ministry of O.P.&H.R.D.'s notification dated 01.12.2016.

- (iv) Until the appointment of an R.T.U. on a regular basis, the officer who is entrusted the responsibilities of the R.T.U. on temporary / look after basis can only exercise powers within the parameters laid down in the above-referred O.M. dated 20.05.2020 issued by the Establishment Division.

52. A report as to the compliance with the said directions shall be submitted to the Registrar of this Court. There shall be no order as to costs. Office is directed to transmit a copy of this judgment to the worthy Secretary, Establishment Division, Government of Pakistan.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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