

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

W.P.No.3003 of 2020  
Dr. Sheikh Akhtar Hussain

**Versus**

Federation of Pakistan through Secretary, Ministry of National Health  
Services, Regulation and Coordination and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**13.10.2020    Barrister Haroon Dugal for the petitioner**

Through the instant writ petition, the petitioner, Dr. Sheikh Akhtar Hussain, impugns the recommendations made by the Policy Board of the Drug Regulatory Authority of Pakistan (“D.R.A.P.”), in its 33<sup>rd</sup> meeting held on 17.08.2020, to terminate the petitioner’s services as the Chief Executive Officer (“C.E.O.”) of D.R.A.P. primarily on the ground that the Ph.D. degree submitted by him along with his credentials had not been recognized by the Higher Education Commission (“H.E.C.”).

2. At the very outset, learned counsel for the petitioner was asked as to how this petition was maintainable since till date the Federal Government had not taken a decision on the impugned recommendations made by the Policy Board of D.R.A.P. He submitted that at no material stage did the Policy Board of D.R.A.P. issue a show cause notice or afford an opportunity of a hearing to the petitioner before recommending that his services be terminated; and that the Policy Board of D.R.A.P violated the procedure prescribed in Rule 10(3) of the Drug Regulatory Authority of Pakistan Employees’ Service Regulations-2015 (“the 2015 Regulations”) by not issuing the petitioner a show cause notice or affording an opportunity of a hearing to him. Learned counsel for the petitioner

prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner.

4. Vide order dated 07.03.2019 passed by the Ministry of National Health Services, Regulation and Coordination, the petitioner had been called upon to stop working as C.E.O. of D.R.A.P. The said order was assailed by the petitioner before this Court in writ petition No.882/2019. Vide order dated 28.03.2019, this Court dismissed the application for interim injunction that was filed by the petitioner along with the said writ petition. Recently, vide judgment dated 17.09.2020, this Court dismissed the said writ petition. By the time the said writ petition was decided, the Policy Board of D.R.A.P. had given its recommendations to terminate the petitioner's services as C.E.O. of D.R.A.P. In paragraph 31 of the said judgment dated 17.09.2020, this Court observed *inter alia* that it remains to be seen whether or not the recommendations of the Policy Board prevail over the Federal Government.

5. The vital question that needs to be determined is whether the recommendations made by the Policy Board of D.R.A.P., in its 33<sup>rd</sup> meeting held on 17.08.2020, to terminate the petitioner's services as C.E.O. of D.R.A.P. can be challenged in a writ petition given the fact that till date the Federal Government has not taken a decision on the said recommendations. In the case of Waheed Shahzad Butt Vs. Federation of Pakistan (PLD 2016 Lahore 872), it has been held *inter alia* that the two expressions "*decision*" and "*recommendation*" have different connotations and that a decision is a binding adjudication of rights and claims between

two or more persons whereas recommendation denotes something in the nature of a suggestion.

6. Regulation 10(1) of the 2015 Regulations gives the power to the Federal Government to remove the C.E.O. of D.R.A.P. on the recommendations of the Policy Board. Till date, the Federal Government has not taken a decision to remove or not to remove the petitioner from the position of C.E.O. of D.R.A.P. Therefore, it is my view that the instant petition is liable to be dismissed as premature. In holding so, I place reliance on the following case law:-

- (i) In the case of Dr. Qaimuddin Vs. Government of N.-W.F.P. (1995 SCMR 876), the Hon'ble Supreme Court upheld the judgment of the Hon'ble Peshawar High Court dismissing as premature a writ petition challenging the recommendations of the Departmental Promotion Committee to recommend the promotion of a candidate. It was held *inter alia* that the recommendations of the Departmental Promotion Committee could not give rise to any cause of action to the petitioner as the recommendations were not binding on the competent authority for the purpose of making a final decision.
- (ii) In the case of Dr. Habib ur Rehman Vs. The West Pakistan Public Service Commission, Lahore (PLD 1973 SC 144), the appellant had challenged before the Hon'ble High Court the recommendations of West Pakistan Public Service Commission and the list in which the name of the appellant was not included for promotion. In the said case, it was held as follows:-

*“Yet another aspect of the matter may also be noticed, viz. that the recommendations*

*of the Public Service Commission being only advisory in nature and it being open to the appointing authority under Article 188 of the Constitution not to accept its advice, it is difficult to see how a petition of this nature can be maintained. The grievance of the candidate would rise only when the Government has made an appointment in contravention of the rules; until that time the advice tendered by the Commission remains confidential and inchoate and cannot give rise to a grievance or a cause of action within the meaning of Article 98 of the former Constitution.”*

- (iii) In the case of Secretary, Establishment Division Vs. Aftab Ahmed Manika (2015 SCMR 1006), it was held that the recommendations made by the Central Selection Board to promote or not to promote an officer to BS-21 were not binding on the competent authority i.e. Prime Minister.
- (iv) In the case of Secretary, Establishment Division, Government of Pakistan Vs. Dr. Muhammad Arif (2018 PLC (C.S.) 907), this Court held that the recommendations of the Central Selection Board to the Prime Minister were not justiciable and could not be subjected to judicial review under Article 199 of the Constitution.

7. In view of the above and given the fact that till date a decision has not been made by the Federal Government on the impugned recommendations of the Policy Board of D.R.A.P., the instant petition is dismissed in *limine* as premature.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

Qamar Khan