

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan

Civil Petitions No. 2547 and 2640 of 2023

(Against the judgment dated 09.03.2023 of the Federal Service Tribunal, Islamabad passed in Appeal No. 1717(R)CS/2018 and Appeal No. 1501(R)CS/2021)

*Chairman Federal Public Service Commission,
Islamabad and others.
(In CP. 2547/2023)*

*The Secretary, M/o National Health Services, Regulations
& Coordination, Islamabad and others.
(In CP. 2640/2023)*

... *Petitioners*

Versus

*Dr. Humaira Sikandar and others.
(In both cases)*

... *Respondents*

For the Petitioners:
(In both cases)

Mr. Rashdeen Nawaz Qasuri,
Additional Attorney-General for Pakistan.
a/w M. Ibrahim, AHC.
Asif Sohail, Director (Legal), M/o National
Health Services, Regulations & Coordination,
Islamabad.

For Respondent No. 1:
(In both cases)

Mr. M. Aftab Alam Rana, ASC.

Date of Hearing:

13.08.2024.

ORDER

Qazi Faez Isa, CJ. Learned Additional Attorney-General for Pakistan at the outset points out that there was a difference of opinion in the Federal Service Tribunal, Islamabad (**‘the Tribunal’**) and that Mr. Rana Zahid Mahmood, Acting Chairman, had expressed one view and Mr. Muhammad Javed Ghani, Member, had expressed another view. Therefore, the matter should have been referred to the Chairman, but this was not done. Reference is made to section 3A of the Service Tribunals Act, 1973 (**‘the Act’**) and the question arises whether the *Chairman* mentioned therein would include an acting Chairman. To appreciate the point it would be appropriate to reproduce section 3A of the Act, as under:

‘3A. Benches of the Tribunal. -(1) The powers and functions of a Tribunal may be exercised or performed by Benches consisting of not less than two members of the Tribunal, including the Chairman, constituted by the Chairman.

(2) If the members of a Bench differ in opinion as to the decision to be given on any point,—

(a) the point shall be decided according to the opinion of the majority;

(b) if the members are equally divided and the Chairman of the Tribunal is not himself a member of the Bench, the case shall be referred to the Chairman and the decision of the Tribunal shall be expressed in terms of the opinion of the Chairman; and

(c) if the members are equally divided and the Chairman of the Tribunal is himself a member of the Bench, the opinion of the Chairman shall prevail and the decision of the Tribunal shall be expressed in terms of the opinion of the Chairman.’

2. The above law states that whenever there is a difference of opinion on any point the same shall be decided according to the opinion of the majority. However, when members are equally divided weightage is given to the opinion of the Chairman, if he was a member of the Tribunal which had heard the matter. In the present case the appeals were heard by an acting Chairman, and not by the Chairman. An acting Chairman is made pursuant to section 3(7) of the Act which is reproduced hereunder:

‘3 (7) At any time when— (i) the Chairman of a Tribunal is absent or is unable to perform the functions of his office due to any cause; or

(ii) office of the Chairman is vacant, the most senior of the other members of a Tribunal shall act as Chairman till the Chairman resumes his office or the regular Chairman is appointed as the case may be.’

3. Since the legislature in its wisdom did not mention an *acting Chairman* in section 3A(2)(c) of the Act we cannot insert such words therein or imply that a Chairman would also include an acting Chairman. Moreover, the general rule, and one of logic too, is that when there is a difference of opinion amongst adjudicators the matter is referred to a third adjudicator. However, the legislature created an exception to such a general

rule, and having created the exception it must be construed strictly. By applying this rule of interpretation the weightage given to the opinion of the Chairman in clause (c) of section 3A(2) of the Act cannot be extended to include an acting Chairman.

4. Therefore, since there are two opinions at variance and as the Chairman was not a member of the Tribunal we have no option but to remand the matter to the Chairman for his decision in the subject appeals. We expect that since this is an old matter it would be given priority by the Chairman and the same will be decided expeditiously and preferably within a period of three months from the date of receipt of this order.

5. These petitions are disposed of in the aforesaid terms.

Chief Justice

Judge

Islamabad:
13.08.2024
(Atif)

Approved for Reporting