Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 1181 OF 2021

Dr. Syed Ali Hussain Naqvi

Vs

Federation of Pakistan through Secretary, Ministry of National Health Service Regulations and Coordination, etc.

PETITIONER BY:	M/s Muhammad Shoaib Shaheen, Saif-ur-Rehman Shah Bukhari and Muhammad Zunair Semab, Advocates.
RESPONDENTS BY:	Mr Farrukh Shahzad Dall, Assistant Attorney General. Syed Qamar Hussain Sabwari, Advocate. Mr. Majid Khan, A.D Legal, NHSR&C.
DATE OF DECISION**:**	13.10.2021.

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BABAR SATTAR, J.- Through this judgment this Court will dispose of the instant petition and W.P No. 1564/2021. Through W.P No. 1181/2021 the petitioner impugned a show cause notice dated 17.03.2021 and a suspension notice also dated 17.03.2021 issued by the Board of Islamabad Healthcare Regulatory Authority **("Authority").** Through W.P No. 1564/2021 the petitioner impugned order dated 09.04.2021 issued by the Board of the Authority pursuant to which his services as Chief Executive Officer **("CEO")** of the Authority were terminated.

2. Learned counsel for the petitioner submitted that the show cause notice and suspension notice were issued without jurisdiction as the said notices were issued by the Board of the Authority even thought it fell within the domain of the Federal Government to appoint CEO of the Authority and consequently it was only the Federal Government that could have issued a show cause notice to the petitioner or passed his suspension order. It was further submitted on behalf of the petitioner that his due process rights had not been upheld while issuing a termination order. That a hearing committee of the Board of the Authority was constituted and on the basis of its recommendations the Board of the Authority terminated his services. That the petitioner was not given reasonable opportunity to appear before the Board and defend his position. It was the petitioner's contention that the Board of the Authority was interfering with the operational matters that fell within the domain of the CEO of the Authority and it was only to protect the interest of the healthcare establishments, with whom the members of the Board were affiliated, that his services had been terminated and consequently the termination order suffered from malice. It was contended that the petitioner had constituted an inspection team to ensure that healthcare establishments were providing healthcare services, including PCR test for Covid-19 at the price prescribed by the Authority and it was due to lobbying by healthcare establishments that wished to charge higher prices for Covid-19 testing that cause has been manufactured to terminate the services of the petitioner. The learned counsel for the petitioner submitted that allegations in the show cause notice were false

and while he was not being provided reasonable opportunity to defend himself, he had filed an initial response and had explained that he acted in accordance with law and had not availed any undue benefits, including paid leave, or services of employees of the Authority for his personal household purposes. It was contended that the petitioner was a professional who had returned to Pakistan to indulge in public service and had been selected through a transparent process and it was only when he made efforts to discharge the mandate of the Authority that the Board members who were proxies of healthcare establishments turned against him and his termination was consequently liable to be set aside as it suffered from *mala fide* of law and fact.

4. Learned Assistant Attorney General submitted that the Federal Government had no role to play in an appointment or removal of the CEO. That section 12 of the Islamabad Healthcare Regulation Act, 2018 **("Act")** clearly provided that it was for the Board to appoint CEO of the Authority and subsections (1)(i), (j) & (k) of section 10 of the Act vested the authority in the Board to appoint a CEO, determine his terms and conditions of service, oversee the CEO's performance and hold him accountable according to the terms and conditions of his employment. He submitted that a summary had been mistakenly moved to seek the approval of the Prime Minister prior to the appointment of the petitioner, but the said summary was returned with the observation that the Act provided a statutory mechanism for the appointment of the CEO and pursuant to the provisions of the Act, it was for the Board to grant such approval in relation to the appointment of CEO and not the Prime Minister or the Federal

Government. The learned Assistant Attorney General objected to the maintainability of the petition by submitting that the CEO of the Authority had been appointed pursuant to a contract and his terms and conditions of service were not regulated by statutory rules and consequently the petition was not maintainable.

5. The learned counsel representing the Board and the Authority submitted that the petitioner had been appointed pursuant to contract dated 31.01.2021 for a period of three years and the terms and conditions of his employment were listed in the contract as well as the benefits he was entitled to. That the contract was offered to him by the Board and his terms and conditions of service were not regulated by statutory rules as was evident from the content of his employment contract as well as section 10(1)(i) of the Act, which provided that it was for the Board to appoint a CEO and determine his terms and conditions of service and that in terms of section 10(1)(k) it was for the Board to hold the CEO responsible according to the terms and conditions agreed. That Consequently the petitioner was a contractual employee of the Authority and his terms and conditions of service were regulated by a contract and not by statutory rules, and the petition was thus not maintainable. He contended that the petitioner had been held accountable by the Board in accordance with provisions of the Act and his terms and conditions of service, and the show cause notice, suspension notice and termination order suffered from no infirmity. That it was for the Board to hold the CEO accountable and oversee his performance and it was the petitioner who acted in breach of the provisions of the Act and continued to avail benefits that he was not entitled to. That the

impugned show cause notice was issued to him and an opportunity provided to him to explain his position. That he filed a response to the show cause notice but also refused to relinquish his charge upon issuance of the suspension notice and communicated his refusal by letter dated 22.03.2021. That there had emerged a consistent pattern of behavior on part of the petitioner to refuse to abide by the directions of the Board and refuse to respect the responsibility conferred by the Act on the Board and the petitioner was therefore liable for insubordination as well. That the petitioner assumed the authority to fix prices for Covid-19 testing which was neither vested in him nor in the Authority under the provisions of the Act. That he then assumed the authority to conduct inspections of healthcare establishments to enforce the prices fixed by him and further to pass orders to shut down vaccination centres that had been established on the direction of the National Command and Operation Centre (NCOC) at a critical time when all efforts were being made by the Federal Government and NCOC to ensure the vaccination centres were up and running and that they provided services that were trustworthy, in order to meet the emergency created due to Covid-19. That acting in excess of authority vested in the CEO under the Act, the petitioner issued suspension letters and when the Board intervened, he also sent letters to healthcare establishments claiming that the Board was acting in an illegal manner, which reflected both his conduct to bring the Authority into dispute as well as his insubordination. That he acted in breach of the provisions of Public Procurement Rules, 2004, while procuring vehicles for the Authority and that he continued to use

employees of the Authority as domestic help, which he was not authorized to do. That he further availed paid leave that he was not entitled to. That in the 15th extraordinary meeting the Board on the basis of complaints received and on the basis of its own information constituted a four-member hearing committee to provide the petitioner an opportunity of hearing with a notice of hearing on 05.04.2021 and the petitioner was invited to the hearing for 07.04.2021. That the petitioner initially agreed to appear along with his counsel but subsequently refused to do so. Consequently, the hearing committee recommended on the basis of record that the petitioner was liable to be terminated from service and in view of such recommendation the Board decided to terminate the contract of the petitioner, which it was authorized to do under the Act. He submitted that there was no infirmity in the manner in which the show cause notice was issued and the suspension or termination orders were passed. That due process rights of the petitioner had been upheld by the Board and the petitioner of his own volition refused to avail the opportunity of hearing provided. That the contract of the petitioner was terminated for cause and the Board had acted lawfully as the petitioner had continued to act in breach of provisions of the Act and the terms of his contract.

6. In the comments filed by the Ministry of National Health Services Regulations and Coordination it also took the stance that the question of appointment and removal of the CEO fell within the domain of the Board of the Authority, in view of the Act, and not that of the Federal Government.

7. Let us first consider the scheme of the Act. It was promulgated to ensure provision of quality healthcare services to the residents of Islamabad Capital Territory by establishing quality standards for the healthcare sector and seeking compliance of such standards by healthcare establishments. Under section 3 of the Act, it was for the Federal Government to create the Authority as a body corporate. Section 4 lists the powers of the Authority, including the powers and functions to register healthcare establishments, issuance of licenses for provision of healthcare services, enforcement of minimum safety standards for patients, healthcare professionals and other staff in a healthcare establishment and regulate healthcare establishments in accordance with the prescribed standards and notified practices. The Authority pursuant to section 5 of the Act functions under general superintendence of the Board which was notified by the Federal Government. Section 6 provides for a Selection Committee that is vested with the authority to select Board members after the initial selection of Board members by the Federal Government. Section 7 provides for a term of a Board member. Section 8 provides for disqualifications of the Chairperson or a member of the Board. Section 10 lists the functions and powers of the Board and subsections (1)(i), (1)(j), (1)(k) and (1)(l) of section 10 provide the following:

> ***10. Functions and power of the Board****.--(1) the functions and powers of the Board shall be*
>
> *i) to appoint full time chief executive officer, determine his terms and conditions of service.*
>
> *j) authorize the chief executive to manage the affairs of the Authority and set performance targets for him.*

k) in case of complaint and non-performance, to hold responsible the chief executive officer according to terms and conditions agreed; and

l) to regulate appointment, grades appraisal dismissal and terms and conditions of service of employees of the Authority.

8. The Chief Executive Officer is to be appointed by the Board under section 12 of the Act and under section 12(2), the CEO may exercise such powers and functions as delegated by the Board and is to continue to act subject to the control of the Board. Section 12(3) then lists the functions that the CEO may perform to the extent delegated by the Board. Section 13 provides disqualifications of the CEO and states that a person is not entitled to be appointed or held office of CEO if he is disqualified under any of the provisions listed within section 13. Chapter III provides for establishment of Registration Board for purposes of registering healthcare establishments and such Registration Board is to appoint an inspection team for purposes of pre-registration, post registration and pre-renewal inspection of healthcare establishments. The inspection committee is to be established by the Registration Board and the inspection can be ordered as and when directed by the Board or by the CEO. Section 18 provides the composition of the inspection committee. Section 20 provides for an inspection team to be appointed by the Authority to perform the functions and exercise the powers of the Authority subject to such conditions and limitations as the Authority may specify. It is the inspection team appointed under section 20 of the Act that is authorized to undertake an inspection of a healthcare establishment, equipment and healthcare services provided by the healthcare establishment, for the grant, renewal,

suspension or cancellation of its registration or license. Section 26 provides that the Authority after granting an opportunity of hearing to the licensee can revoke a license or suspend a license to be obtained by fraud or misrepresentation. Section 26(2) empowers the Authority to suspend a license of the healthcare establishment if the services provided do not meet the minimum safety standard or the healthcare establishment fails to comply with the instructions and directions of the Authority.

9. What emerges from the scheme of the Act is that the Authority functions under the supervision and control of the Board which appoints a CEO to manage the affairs of the Authority subject to such powers as delegated to him/her by the Board. It was for the Board to appoint a CEO and oversee the exercise of the authority by such CEO and to hold him/her to account when acting in breach of the law and the terms and conditions of service pursuant to which he has been employed by the Board. Further, the Registration Board is established under section 15, which is to establish an inspection committee for purposes of pre-registration, pre-renewal and inspection of healthcare establishments. Once such committee has been constituted by the Registration Board, inspections can be ordered by the Registration Board or by the CEO of the Authority. For all other purposes of the Act (i.e. for purposes of registration or renewal of a registration, which falls within the mandate of the Registration Board), an inspection team is to be appointed by the Authority which is then authorized to conduct inspections pursuant to such limitations as prescribed by the Authority. Thus, provisions of the Act reflect that it grants no mandate to the Authority to fix prices

for provision of services by healthcare establishments. The mandate of the Authority is to establish standards and to enforce such standards. And the mechanism provided for enforcement of prescribed standards is the mandatory registration of healthcare establishments by the Registration Board and the licensing of healthcare services by the Authority. The registration function is to be performed by the Registration Board and it is required to appoint an inspection committee to facilitate its functions. And to help discharge the diligence function of the Authority, the Authority may appoint an inspection team. The CEO is not vested with any authority either to appoint an inspection team for purposes of registration of healthcare establishments or to appoint an inspection team to act on behalf of the Authority. The scheme of the Act further reflects that the Authority functions under the Control of the Board, and the CEO as a Chief Executive Officer functions under the control of the Board subject to such authority as delegated by the Board of the Authority. And consequently, it is the Board that manages and administers the Authority and not the CEO, as is customary when it comes to the distribution of powers for governance of body corporates.

10. In view of the provisions of the Act and submissions made on behalf of the petitioner, it appears that the petitioner was acting under the misapprehension that he was the Authority in and of himself. The petitioner also appears to have been acting under the misapprehension that he had the power to fix prices for services, appoint inspection teams and conduct spot inspections for purposes that he deemed fit. It has been submitted on behalf of the Authority that the Authority is yet to prescribe any safety

standards that healthcare establishments are required to comply with. It also appears that neither an inspection committee has been duly appointed for purposes of registration nor an inspection team has been duly constituted to enforce any safety standards prescribed by the Authority that healthcare establishments were required to comply with. The scheme of the Act appears to be to enforce safety standards that are prescribed by the Authority for provision of quality healthcare services within the Islamabad Capital Territory and such prescribed safety standards are then to be complied with by healthcare establishments. The scheme of the Act further appears to be that the power created under the Act is not to be centralized in any one place, and the legislature in its wisdom has distributed such authority between the Authority and the Registration Board and such authority can only be exercised in such a manner and to such extent as provided in the Act.

11. This Court has not been convinced by the arguments of the learned counsel for the petitioner that the Board has acted with malice. The Act does not require that members of the Board of the Authority shall not be healthcare professionals or shall not be affiliated with any healthcare establishment. If the Board is to oversee provision of quality services by healthcare establishments, it is only logical that as the front-line regulator, the oversight functions are performed by individuals from the healthcare sector as is also the standard practice when it comes to other professional frontline regulators such as Bar Councils or Pakistan Engineering Council or the Pakistan Medical Commission. Thus, being affiliated with the healthcare sector or a healthcare

establishment is a qualification and not a disqualification, as it reflects relevant experience of someone qualified to oversee provision of services by a healthcare establishment. It is only in a case of conflict of interest i.e. where the Authority is seeking to regulate a healthcare establishment that a Board member is affiliated with, that the Board member must disclose his/her conflict of interest and recuse himself/herself from participation in the decision-making process related to such healthcare establishment. It has not been claimed by the petitioner that any Board member was affiliated with a healthcare establishment in relation to which the petitioner ordered an inspection or took enforcement action due to which such Board member was conflicted. The petitioner has also failed to establish malice based on any record produced before this Court. It is reflected from the provisions of the Act, as enumerated above, that the Board is the appointing authority for the CEO and that the CEO is employed on such terms and conditions as agreed between the Board and CEO at the time of his/her employment. The Act circumscribes the authority that may be delegated to a CEO, and vests in the Board the power to determine the extent to which the powers and functions of the Authority are to be delegated to the CEO. This is because the Authority acts under the supervision and control of the Board, and it is ultimately the Board that is responsible and accountable for the actions or inactions of the Authority. The statute itself does not prescribe a fixed term for the CEO, as it does in relation the members of the Board. The nature of the employment of CEO is therefore not regulated by statute but is a matter of the agreement between the Board and the CEO. And

the CEO is then accountable as per the terms and conditions agreed as a matter of contract, and it is for the Board as the competent authority to enforce such terms and conditions. Under Section 10, it was in exercise of such powers that the Board was duly authorized to issue a show cause notice to the petitioner and pass suspension and termination orders, if just, fair and reasonable in view of the facts. The actions of the Board are therefore not without jurisdiction or devoid of legal authority. It is not for this Court to engage in the adjudication of the merits of the suspension and termination of the petitioner's employment and whether or not such termination was justified. The petitioner has failed to point out how the actions of the Board of the Authority suffer from any jurisdictional defect. The petitioner has failed to establish that the Board did not afford to him an opportunity to be heard or otherwise abused the authority vested in it under section 10(1)(i)(j) and (k) of the Act.

12. The leaned counsel for the petitioner relied on ***Lahore Development Authority Versus Ms. Imrana Tiwana (2015 SCMR 1739)*** and ***Ghulam Rasool Versus Government of Pakistan through Secretary, Establishment Division Islamabad (PLD 2015 SC 6)*** for the proposition that it is for the Federal Government to appoint the Chief Executive of a regulatory authority. The said judgments do not help the cause of the petitioner. In ***Imran Tiwana*** the august Supreme Court did not lay down a general rule that all appointments of autonomous and regulatory bodies must be made by the Federal Government. The dicta being relied on by the learned counsel for the petitioner relates to regulatory capture and no law or principle regarding the

authority of the Federal Government to appoint chief executives of all regulatory bodies was laid down by the apex court. Likewise, in ***Ghulam Rasool*** the law laid down is opposed to what has been argued by the learned counsel for the petitioner. The august Supreme Court had previously directed that a high-powered commission be established for appointments to statutory bodies and corporations while adjudicating ***Khawaja Muhammad Asif Vs. Federation of Pakistan and others (2013 SCMR 1205***). In ***Ghulam Rasool*** the august Supreme Court clarified that it had not laid down any larger obligation for the Federal Government, in contrast to Article 90 of the Constitution, and that the matters of appointment of heads of statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities, etcetera are governed under the specific statutory provisions which cannot be overlooked or substituted by some other mechanism. ***Ghulam Rasool*** is therefore authority for the proposition that appointments in statutory and regulatory authorities are to be made in compliance with provisions of the statute under which the said regulatory authority is created and governed. In the instant matter, the Act clearly provides that it is for the Board to appoint the CEO of the Authority. The Federal Government thus rightly declined to approve the summary asking it to confirm the appointment of the CEO of the Authority as the Federal Government is vested with no legal authority to interfere with the power vested in the Board of the Authority.

13. The learned counsel for the respondent relied on ***Abdul Wahab and other Vs. HBL and others (2013 SCMR 1383)*** for the proposition that where service grievance agitated by the

person is not governed by statutory rules the petition is not maintainable in terms of Article 199 of the Constitution. It is settled law that in the event that a service grievance does not identify any action taken against a petitioner in breach of provisions of the law, such petition is not maintainable under Article 199 of the Constitution. In the instant case, the petitioner has failed to point any action of the Board or the Authority that is in breach of the provisions of the Act and as the terms and conditions of service of the petitioner are not regulated by law, and the show cause notice, the suspension and termination orders have not been issued without jurisdiction, the petitions are not maintainable and are therefore **dismissed.**

(BABAR SATTAR)
JUDGE

Announced in the open Court on **08.11.2021.**

JUDGE

Saeed