JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 3317/2024

Muhammad Sajjad Hussain
Vs.
Federation of Pakistan through Secretary Establishment Division & others

Petitioner by:	Raja Adnan Aslam, Advocate.
Respondents by:	Mr. Fahad Khan Tareen, Assistant Attorney General. Mr. Jameel Hussain Qureshi, Advocate, along with Mr. Ali Ata Hashmi, Assistant Director, National Energy Efficiency & Conservation Authority. Mr. Qamar ul Haq Khan Niazi, Advocate for respondent No.4. Mr. Zafar Ullah Khan, Law Officer, Power Division.
Date of Hearing:	07.05.2025.

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BABAR SATTAR, J.- The petitioner has impugned the actions of the National Energy Efficiency and Conservation Authority **("NEECA"):** (i) the creation of the post of Director, Strategy Management Office **("Director SMO")**, (ii) the appointment of respondent No.4 to the position of Director Strategy Management Office and (iii) Gazette notification dated 05.03.2024, in the form of SRO 346(I)/2024 dated 25.01.2024, through which amendments were introduced to the National Energy Efficiency and Conservation Authority (Service) Regulations, 2021 **("NEECA Service Regulations")**.

2. The petitioner contended that the entire process of creation of the post of Director SMO, the prescription of criteria for appointment to such post and the manner in which such process was conducted, to appoint respondent No.4, was in breach of law and provisions of the National Energy Efficiency and Conservation Act, 2016 **("NEECA Act")**, read with the NEECA Service Regulations.

Islamabad High Court

3. The learned counsel for the petitioner submitted that the power to appoint staff was vested in NEECA pursuant to Section 7(w) of the NEECA Act. He submitted that Section 21 of the NEECA Act vested authority in the Board to frame regulations in consultation with the NEECA. Section 21(2) of the NEECA Act provided for regulations to determine the manner in which modes of appointment and determination of terms and conditions of employees were to be exercised. He submitted that pursuant to such provision, NEECA Service Regulations have been framed. But the post of Director SMO has not been prescribed through NEECA Service Regulations. He further submitted that the said office did not form a part of the organogram of NEECA. Further, the scheme of appointments reflected that the maximum age limit for the post of Director SMO has been fixed for all other such posts as forty-five (45) years. In the instant case, the advertisement inviting applications for the post of Director SMO fixed the maximum age at forty (40) years to tailor the process to benefit respondent No.4 and exclude competition from other qualified persons. He submitted that respondent No.4 had previously applied for the job of Senior Assistant Director in the year 2021, where, after competitive process, he was not offered the job, but the petitioner was offered the said job. However, subsequently a special post of Director SMO, was carved out to accommodate respondent No.4 through a tailored process, which was not supported by the NEECA Service Regulations.

4. The learned counsel for respondents No.3 and 4 raised a preliminary objection about the maintainability of the petition. It was submitted that the post of Director SMO, held by respondent No.4, was not a statutory position and did not qualify as a public

Islamabad High Court

office in terms of the law laid down in ***Ghulam Murtaza v. Federation of Pakistan*** ***(2023 PLC(C.S) 1188)*** and ***Shahid Mehmood v. BISP*** **(2024 PLC(C.S) 1103)**. It was further submitted that in the event that the petition was not to be treated as seeking the issuance of a writ of quo-warranto, but instead a writ of mandamus, the petitioner must be an aggrieved person, as required by Article 199 of the Constitution. It was submitted that the petitioner never applied for the position of Director SMO and could not be treated as an aggrieved person in relation to respondent No.4 being hired for such position.

5. The learned counsel for the petitioner, on the question of maintainability, submitted that the petition was not merely seeking the issuance of a writ of quo-warranto declaring that respondent No.4 was serving on a public post, where he should not be serving. The challenge brought forth in the instant petition related to the manner of recruitment undertaken by a statutory authority. He submitted that the Board of NEECA was vested with powers under Section 21 of the NEECA Act to frame regulations for purposes of the NEECA Act. In the NEECA Service Regulations, approved by the Board of NEECA, the maximum age for the appointment of a Director SMO, Strategy Management Office, was 45 years. He submitted that recruitment was undertaken for purposes of appointment of Senior Assistant Directors, in which respondent No.4 also competed, but could not qualify. Subsequently, a special position was carved out and the recruitment criteria were also tailored to provide for his appointment in breach of the criteria approved by the Board of NEECA in terms of the NEECA Service Regulations. The amended Service Regulations also provided a maximum age of forty-five

Islamabad High Court

(45) years for the appointment of a position of Director. However, the said amended Service Regulations had also not been approved by the Board of NEECA, but had nonetheless been still gazette, notwithstanding the fact that the minutes of the 9th Board meeting dated 13.01.2023, as appended with the petition, issued certain directions to amend the organogram of NEECA and place that before the Board. Consequently, there ought to have been an independent Board meeting, in which the organogram and/or any amendments to the NEECA Service Regulations were considered and approved with a direction that the amended NEECA Service Regulations, as approved, be gazetted. But no such minutes have been placed on record to establish that the NEECA Service Regulations, as amended, had been duly approved by the Board and were backed by the authority of law.

6. The learned counsel for respondents No.2 and 3, on merits of the petition, submitted that in the 5th meeting of the Board of NEECA, it was decided that a position be created to provide support to the Board, keeping in view the HR model being used by the Benazir Income Support Programme (BISP) for purposes of appointment to the position of Director. The Managing Director (MD), NEECA, was the competent authority in terms of regulation 13(2) of the NEECA Service Regulations. The MD, NEECA, had constituted a committee, which then finalized the Terms of Reference (TOR) for the said position and determined that the position would be that of Director. It was submitted that there was no legal infirmity with fixing a maximum age of forty (40) years as a criterion for appointment to such position. It was in view of the directions issued by the NEECA Board in the 13th meeting dated 16.08.2024, the NEECA Service Regulations were

Islamabad High Court

amended and gazetted on 05.03.2024 (SRO 346(I)/2024, dated 25.01.2024). He submitted that there was no infirmity in the manner in which the position of Director SMO was created or the manner in which respondent No.4 was hired for the said position.

7. The learned counsel for respondent No.4 submitted that respondent No.4 was at the receiving end of the decisions rendered by NEECA. To the extent that there was any irregularity, he could not be held liable for the same. He had applied in accordance with an advertisement issued by NEECA and had been appointed in accordance with law. He relied on the doctrine of locus poenitentiae to argue that his appointment could not be declared illegal.

8. In rebuttal, the learned counsel for the petitioner submitted that the NEECA Board had issued directions to abolish two posts. The Board however never issued a direction to re-do the organogram of NEECA and publish it without the Board's approval. The minutes of the 13th Board meeting of NEECA explicitly required the management to produce the proposed organogram before the Board, which direction was never complied with. The decision to create a position to provide secretarial support to the Board by creating post of Director SMO was also not backed by the authority of the Board or the NEECA Service Regulations. He submitted that respondent No.4 had previously applied for a position of Assistant Director, for which the recruitment process was carried out by Institute of Business Administration (**"IBA"**). The petitioner and respondent No.4 both competed in the process and the petitioner was appointed to the position of Senior Assistant Director Strategy, Policy and Regulations by appointment letter dated 18.03.2022. Respondent

Islamabad High Court

No.4, however, was not selected or appointed to any position in NEECA. Having failed such recruitment process, the position of Director SMO was then tailored in order to select respondent No.4 for such position, which was done through a process that was neither competitive nor transparent. The petitioner was an aggrieved person as he had been hired through a transparent competitive process in accordance with law to the post of Senior Assistant Director. While respondent No.4 had been appointed through a tailor-made process designed for him and had been appointed to a position higher than the petitioner's position. It was thus that the petitioner was seeking the issuance of a writ of mandamus challenging the entire process through which the position of Director SMO was created and respondent No.4 was appointed to it.

9. The basic challenge brought by the petitioner is against a series of actions of Respondent No.3 that have led to the creation of the post of Director, Strategy Management Office and the recruitment of Respondent No.4 against such post. The first prayer of the petitioner is seeking a declaration that, *"all acts of respondents, including the creation of post of Director Strategy Management Office along with appointment of respondent No.4 as illegal, unconstitutional, without lawful authority… ".* It has further been prayed that, *"a Gazette notification issued dated 05.03.2024 should be set aside being void ab initio without lawful authority."*

10. One of the objections to the maintainability of the petition raised by the counsel of respondents was that the office held by respondent No.4 was not of a statutory nature and did not qualify as a public office. The office held by respondent No.4 may not be a public office but that is beside the point for purposes of

Islamabad High Court

the instant petition. The petition is not in the nature of seeking the issuance of a writ of *quo warranto* against respondent No.4. The petitioner has challenged the process adopted by respondents No.2 and 3 for purposes of the purported creation of the office of Director Strategy Management. It has been argued that the notification issued for purposes of recruitment of the position of Director SMO was in breach of the NEECA Act and NEECA Service Regulations. It has further been asserted that NEECA Service Regulations, as amended through SRO 346(I)/2024 dated 25.01.2024, published in the official gazette on 05.03.2024, are illegal as such amendments were never approved in accordance with provisions of the NEECA Act. The petitioner is therefore seeking the issuance of a declaration by this Court holding that the actions of respondent No.3, which is a statutory authority, in creating the post of Director Strategy Management Office, undertaking the recruitment process tailored to hire respondent No.4 to such post in breach of requirements of the NEECA Regulations, and notification of amendment to NEECA Regulations without due authorization to be declared illegal. This Court has the jurisdiction to issue such declaration in exercise of its judicial review powers, if it finds merit in the assertions made by the petitioner. It has already been clarified by this Court in ***Usama Khilji v. Federation of Pakistan and others*** ***(W.P. No.1561 of 2023)*** that the maintainability of a petition cannot be challenged merely on the basis of a relief claimed by the petitioner when in view of the facts and circumstances of the case the relief to be granted falls within the power and jurisdiction of the Court. In the instant matter, the relief being claimed is a declaration that the actions of respondents No.2 and 3 leading to the creation of

Islamabad High Court

the post of the Director SMO and hiring of respondent No.4 to such office were illegal and ultra vires the provisions of NEECA Act and NEECA Service Regulations. The objection that the office in question is not a public office is therefore irrelevant.

11. The second objection to the maintainability of the petition raised is with regard to whether the petitioner is an aggrieved person. This objection is also without merit. It is the actions of respondent No.3 as a statutory authority that are in question before this Court in relation to which exercise of judicial review powers have been sought. The petitioner is seeking judicial review of the actions of his employer, which is a statutory authority on the basis that such actions are not in accordance with provisions of the NEECA Act and the NEECA Service Regulations. To the extent that the actions of respondent No.3 are not in accordance with the law, this in itself qualifies the petitioner in his capacity as an employee of the said statutory authority as an aggrieved person. But this is not all. The petitioner participated in a recruitment process undertaken by respondent No.3 through advertisement of certain positions on 28.11.2021. The recruitment process was administered by IBA. After a written test and an interview, the petitioner was selected for the position of Senior Assistant Director. Respondent No.4 also participated in the recruitment process and was not selected. Subsequently, the position of Director Strategy Management Office was created, which according to the petitioner was done to accommodate respondent No.4, and the recruitment process was tailored for such purpose. Finally, respondent No.4 was appointed as Director SMO without a written test and a transparent recruitment process such as the one that the petitioner participated in, and respondent

Islamabad High Court

No.4 was appointed to a post higher than that held by the petitioner. It is in view of these facts that this Court is satisfied that the petitioner qualifies the test of being an aggrieved person for purposes of Article 199 of the Constitution.

12. NEECA has been created pursuant to section 6 of the NEECA Act. The supervision, management and policy direction of NEECA is vested in a Board, the powers and functions of which are detailed in section 4 of the NEECA Act. Section 4(4) of the NEECA Act provides that, *"the Board may approve appropriate strengthening, restructuring, capacity building, terms and conditions of employees and compensation or protection of service benefits for NEECA and its employees, who effectively carry out the functions under the provisions of this Act."* Section 6 that declares NEECA to be a body corporate provides that its general direction and administration shall vest in a Managing Director, who in terms of Section 6(3) also serves as the Secretary of the Board and reports to the Board for approval in relation to all matters including NEECA's budget, plans and projects. Section 7 of the NEECA Act lists the powers and functions of NEECA as an Authority. Section 7(w) includes amongst its powers and functions, the power to *"appoint such technical and legal experts and administrative staff as it considers necessary for the efficient performance of its functions on such terms and conditions as may be prescribed."* As is customary, the term "prescribed" is defined in Section 2(xxvi) to mean *"prescribed by rules or as the case may be, regulations made under this Act".* Section 20 vests the Federal Government with the power to make rules as approved by the Board. And section 21 vests the Board with the power to make regulations in consultation with the Authority in order to achieve

Islamabad High Court

the purposes of this Act *"by notification in the official Gazette"*. In exercise of the authority vested by Section 21 of the NEECA Act, the NEECA Service Regulations were promulgated and notified in the Gazette on 11.12.2021. Regulation 7 of the NEECA Service Regulations that deals with initial appointments, prescribes a maximum age of 45 years for the post of Director. Regulation 13(2) provides that a Managing Director is the authority competent to make appointments in pay scales NPG-1 to 5. The post of Director qualifies as an NPG-1 post in accordance with regulation 2(13) of the NEECA Regulations.

13. Appendix-2 to the NEECA Service Regulations deals with the sub-cadre pay scales and number of positions. The post of Director Strategy Management Office is not a post listed in Appendix-2, which otherwise lists the available positions for Directors in various Directorates. Appendix-3 to the NEECA Service Regulations lists the requisite qualifications, experience and age limits for initial appointment. As the post of Director Strategy Management Office does not exist under the NEECA Service Regulations, no qualifications and experience are prescribed for such position. What is however common for all posts of Director, irrespective of the Directorate in which such posts exist, is that the maximum age limit for initial appointment to such post is 45 years.

14. The NEECA Service Regulations were purportedly amended through an SRO No.346(I)/2024 (dated 25.01.2024) which were notified in the Gazette on 05.03.2024 **("Amended Regulations")** and have been impugned before this Court. The legality of the Amended Regulations will be considered later in the judgment. There are, however, two matters to note in view of the

Islamabad High Court

context of such Amended Regulations. One, that the maximum age for eligibility for initial appointment for the office of Director has been retained in such Amended Regulations as 45 years. And two, the Amended Regulations substitute Appendix-2 and add the Directorate of MD Secretariat and create the post of Director in NPG-1 Grade to staff such Directorate. Appendix-3 in the Amended Regulations, purporting to replace Appendix-3 in the NEECA Service Regulations in terms of prescribing the qualification, experience and age limit for initial appointment, curiously prescribes no qualification and experience for the post of Director for the Directorate of MD Secretariat.

15. Respondent No.4 was recruited pursuant to an advertisement issued by NEECA for the post of Director SMO, which prescribed 25.03.2022 as the last date for submission of applications and guided interested candidates to NEECA's website for detailed terms of reference for the job in question. The key duties and responsibilities prescribed in the TORs were not limited to performance of coordination and/or secretarial tasks for purposes of the Board. Some of the key duties and responsibilities are listed as follows:

> *i. Support and lead to review, update, prepare, and strategize follow up with all the directorates on tasks assigned by the executive management.*
> *ii. Coordinate and facilitate provincial implementing arms of the organization in all their secretariat related matters.*
> *iii. Oversee the implementation of Strategy initiatives for day-to-day activities ensuring that all the management wings' objectives align with the overall Strategy plan of the organization.*
> *iv. Perform the role of a bridge between the organization, its national and international stakeholders/partners, and the management wings for smooth information flow.*
> *v. Support the management wings and provincial implementing arms to design and develop programs ensuring adherence to the guidelines under solicited or unsolicited technical assistance, PSDP, concept notes, and briefs especially conforming to applicable laws and/or approved rules, regulations and specifications.*

Islamabad High Court

vi. To maintain and update all confidential record related to executive matters of the organization.

The TORs required that the maximum age of the candidate applying for the position should not be more than 40 years on the date of advertisement of the position. Unlike the previous recruitment phase in which the first step in the recruitment process was a written test administered by IBA, the recruitment for the post of Director SMO did not require any written test and was only subject to an interview to be taken by a Selection Committee constituted by the Managing Director. The first important thing to note about the recruitment process pursuant to which Respondent No.4 was inducted and offered an appointment letter dated 08.04.2022 is that it advertised the need to fill the post of Director SMO which post did not exist under provisions of the NEECA Service Regulations and for which no qualifications had been prescribed therein. The maximum qualifying age prescribed for all posts of Director in NEECA under provisions of the NEECA Service Regulations is 45 years. This remains so even if the Amended Regulations are deemed to have been lawfully issued. The maximum age prescribed for the position of Director SMO was however 40 years, which is the age prescribed for the position of Senior Assistant Director as per Appendix 3 of the NEECA Service Regulations, a post that is two tiers below the post of Director.

16. The Respondents throughout the hearings were unable to satisfy the Court or articulate any justification as to why the maximum age limit for the advertised post of Director SMO was reduced from 45 years to 40 years in conflict with the requirement of NEECA Service Regulations and the Amended Regulations. By

Islamabad High Court

reducing the maximum age by five years, Respondent No.3 obviously limited the pool of candidates that were eligible to apply for the said position. The pool of eligible candidates could not have been so limited unless that was the maximum age prescribed by the NEECA Service Regulations which would be applicable across the Board to all recruitments, after such age had been determined to be the appropriate age by the organization as a policy measure and prescribed as such in the NEECA Service Regulations. This is, however, not the case in the matter before us. The maximum age for initial appointment to the post of Director within NEECA remains 45 in accordance with the requirements of NEECA Service Regulations. It is only for purposes of recruitment to the post of Director SMO that the age was reduced from 45 to 40, rendering potential candidates ineligible to apply for such position who would fall between the 40 and 45 age bracket and would have been eligible to apply for the post had the age limit prescribed by NEECA Service Regulations been followed.

17. The Respondents were also unable to satisfy the Court as to why the recruitment for the position of Director SMO was undertaken on a standalone basis in contrast to the decisions as reflected in the minutes of the Board where hiring at NEECA was to take place in various phases. It was a part of such recruitment plan for the organization that in Phase-I of the recruitment the responsibility of administering a written test had been conferred on IBA, which test was then to be followed by an interview etc. Respondent No.3 was unable to explain as to why the recruitment to the post of Director SMO was not made part of a particular phase of recruitment but was undertaken on a standalone basis,

Islamabad High Court

and why a distinctive process was adopted for such recruitment i.e. sole interview by the selection committee as opposed to a written test followed by an interview, as in the case of routine recruitments in phase-1 of recruitments for the organization.

18. The learned counsel for Respondent No.3 insisted that to the extent that the post of Director SMO existed, it was for the Managing Director to fill such post pursuant to Regulation 13 of the Regulations and for such purpose he appointed a Selection Committee in exercise of authority under Regulation 15 of the NEECA Service Regulations. Consequently, the selection process suffered from no infirmity.

19. This may be true if the argument is appreciated in isolation. A dark cloud, however, emerges over the instant recruitment when it is considered in the context of how NEECA was to be staffed through a phase-wise recruitment process, for which purpose NEECA Board had approved the engagement of IBA for limited purposes. What stands out is why would NEECA adopt a different recruitment process for the post of Director SMO when all the other NPG posts, including those of Directors, were to be filled through another process involving a written test and interview as approved by the NEECA board? There was no satisfactory response forthcoming on this aspect of the matter.

20. Let us now consider whether the post of Director SMO was ever created by NEECA Board in accordance with provisions of the NEECA Act. Before we do that, let us remind ourselves of the distinction between the authority and the process prescribed by NEECA Act to create a post and prescribe terms and conditions

Islamabad High Court

for eligibility to such post and the power and authority to appoint a person against an existing post, the terms and conditions for which have been prescribed, and the manner adopted to make such appointment. It is the authority and process prescribed for creating a post and prescribing its terms and conditions that we are concerned with in the first place. As already highlighted in Para 12 above, the authority to approve the structure of the organization and the terms and conditions of employees of NEECA is vested in the NEECA Board under Section 4 of the NEECA Act. As the terms and conditions are to be prescribed through regulations in terms of Section 21 of the NEECA Act, it is only where regulations have been duly authorized and approved by the Board and have been published in the official gazette under the authority of the Board that such regulations take effect. Once the Board has created a post and prescribed its terms and conditions, it is only then that NEECA as an authority can appoint staff against such post on the terms and conditions prescribed, in terms of Section 7(w) of the NEECA Act. There is also nothing to gainsay that in terms of provisions of the NEECA Service Regulations, it is for NEECA as an authority to approve a method of appointment.

21. It has been argued before this Court that the NEECA Board never approved the post of Director SMO and never prescribed terms and conditions for such post. Consequently, neither NEECA as an authority nor its Managing Director was vested with any authority to advertise such post, invite applications for recruitment, and prescribe the terms and conditions for service against such post.

Islamabad High Court

22. Let us consider the decisions of the NEECA Board to determine whether it approved the post of Director SMO and prescribed terms and conditions for service including the qualifications and eligibility criteria for appointment to such post. The NEECA Board in its third meeting dated 02.04.2021 approved a draft of NEECA Service Regulations, 2021 and also approved the proposed HR structure, number of positions, salary structure, job description of N-1 positions, job description of various positions and hiring phases and further directed that the draft regulations be legally vetted. In its fourth meeting held on 26.07.2021, the NEECA Board approved the legally vetted NEECA Service Regulations.

23. It has been argued on behalf of Respondent No.3 that NEECA Board authorized the creation of the post of Director SMO in its fifth meeting held on 10.12.2021. The minutes in relation to agenda item No.2 reflect that the NEECA Board directed that a position should be created in the ongoing phase 01 hiring at NEECA to discharge the role and responsibilities as a Secretary of the NEECA Board. In the discussion it was observed that the position was meant to ensure that *"smooth execution of NEECA Board's meetings as well as the meetings of its sub-committees as per the NEECA Act, 2016."* In the same meeting, the NEECA Board also approved the hiring of services of IBA for the recruitment/testing of the phase 01 NPG positions. Two things become obvious from the minutes of the fifth NEECA Board meeting. One, that a direction was issued to create the post of secretary of the NEECA Board to coordinate the meetings of NEECA Board and the sub-committees of the Board. And two, that

Islamabad High Court

such position be filled during the phase 1 hiring at NEECA for which services of IBA had been procured in relation to NPG positions. The TORs for the post of Director SMO have already been discussed above and some of the TORs have been reproduced in Para 15 above. A perusal of such TORs reflects that they are not in accord with the direction of the Board with regard to creating a post for discharging the responsibilities of a secretary of the NEECA Board. Further, to the extent that a direction to create a post to coordinate the meetings of the NEECA Board and the subcommittees of NEECA Board was to be created, such post was to be filled through the phase-1 hiring process approved by the NEECA Board, in which the services of IBA had been employed for purposes of carrying out a written test etc. The Board never considered or approved a standalone separate recruitment process for a position to be created to discharge the responsibilities of the secretary of NEECA Board. The respondents have also relied on decisions taken in the ninth meeting of the NEECA Board held on 13.01.2023 to argue that the creation of the post of Director SMO was authorized by the NEECA Board. This reliance is also misconceived. The minutes reflect that as part of agenda item No.5, the Board considered the revised budget and also deliberated on recommendations of the Human Resource and Remuneration Committee. The Board approved the termination of those serving against NEECA executive grade (NPG 1 and 2 positions). It approved the abolition of Director General (NPG -1 positions) from NEECA Human Resource Regulations and directed that NEECA Human Resource Regulations be revised along with the organogram and be presented to the Board. In the 10th meeting of the NEECA Board held on 24.03.2023, the Board

Islamabad High Court

approved the hiring by NEECA of two drivers under NEECA Staff Grade Cadre.

24. It is interesting to note that while approval of the decision to hire two drivers was sought from the Board, in the entire record produced before this Court there is nothing establishing that approval for hiring against the post of Director SMO was ever brought before the Board or its approval sought. After the 11th meeting of NEECA Board held on 17.01.2024 the next Board meeting was held on 16.08.2024, during which period the Amended Regulations were notified in the official gazette on 05.03.2024. Unlike the minutes of the third and fourth Board meeting that considered NEECA Service Regulations and approved them, the Amended Regulations were neither put up for the approval of the Board nor were they ever approved. Respondent No.3 has also presented before this Court a presentation purportedly made during the 13th meeting of the NEECA Board held on 23.09.2024. The Court's attention was drawn to item 3 in such presentation which reflects the position of a director within the MD Secretariat as part of a slide presented before the Board. No minutes of the 13th meeting of the NEECA Board were ever presented before the Court. What emerges from the above discussion is the following:

i. The NEECA Board never approved the position of Director Strategy Management Office nor was such approval ever solicited by the NEECA management by making it an agenda item for discussion during a Board meeting, which stands in sharp contrast with the hiring of two drivers, which matter was placed before the NEECA Board for its approval.
ii. The NEECA Board in its fourth meeting directed that a position be created to discharge the roles and responsibilities of the secretary of NEECA Board, and such position be filled as part of phase-

Islamabad High Court

1 of the hiring being undertaken by NEECA. The NEECA management never amended the NEECA Service Regulations to create such post and have the regulations contain the post as well as the terms and conditions for such post prescribed by NEECA Board through appropriate amendments in the NEECA Service Regulations as required by the NEECA Act.

iii. The impugned advertisement pursuant to which respondent No.4 was hired was issued in March 2022 at a time when the post of Director, Strategy Management Office did not exist and had not been approved by the NEECA Board, nor did there exist any prescribed terms and conditions of service for such post in the NEECA Service Regulations.

iv. While a note was generated by respondent No.3 dated 02.02.2022 pursuant to which recruitment for the post of respondent No.4 was purportedly initiated, the note itself notes that a meeting of the selection committee for phase 01 recruitment of NPG positions shall be convened to finalize the terms of reference and recruitment process for the position to be created to provide secretarial support to the NEECA Board and its subcommittees. Respondent No.3 did not bring to the attention of the NEECA Board that the creation of such post and the prescription of terms and conditions of service in relation to such post required amendments in NEECA Service Regulations.

v. The selection committee constituted for purposes of giving effect to the decision of NEECA Board to create a position to provide secretarial services to NEECA Board held a meeting on 07.02.2022 headed by the Managing Director of NEECA as Chairman of the Selection Committee. It was this committee that decided to create a post of Director Strategy Management Office and finalized the TORs for such post while also deciding that it shall be an NPG-1 position. The decisions reached by this selection committee, headed by the Managing Director NEECA and comprising three other employees of NEECA reporting to the Managing Director, was never taken to the NEECA Board for approval. Further, the TORs as approved were not in conformity with the direction issued by the NEECA Board in its 5th meeting.

vi. The TORs approved by the selection committee determined that the maximum age of the candidate for such NPG-1 post should be no more than 40 years on the date of advertisement of the position. This was done in full view of the fact that the position of Director, which was an NPG-1 position, had a prescribed age of 45 years according to NEECA Service Regulations.

vii. In the 9th meeting of the NEECA Board a direction was issued to revise the NEECA Human Resource

Islamabad High Court

Regulations along with an organogram and present the same to the Board. This direction was issued on 13.01.2023 i.e. after the recruitment of respondent No.4 as Director Strategy Management Office, who was issued an offer letter on 08.04.2022.

viii. The Amended Regulations, through SRO No.346(I)/2024 (dated 25.01.2024), were published in the official gazette on 05.03.2024 without such Amended Regulations having been considered or approved by the NEECA Board.

25. What the above facts establish is that the post of Director SMO was never approved by the NEECA Board. The Board had directed that a secretarial position be created to facilitate the NEECA Board and its subcommittees. Instead of doing so, the position of Director SMO was created with TORs not limited to what the NEECA Board had directed. Notwithstanding that, in order to give effect to the direction of NEECA Board in its 5th meeting to create a secretarial position, there existed a legal obligation to introduce appropriate amendments into NEECA Service Regulations to create the post of Director SMO and prescribe terms and conditions of service for such post. This was never done until respondent No.4 was hired to such post on the basis of eligibility criteria that were in conflict with the eligibility criteria for the post of Director (NPG-1) as prescribed by NEECA Service Regulations. Finally, the Amended Regulations were published in the official Gazette on 05.03.2024 without having been considered or approved by the NEECA Board as required by section 21 read with section 4, 6 & 7 of the NEECA Act.

26. This Court during the hearing also found that the demeanor of respondent No.3 was cagey and unbecoming of a public sector organization. Instead of being forthcoming and placing on record the minutes of the Board meetings, officials of

Islamabad High Court

respondent No.3 had to be summoned to produce such a record by repeating explicit directions for such purpose. During arguments, the Secretary NEECA attempted to misrepresent contents of the unambiguous minutes of the NEECA Board that have been discussed in this judgment.

27. The creation of the post of Director SMO without the approval of the Board, the prescriptions of TORs for such post prescribing a minimum age less than the age prescribed for the office of Director in NPG-1 under NEECA Service Regulations, the act of publishing Amended Regulations in the official gazette without presenting the same to the NEECA Board and seeking its approval, together with the stand-alone manner in which the recruitment for the post of Director SMO was carried out in contrast to other posts during phase-1 of recruitment in NEECA involving IBA, all of which cumulatively taint the recruitment process. In this view of the matter, it cannot be ruled out that the recruitment criteria and the maximum age for the post of Director Strategy Management Office were prescribed in a *mala fide* manner to tailor the recruitment process to benefit a certain individual. However, given that this Court has already come to the conclusion that the post of Director SMO was never legally created and the terms and conditions for such position were never prescribed, this Court, thus, need not render a definitive judgment on the issue of *mala fide*.

28. In view of what has been discussed above, this Court finds that the post of Director Strategy Management Office did not exist and was never lawfully created. Consequently, no recruitment against such post could ever have been undertaken.

Islamabad High Court

Further the eligibility criteria prescribed for the recruitment purposes including a maximum age of 40 years was in conflict with the age criteria prescribed for the position of Director by NEECA Service Regulations. Any recruitment undertaken on the basis of criteria that were in conflict with the criteria prescribed in NEECA Service Regulations, therefore, suffered from legal infirmity as such criterion excluded potential candidates who would have had an opportunity to compete for such position had the age criterion prescribed by NEECA Service Regulations (i.e. 45 years) had been followed. This Court also finds that the Amended Regulations in the form of SRO No.346 (I)/2024 dated 25.01.2024 and published in the official gazette on 05.03.2024 were devoid of legal authority having never been approved by the NEECA Board 6and are of no legal effect. In view of these findings, the post of Director SMO does not legally exist within NEECA and no recruitment against such post could have taken place without first lawfully creating the post and having terms and conditions for service against such post prescribed through appropriate amendments in the NEECA Service Regulations. Consequently, the recruitment process leading to the appointment of respondent No.4 to the post of Director SMO is declared to be ***void ab initio*** and of no legal effect. The Respondent No.4 will relinquish the charge of such post forthwith, which has been declared to have been illegally created. Having been appointed through an illegal recruitment process, the appointment of Respondent No. 4 is hereby set aside.

29. The third prayer in the petition is that the perks and privileges availed by Respondent No.4 in his capacity as Director Strategy Management Office be recovered from him. This cannot

Islamabad High Court

be granted. The scope of the doctrine of locus poenitentiae in relation to illegal appointments as well as in relation to benefit received by a person whose appointment has been found to be illegal came before the Supreme Court in ***Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207)***. It was held by the Supreme Court that where an order is made that had no sanction of law such order would not be protected by the doctrine of locus poenitentiae, which refers to the power of receding till a decisive step is taken. Thus, while the doctrine does not protect illegal appointments, it would protect the recipient in relation to the amounts received under a *bona-fide* belief that they were due and such amounts could not be recovered. The principle applied in ***Jalaluddin*** was reiterated by the Supreme Court in ***Shams-ur-Rehman v. Military Accountant General (2020 SCMR 188)***. In the said judgment the Supreme Court also relied on its previous judgment in ***Mst. Sajida Javed v. Director of Secondary Education (2007 PLC CS 364)*** where the Supreme Court held that the payments made to a senior school teacher for services discharged by her could not be recovered being governed by the principle of locus poenitentiae. On the basis of such ruling the Supreme Court concluded in ***Shams-ur-Rehman*** that recovery of emoluments and benefits paid to a person could not be recovered even if they had been paid under a mistaken belief that he was duly appointed to such post. More recently the Supreme Court has further elaborated the principles of law and equity that are attracted in a case where an appointment is found to be illegal and the question of recovery of benefits derived by a person while serving against such appointment arises. In ***Shahbaz Latif v. DIG Pakistan Railways Headquarters (PLD 2025 Supreme***

Islamabad High Court

Court 560), it was found that an employee had been wrongly appointed as he did not meet the requisite threshold of marks required in the matriculation exam. At the time of such discovery, he had already rendered services for 15 years. Supreme Court held that:

> *"3. In the present circumstances, the doctrine of quantum meruit finds clear and compelling application. This equitable principle permits reasonable compensation for services rendered where one party has knowingly accepted and benefited from the work of another, even in the absence of a valid or enforceable contract…*
>
> *4.The doctrine of quantum meruit, literally meaning 'as much as he has earned' or 'as much as he deserves' is a foundational principle of equity and restitution in both common law and civil law jurisdictions. It enables a party to claim reasonable compensation for services rendered or work performed, even where a contract is void, unenforceable, or otherwise defective. The doctrine rests not merely on contractual notions, but on the broader equitable premise that a person who has received and retained a benefit should not be allowed to do so without paying reasonable compensation, particularly where the services were not intended to be gratuitous. This creates an implied obligation in law, akin to a quasi-contract, compelling restitution where unjust enrichment would otherwise result.*
>
> *6…While the eventual termination of service due to irregular appointment may be legally sustainable, the direction for recovery of fifteen years' salary without any allegation or proof of fraud or mala fide intent on the part of the petitioner is manifestly disproportionate, inequitable, and legally untenable.*
>
> *7…Principles of equity, good conscience, and public interest dictate that in the absence of fraud or dishonest conduct by the employee, retrospective recovery of wages is not only unjust, but contrary to settled legal precedent. See Shams-ur-Rehman and Jalal-ud-Din. The recovery of salary for services lawfully and diligently performed is impermissible, notwithstanding defects in the initial appointment."*

30. In view of the above, notwithstanding that the appointment of respondent No.4 was illegal, it is admitted that he

Islamabad High Court

has discharged services against the post of Director Strategy Management Office. While the doctrine of locus poenitentiae cannot protect his illegal appointment, as has been discussed above, no recovery can be affected from him for services that he has discharged while holding the office prior to the issuance of a declaration that his appointment was illegal.

31. This petition is ***allowed*** in the above terms. The appointment of respondent No.4 together with the creation of the post of Director Strategy Management Office is declared to be unlawful and of no legal effect. Further, SRO No.346(I)/2024 dated 25.01.2024, and gazetted on 05.03.2025 is declared to be devoid of legal authority having never been approved by the NEECA Board. Let a copy of this judgment be sent to the Chairman of NEECA Board for his information, as the NEECA Board may wish to take corrective action to ensure that the management of NEECA does not continue to act in breach of NEECA Act and NEECA Service Regulations and may wish to consider affixing responsibility for publishing in the official gazette the Amended Regulations that were never approved by the NEECA Board.

(BABAR SATTAR)
JUDGE

This judgment is being signed and released on **27.10.2025.** Let the office inform the parties of the release of this judgement.

(BABAR SATTAR)
JUDGE

M.A. Raza

Islamabad High Court