CITATION AWAITED

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 82 of 2025

Federation of Pakistan through Information Commissioner, Government of Pakistan
Vs.
Muhammad Saad Zamurad, etc.

Appellant by	:	Mr. Munir Ahmed., Advocate
Respondent No.1 by	:	Mr. Faisal Fareed, Advocate.
Date of Hearing	:	17.09.2025

MUHAMMAD ASIF, J. By this judgment, we propose to decide the present Intra-Court Appeal filed by the Pakistan Information Commission ("**the Commission**") assailing the order dated 31.01.2025 ("**the impugned order**") passed by the learned Single Judge in Writ Petition No. 3968/2022. Through the impugned order, the learned Single Judge set aside the Commission's advertisement dated 26.08.2022 for recruitment to the post of Lower Division Clerk (BS-09) and directed the Commission to proceed strictly in accordance with law.

2. The facts in brief for disposal of the instant appeal are that the Respondent No.1 (*Muhammad Saad Zamurad*) was hired by the Commission as a Data Entry Operator on purely temporary basis through successive 89-day contracts, the first commencing on 05.11.2020 and the last expiring on 30.09.2022. On 26.08.2022, following the resignation of the previous incumbent, the Commission published an advertisement inviting applications for appointment against the post of LDC (BS-09) on regular basis. The advertisement prescribed, *inter alia*, a maximum age limit of "18-25" years, which, with the general relaxation under the ESTA Code, extended to 30 years. For convenience, the advertisement is reproduced herein below:

DRAFT

Pakistan Information Commission
Government of Pakistan
SITUATION VACANT

Applications are invited from suitable candidate for recruitment against following regular post in the Pakistan Information Commission, Islamabad.

S.No.	Name of Post/BPS	No. of Posts	Qualification/Experience etc.	Max Age Lt	Domicile
3	Lower Division Clerk (BS-09)	01	a) Matric b) A minimum Speed of 30 w.pm in typing c) Computer literate will be preferred	18-25	Open merit

[Followed by the standard Terms and Conditions].

3. Respondent No. 1, being 33 years old at the relevant time, was over the maximum age limit of 30 years prescribed under the ESTA Code (25 years plus 5 years general relaxation) and was, therefore, ineligible to apply. He subsequently filed Writ Petition No.3968/2022 before this Court with the following prayer clause:

> ***"Under the light of above circumstances, it is most respectfully prayed that;***
>
> ***a. The impugned advertisement very kindly be declared discriminatory, illegal, unlawful unconstitutional and for being published without having legal backing, lawful authority and jurisdiction in this regard.***
>
> ***b. The respondents may very graciously be directed equal treatment to all similarly placed employees including petitioner, and administer even handed treatment without picking and choosing. And to act accordance with law and treat the petitioner according to the law and the constitution.***
>
> ***c. Direct the respondent to treat the petitioner in accordance with the directions passed in ICA No.340/2017, Imran Ahmed and others vs Federation of Pakistan.***
>
> ***d. Any other relief deemed apt by this Hon'ble Court may also be granted in favour of the petitioner."***

4. The learned Single Judge allowed the Writ Petition, vide the impugned order dated 31.01.2025. For a proper appreciation of the matter, the operative portion of the impugned order is reproduced hereinbelow:

> ***"Learned counsel for the Pakistan Information Commission concedes that neither rules under section 26 nor regulations under section 27 of the Right of Access to Information Act, 2017, have been made by the Commission. The Act was passed in October 2017. No reason is given as to***

> ***why the Commission never found time to either recommend rules to the Federal Government for the purpose of section 25 or to make regulations itself under section 27 of the Act. Section 22(1)(g) stipulates that the Commission should also appoint its employees in prescribed manner. The word 'prescribed is defined in section 2 as prescribed by rules or regulations made under the Act.***
> ***2. No good reason is given as to why the informal following of the ESTA CODE could not have been formalized through incorporation by reference in regulations made under section 27, as a shorthand device. In the absence thereof, a statutory gap remains that has not been fulfilled by the Commission.***
> ***3. Resultantly this petition is allowed, the impugned advertisement is set aside, and the Commission is directed to proceed in accordance with law."***

5. Consequently, the advertisement for the post of LDC was cancelled, despite the fact that the recruitment process, including tests, interviews, and skills assessments conducted by an independent and fair testing service, had reached its final stage. The primary ground for this decision was that the Commission had not framed its own Recruitment Rules under the Right of Access to Information Act, 2017 (the **"Act, 2017**"), creating a statutory gap, and thus could not lawfully rely on the ESTA Code.

6. Learned counsel for the Appellants submits that the learned Single Judge failed to appreciate that Establishment Division's recruitment policies issued through Office Memoranda, which are being followed by the Commission in the absence of its own recruitment rules. He urged that several autonomous bodies without their own specific rules follow the same established practice to ensure uniformity and fairness. It is contended that the Commission's recruitment to BS-09 was in line with such policies and with the ESTA Code, which provides a comprehensive and codified framework. It is further submitted that the Respondent No.1 was never a regular employee of the Commission but was engaged on successive 89-days contracts on purely temporary and "services rendered" basis; that the relationship was one of "master and servant", governed purely by contract, not by statutory rules of service; therefore, the matter did not fall within the extraordinary writ jurisdiction of this Court under Article 199 of the Constitution, which is not intended for the

enforcement of private contractual rights. Learned counsel also emphasized that the Respondent No.1 was overage and ineligible for the post of LDC (BS-09) as advertised. He pointed out that under the ESTA Code, the prescribed age for LDC (BS-09) is 25 years with five years' general relaxation, i.e., a maximum of 30 years as on the last date for submission of applications. The Respondent No.1 was 33 years old and hence could not have applied through the advertised process even if he wished to, thus suffering no legal injury from the advertisement. While concluding his arguments, learned counsel urged that the Respondent No.1 misled the learned Single Judge by suggesting continuous and unbroken service, whereas his own documents showed considerable gaps between the contracts. As such, the writ petition was not maintainable and amounted to an abuse of the process of the Court. He, thus, prayed for the appeal to be allowed and the impugned order of the learned Single Judge to be set aside.

7. Learned counsel for the respondent No.1, on the other hand, supported the impugned order and submitted that the Commission was statutorily bound to frame rules under Sections 26 & 27 of the Act, 2017. He argued that in the absence of such specific rules, the Commission enjoyed unguided and free discretion, which rendered the impugned advertisement illegal and *void ab initio*. He, thus, prayed for the dismissal of the instant appeal.

8. We have heard the learned counsel for the parties at considerable length and with their able assistance, have perused the record of the case. The main question that needs to be answered by us is whether the learned Single Judge was correct in setting aside the advertisement for recruitment issued by the Commission on the solitary ground that the Commission had not framed its own specific recruitment rules under the Act, 2017.

9. At the heart of this dispute lies a fundamental principle of statutory interpretation concerning the distinction between a substantive power conferred by a statute and the procedural machinery of rules framed to guide the exercise of that power. The Act, 2017, is a transformative piece of legislation enacted to promote transparency

and accountability. Its very preamble and architecture indicate an intent to create a functionally independent institution. Section 18 of the Act is pivotal in this regard, and for a proper appreciation, its relevant sub-section is reproduced hereinbelow:-

> **"18. Information Commission.–**
>
> (1) .....
> (2) The Information Commission shall enjoy operational and administrative autonomy, except as specifically provided for by this Act."

10. In light of the clear legislative intent, the grant of autonomy is not a mere formality; it is the foundation of the Commission, enabling it to function independently of the executive arm of the state in its day-to-day operations. To hold that this autonomously constituted body is paralyzed and cannot perform the most basic administrative function of recruiting staff until it frames its own rules would be to negate the very autonomy, that was intended by the legislatures to bestow upon it. Such an interpretation would lead to an absurdity where a statutory body, created to be self-sustaining, is rendered ineffective from its inception due to a procedural delay.

11. The substantive power to appoint employees is explicitly conferred upon the Commission by Section 20. This section is pivotal and is reproduced hereinbelow in its entirety for expediency:-

> **"20. Powers of the Information Commission.–**
> (1) The Information Commission shall have all the powers, direct or incidental, as are necessary to perform its functions as provided for in this Act and the power to acquire, hold and dispose of property including the power to–
> (a) monitor and report on the compliance by public bodies with their obligations under this Act;
>
> (b) cooperate with or undertake training activities for public officials on the right of access to information and the effective implementation of this Act;
>
> (c) publicise the requirements of this Act and the rights of individuals thereunder;
>
> (d) conduct inquiries in relation to an appeal and for this purpose shall have the powers of a civil court in respect of the following matters:–
> (i) summoning and enforcing the attendance of witnesses and

compelling them to give oral or written evidence on oath; and
(ii) requiring public bodies to produce records as defined in section 6 pertaining to the appeal;

(e) order a public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provisions of this Act;

(f) impose on the official a fine equivalent to his salary for one day, for a maximum of one hundred days, who has acted willfully to obstruct any activity which is required to be undertaken by this Act, including preventing or delaying the disclosure of information to an applicant;

(g) <u>appoint its employees in prescribed manner</u>; and
(h) ...
(2) ..."

12. The term "prescribed" is defined in Section 2(vii) to mean "prescribed by rules or regulations made under this Act." A meticulous reading of Sections 26 and 27, which are fundamental to the dispute, reveals a critical detail. The same are reproduced hereinbelow:

"26. Power to make rules.– The Federal Government may, by notification in the official Gazette and within one hundred and twenty days from commencement of this Act, make rules for carrying out the purposes of this Act."

"27. Power to make regulations.– The Information Commission may make regulations, not inconsistent with the provisions of the rules made under section 26, regarding its internal procedures and, without limiting the generality of the foregoing, it may make regulations regarding–

(a) record management standards; and
(b) fee that may be charged for requests; and
(c) procedure for processing of appeals."

13. A careful examination of Sections 26 and 27 makes it clear that the power to make rules is conferred upon the Federal Government using the word "**may**," and the regulations the Commission itself may make under Section 27, pertain exclusively to its internal procedures, record management, fees, and appeal procedures. There is no explicit mandate in either section specifically compelling the Commission to frame *recruitment* regulations. The provisions for rules are, therefore, facilitative and directory in nature.

They are intended to provide a structured procedure for the exercise of a power that inherently exists from the moment the statute comes into force. The well-settled legal maxim *"ubi jus ibi remedium"* (where there is a right, there is a remedy) can be analogized here: where a statute confers a function (the "jus" or right to operate autonomously), it necessarily implies the power to take all incidental actions required to perform that function, including recruiting staff. The absence of a specific procedural roadmap (the "remedy" of detailed rules) does not extinguish the primary function or the inherent power to sustain it.

14. The similar issue was also comprehensively addressed by a Division Bench of this Court in **Intra Court Appeals No. 324/2022 & 326/2022** titled "*Federation of Pakistan vs. Waqas Mehmood Kayani*". In that case, the appointment of a Member of ICT-PEIRA, made in 2010 under a statutory provision similar to Section 22(1)(g) of the Act,2017, was challenged years later after the promulgation of rules in 2015 which prescribed a tenure system. The Hon'ble Bench, in a detailed judgement, upheld the validity of the earlier appointment and held as under:

> ***"The primary justification given in the Ministry of FE&PT's summary dated 16.11.2021 submitted to the Cabinet for terminating Mr. Kayani's appointment as Member (Registration) was that the said appointment had been made "in the absence of rules." This is explicitly mentioned in paragraphs 4 and 6 of the said summary. It is well settled that the mere fact that rules have not been prescribed providing for the qualifications and experience required for making an appointment to a statutory post would not mean that an appointment without rules could not be made at all or that if an appointment in the absence of rules is made, it would only be of a temporary nature.***"

The Hon'ble Bench also placed reliance on this Court's earlier judgment in "*All Pakistan ZTBL Workers Union Vs. Federation of Pakistan"* **(2021 PLC 1)**, wherein it was held in explicit terms that:

> ***"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."***

15. The principles laid down in the aforementioned judgments are directly applicable to the facts of the present case and provide clear guidance for interpreting the powers conferred on the Commission under the Act, 2017**.**

16. Having considered the statutory powers and relevant judicial precedents, it is now necessary for us to examine the characterization of the Commission's reliance on the ESTA Code, and to assess its validity within the framework of an autonomous and functioning

statutory body. The learned Single Judge's characterization of the Commission's reliance on the ESTA Code as "informal" and thus unlawful, with utmost respect, adopts an unduly technical and impractical approach. The ESTA Code is not an informal set of guidelines; it is a comprehensive, codified, and completely recognized framework developed by the Establishment Division to ensure uniformity, fairness, and transparency in public sector recruitment across the Federal Government. For an autonomous body like the Information Commission, which finds itself in the interim period before framing its own specific rules, to adopt this established and lawful code is not an act of illegality but one of prudence and good sense. It ensures that its recruitment process is insulated from allegations of arbitrariness and is conducted on an objective, predictable, and fair basis. This action represents a lawful substitute for its own unmade rules, taken in good faith to ensure the continuity of public business. To suppress essential administrative functions on such a hyper-technical ground would be to prioritize form over substance and bring the machinery of governance to a grinding halt.

17. The learned Single Judge also failed to appreciate the fatal flaw of "lack of maintainability" and *"locus standi"* in the Writ Petition. The Respondent No. 1 was a contractual employee and, crucially, was 33 years old, well beyond the maximum age limit of 30 years prescribed in the advertisement. A person who is statutorily ineligible to participate in a process cannot be said to have suffered any legal injury from that process. The Respondent No. 1, by his own ineligibility, placed himself outside the class of individuals who could challenge the recruitment. The writ petition, in this context, was not a bona fide exercise of rights but an attempt to obstruct a lawful process by a person lacking any qualifying right. This Court, in its constitutional jurisdiction under Article 199, does not entertain petitions by persons lacking legal standing. In the case of *Central Board of Revenue, Government of Pakistan v. Asad Ahmed Khan* (**PLD 1960 SC 81**), it was held by the Apex Court as follows:

> ***"In the circumstances, it cannot be said that any rights of the petitioners were infringed, which they could enforce by***

> ***it writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ."***

18. The recruitment for the post of LDC (BS-9) was executed through a process initiated by a duly published advertisement, ensuring transparency and open competition. This action is not only a valid exercise of the Commission's substantive power under Section 20(1)(g) of the Act but is also in strict conformity with the settled legal principle that a public appointment must be preceded by a public advertisement to be lawful. The Apex Court in *Lt. Col. (R) Muhammad Arif Zahid v. Azad Government of the State of Jammu and Kashmir* **(2018 PLC (C.S.) Note 136)** has categorically held that an appointment to a public post is invalid if the said post was not advertised before making the appointment, as the very object of an advertisement is to ensure that all eligible and interested candidates have an opportunity to compete through a fair and transparent process. By issuing a public advertisement, the Commission has therefore fulfilled a essential legal prerequisite, insulating the process from the vice of arbitrariness**.** Consequently, the Commission's conduct was a valid exercise of its power, in perfect harmony with this settled legal position.

19. The impugned order constitutes a transgression of the well-defined boundaries of judicial review under Article 199 of the Constitution. It is a cornerstone of our constitutional jurisprudence that a court, in its extraordinary writ jurisdiction, cannot sit as a court of appeal over the administrative decisions of a competent statutory authority. By setting aside the advertisement on the solitary and hyper-technical ground of unmade rules, the learned Single Judge effectively substituted the Court's view on administrative necessity for the Commission's operational judgment, thereby undermining the statutory autonomy granted under Section 18(2) of the Act. Such an approach amounts to judicial overreach. While holding that we are fortified by decision of the Apex Court in the case of *The Secretary Punjab Public Service Commission, Lahore and others vs. Aamir*

Hayat and others (**2019 SCMR 124**), wherein it was observed that:-

> ***"We also notice that the High Court lost sight of the fact that it is settled law that Courts cannot interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own. The jurisdiction of the High Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters it is not liable to be interfered with. Such interference would constitute overstepping its jurisdiction by the High Court and entering the domain of the executive which is contrary to the concept of trichotomy of powers as per the scheme of the Constitution".***

20. In light of the above discussion, and in view of the binding precedents discussed above, the impugned order dated 31.01.2025 passed by the learned Single Judge is set aside. Writ Petition No. 3968 of 2022 filed by the Respondent No.1 stands dismissed. Consequently, the present Intra-Court Appeal is **allowed** in the following terms:

i. The advertisement dated 26.08.2022 for the post of LDC (BS-09) is restored, and the appellant Commission is directed to complete the recruitment process initiated therein forthwith and in accordance with the ESTA Code.

ii. The appellant Commission is further directed, in the interest of good governance, to frame its Recruitment Rules under the relevant provisions of the Right of Access to Information Act, 2017, within a period of six (6) months from today.

(INAAM AMEEN MINHAS)
JUDGE

(MUHAMMAD ASIF)
JUDGE

Announced in the open Court on _____.09.2025

(MUHAMMAD ASIF)
JUDGE

(KHADIM HUSSAIN SOOMRO)
JUDGE

ISLAMABAD: .10.2025
APPROVED FOR REPORTING
BLUE SLIP ADDED

Shoaib