Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 13 of 2015

Irfan Ahmed, etc.
Vs
Federation of Pakistan, etc.

DATE OF HEARING: 11-12-2015.

PETITIONER BY: Hafiz Arfat Ahemd Chaudhry and Kashifa Niaz Awan Advocates.

RESPONDENTS BY: Mr Abdul Ghanni Channa Advocate, for respondent No. 2.
Malik Zahoor Awan, Standing Counsel.

ATHAR MINALLAH, J.- The petitioners are employees of the Pakistan Science Foundation (hereinafter referred to as the "Foundation") established under the Pakistan Science Foundation Act, 1973 (hereinafter referred to as the "Act of 1973"). The Federal Government, vide letter dated 25-3-2013, had forwarded a copy of the Finance Division's letter, dated 06-3-2013, wherein approval of the competent Authority was conveyed in respect of the grant of Special Allowance, at the rate of 20% of running basic pay, w.e.f. 01-3-2013, to all the officers and staff working in the Federal Ministries/Divisions. The said office memorandum, dated 06-3-2013, had explicitly enumerated the organizations/entities eligible for the said special

allowance, and those which were excluded from its ambit. The Board of Trustees of the Foundation, in its 43rd meeting held on 10-6-2014, adopted various orders of the Federal Government, including the grant of Special Allowance at the rate of 20%, and the decision is recorded at serial No. 3 of Item No. 4 of the minutes of the Board of Trustees' Meeting. The Ministry of Science and Technology i.e. the respondent No. 1, vide letter dated 28-11-2014, sought clarification from the Foundation regarding the authority under which the allowance had been adopted and paid to the employees. The said letter was followed by numerous reminders. The Foundation, vide letter dated 10-12-2014, brought to the attention of the Federal Government the legal provisions empowering the Board of Trustees in respect of adopting the Special Allowance. The Ministry of Science and Technology, vide letter dated 23-12-2014, communicated the direction of the Secretary to the effect that the payment of Special Allowance at the rate of 20% may be discontinued, and recovery thereof may be started from employees of the Foundation who had received the same w.e.f. March, 2013. The petitioners have assailed the said direction dated 23-12-2014.

2. The learned counsel for the petitioners has contended that; the Foundation has been established under the Act of 1973; the general directions, conduct and management of the affairs of the Foundation are vested in the Board of Trustees; Section 16 of the Act of 1973 exclusively confers powers of appointment of officers and servants to the Foundation; the Foundation has the exclusive power to appoint officers, servants and engage such consultants or experts as it may consider necessary for the efficient performance of its functions, and their terms and conditions are also to be decided and determined by the Foundation; Sub Sections 2 of Section 16 of the Act of 1973 makes it mandatory for the Foundation to fix the terms and

conditions of its officers and servants as nearly as may be to conform to the scales of pay, allowances and conditions of service applicable to the corresponding class of employees of the Federal Government; this Court, vide order dated 01-12-2014 passed in W.P. No. 4475/2012, has already declared that the Secretary Ministry of Science and Technology is not vested with powers to interfere in the affairs of the Foundation.

3. The learned counsel appearing on behalf of the Foundation has not opposed the petition. He has affirmed that the Pakistan Science Foundation Employees Services Regulations are statutory in nature in the light of the law laid down by the august Supreme Court in the case of *Pakistan Defence Officers' Housing Authority and others Versus Lt. Col. Syed Jawaid Ahmed* [2013 SCMR 1707].

4. The learned Standing Counsel, on the other hand, has argued that the petition is pre-mature as no order has been passed by the Board of Trustees; the Federal Government is vested with the power to issue directions relating to policy matters, as provided under sub Section (3) of Section 4 of the Act of 1973; the Foundation is under an obligation to comply with the directions of the Federal Government.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The Foundation has been established under section 3 of the Act of 1973. Sub section (2) of section 3 declares the Foundation as a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property. It can sue or be sued in the name of the

Foundation. Section 4 enumerates the functions of the Foundation in clauses (i) to (ix) of sub section 1 ibid. Sub section (3) of Section 4 provides that in performance of its functions the Foundation shall be guided on the questions of policy by the Federal Government, and the latter shall be the sole judge as to whether the question is a question of policy. The general directions, conduct and management of the affairs of the Foundation, including the administration of its funds, has been vested in the Board of Trustees as described in Section 5. Sub section (1) of Section 16 empowers the Foundation to appoint such officers and servants, and engage such consultants or experts, as it may consider necessary for the efficient performance of its functions and on such terms and conditions as it may deem fit. The legislature, in its wisdom, has provided in sub section (2) of section 16 that the Foundation shall, as nearly as possible, fix the terms and conditions of service of its officers and servants so that they conform to the scales of pay, allowances and conditions of service applicable to the corresponding class of employees of the Federal Government.

7. When the provisions of the Act of 1973 are read as a whole, it makes it obvious that it was the intent of the legislature to establish an independent statutory entity i.e. a person as a body corporate and restrict the role of the Federal Government in the context of its management and affairs. Section 5 explicitly vests the general directions, conduct and management of the affairs of the Foundation, including administration of its funds, in the Board of Trustees, as constituted and described therein. Matters relating to the appointment of officers and servants and determining their terms and conditions have been vested exclusively in the Foundation. This is manifest from a plain reading of section 16 of the Act of 1973. Moreover, by inserting sub section (2) of section 16 the legislature has specified the criterion or

guidelines for fixing the terms and conditions of service i.e. it shall conform, as nearly as possible, to the scales of the pay, allowances and conditions of service applicable to the corresponding class of the Federal Government. The scheme of the Act of 1973 provides for a restricted role of the Federal Government. Sub section (3) of section 4 provides that in the performance of its functions the Foundation shall be guided on the questions of policy by the instructions, if any, given to it by the Federal Government, and that the latter shall be the sole judge as to whether the question is of policy or not. The only other provisions in the statute ascribing any role to the Federal Government are sub section 1 of section 3 and clause (a) of section 13.

8. The question before this Court is whether the Foundation is to be guided by the instructions of the Federal Government, as provided under sub section 3 of section 4, even in those matters which pertain to section 16 of the Act of 1973, or, in other words, is the Foundation under an obligation to implement the instructions as communicated through the impugned letter? As noted above, the functions of the Foundation have been enumerated in Section 4 of the Act of 1973. The said functions do not include matters relating to the appointment of officers and servants and determining their terms and conditions. The role of the Federal Government in guiding the Foundation in the performance of its functions on questions of policy by way of instructions appears in sub section (3) of section 4 of the Act of 1973. It is further noted that the power and jurisdiction to appoint officers and servants and to fix their terms and conditions of service have been exclusively vested in the Foundation under section 16, and guidelines for exercising the said power of fixing the terms and conditions have been prescribed in sub section 2 thereof. The legislature could have included the power to appoint officers or servants and fixing their terms and conditions of service as one of the

functions enumerated in section 4. Moreover, if it had been the intent of the legislature to give the Federal Government a role beyond the functions listed in section 4, then instead of inserting sub section 3 in section 4, either a distinct provision would have been inserted or the intention would have been manifested through language that the Foundation would be guided on all matters i.e beyond the functions described under section 4. This obviously is not the case. By inserting sub section 3 in section 4, and by the language used therein, it can safely be discerned that the legislature intended that the scope of the power of the Federal Government to guide the Foundation in its functions through instructions does not go beyond the functions enumerated in section 4 of the Act of 1973.

9. This Court is, therefore, of the opinion that the role of the Federal Government, as envisaged in sub section 3 of section 4, does not extend to matters covered under sub section 1 of section 16. Sub section 2 of section 16 prescribes the criterion and guidelines in this regard. Furthermore, the administration of funds, general direction, conduct and management of the affairs of the Foundation have been exclusively vested in the Board of Trustees. However, this does not preclude the Federal Government from informing the Foundation regarding scales of pay, allowances, and conditions of service applicable to the corresponding class of employees of the Federal Government. Any such information, though not binding on the Board of Trustees of the Foundation, nevertheless has to be considered for complying with the prescribed criterion provided under sub section 2 of section 16. The criterion or guideline prescribed in the said provision has statutory force, and hence its compliance is indeed an obligation of the Foundation. The Foundation, therefore, in discharging its obligations under sub section 2 of section 16 of the Act of 1973, has to take into consideration any information

or opinion, whether placed before the Board of Trustees of the Foundation by the Federal Government or received through any other source, so as to ascertain the pays, allowances and conditions of service applicable to the corresponding class of employees of the Federal Government.

10. In the light of the above, this Court is of the opinion that the impugned letter dated 23-12-2014, though not binding on the Foundation or the Board of Trustees, nevertheless may be treated as an information or opinion to be considered by the latter for taking a decision or reviewing its earlier decision taken in the 43rd meeting held on 10-06-2014. The Board of Trustees has yet to consider the letter dated 23-12-2014 and take a decision independently as mandated under section 16 of the Act of 1973. The Board has, therefore, to determine whether the special allowance granted vide Finance Divisions letter dated 06-3-2015 relates to the corresponding class of employees of the Federal Government in the context of granting the same allowance in case of employees of the Foundation under sub Section (2) of Section 16 of the Act of 1973. It would also be open to the Board of Trustees to reconsider its decision taken in the 43rd Meeting held on 10-6-2014.

11. In the context of the instant petition it would be beneficial to refer to two passages from the celebrated t*reaties* by De Smith, as quoted with approval by the august Supreme Court of Pakistan in the case of *M.A.Rahman Versus Federation of Pakistan and others* [1988 SCMR 691]. The said two passages are as follows:

> *"The relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can*

be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

And:--

"An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. In at least two modern Commonwealth cases licensing bodies were found to have taken decisions on the instructions of the heads of Government who were prompted by extraneous motives. But, as less colourful cases illustrate, it is enough to show that a decision which ought to have been based on the exercise of independent judgment was dictated by those not entrusted with the power to decide, although it remains a question of fact whether the repository of discretion abdicated it in the face of external pressure. An it is immaterial that the external authority has not sought to impose its policy."

12. The august Supreme Court observed and held in the case of M.A Rehman supra that a discretion must be exercised only by the authority to which it is committed, and that in exercising the same the authority must genuinely address itself to the matter before it and must act in good faith, and have regard to all relevant considerations. It was further held that in exercising discretion, the authority must not be swayed by irrelevant considerations, nor must it seek to promote purposes alien to the letter and/or spirit of the legislation that gives it the power to act and, therefore, must not act arbitrarily or capriciously. It is, therefore, obvious that the Board of Trustees is vested with the power and jurisdiction to decide all matters under section 16 of the Act of 1973, independently, having regard to all relevant considerations and pursuant to the purpose and object of the statute.

13. It is expected that while considering the letter dated 23-12-2014, the Board of Trustees shall not be dictated by its contents but would treat it as an opinion or information, and after considering the same would take a decision independently, in a manner that is in consonance with the legislative intent as envisaged under section 16 of the Act of 1973.

14. The petition is, therefore, allowed and disposed of in the above terms.

(ATHAR MINALLAH)
JUDGE

Announced, in open Court, on 21st of December, 2015.

JUDGE

Approved for reporting.

Tanveer Ahmed.

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