

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Syed Hassan Azhar Rizvi
Justice Rozi Khan Barrech

C.P.L.A.50/2025

(Against the judgment dated 10.10.2024 passed by the Peshawar High Court, Peshawar in WP No. 4379-P/2024)

Javed Iqbal ...Petitioner(s)

Versus

Government of Khyber Pakhtunkhwa and ...Respondent(s)
others

For the Petitioner(s) : Mr. Shumail Butt, ASC
Mr. Muhammad Zahid Mehboob Khan,
ASC

For the Respondent(s) : Mr. Muzammil Khan, Additional
Advocate General, KP
Mr. Bilal Ahmed Kakaizai, ASC Khalid
Ali Khan, Manager (Legal) and M.
Zulfiqar, Superintendent (Legal),
KPEZDMC

Date of Hearing : 23.02.2026

ORDER

Rozi Khan Barrech, J: Through this petition, the petitioner assails the judgment dated 10.10.2024 (“**impugned judgment**”) passed by the Peshawar High Court, Peshawar, whereby his writ petition challenging the termination of his tenure as Chief Executive Officer (**CEO**) of the Khyber Pakhtunkhwa Economic Zones Development and Management Company (hereinafter “**KP-EZDMC**”) was dismissed.

2. Brief facts of the case are that the petitioner was appointed as CEO of KP-EZDMC in March 2020 for a term of three years on contractual basis. Prior to expiry of his tenure, the Provincial Cabinet approved what was termed as his “re-appointment” for a further period of three years. Subsequently, upon change of government, the Cabinet terminated his

contract. Being aggrieved, the petitioner challenged his termination in a writ petition before the Peshawar High Court, whereby vide impugned judgment, his termination was upheld, holding that the re-appointment of the petitioner was contrary to law.

3. Learned counsel for the petitioner contended that the petitioner was validly re-appointed and the Provincial Government had no authority to rescind petitioner's re-appointment without due process. He further submitted that Articles 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 ("the **Constitution**") were infringed and his removal was politically motivated.

4. Conversely, learned Advocate General KP submitted that the post of CEO is governed by the statute; that the process adopted for re-appointment was contrary to mandatory provisions of law; and that in a company that is owned purely by the Government, removal was competent under statutory authority.

5. Heard.

6. The office of Chief Executive Officer of a company is a statutory creation under Sections 186¹ and 187 of the Companies Act, 2017 ("the **Act, 2017**") and as such appointment must be made in the manner prescribed therein. Section 187(2) of the Act, 2017 employs language of

¹186. **Appointment of first chief executive.**—(1) Every company shall have a chief executive

appointed in the manner provided in this section and section 187.

(2) The name of first chief executive shall be determined by the subscribers of the memorandum and his particulars specified under section 197 shall be submitted along with the documents for the incorporation of the company.

(3) The first chief executive shall, unless he earlier resigns or otherwise ceases to hold office, hold office up to the first annual general meeting of the company or, if a shorter period is fixed by the subscribers at the time of his appointment, for such period.

(4) Notwithstanding anything contained in this section, the Government shall have the power to nominate chief executive of a public sector company in such manner as may be specified

marked significance. The legislature has consciously provided that upon expiry of the term; the Chief Executive shall be *eligible for re-appointment*. The choice of the expression “eligible” is neither accidental nor superfluous. It denotes qualification for consideration, not a mandate for continuation. For ready reference, the relevant provision of law is reproduced:

*“187. **Appointment of subsequent chief executive.** (1) Within fourteen days from the date of election of directors under section 159 or the office of the chief executive falling vacant, as the case may be, the board shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment:*

Provided that the chief executive appointed against a casual vacancy shall hold office till the directors elected in the next election appoint a chief executive.

(2) On the expiry of his term of office under section 186 or sub-section (1) of this section, a chief executive shall be eligible for reappointment.

(3) The chief executive retiring under section 186 or this section shall continue to perform his functions until his successor is appointed, unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.

(4) Notwithstanding anything contained in this section, the Government shall have the power to nominate chief executive of a company where majority of directors is nominated by the Government, in such manner as may be specified.”

7. A statutory office of fixed tenure comes to an end by efflux of time unless the governing enactment expressly provides otherwise. Re-appointment, where contemplated, is a fresh exercise of statutory power. It requires an affirmative decision taken in accordance with the procedure

prescribed and the eligibility criteria as provided in section 153², 171³ and 172⁴ of the Company Act 2017. Until such decision is made, no right to hold over can be asserted. The distinction between eligibility and entitlement is fundamental; the former opens the door to consideration; the latter confers a legally enforceable claim. The statute confers only the former.

²153. **Ineligibility of certain persons to become director.** A person shall not be eligible for appointment as a director of a company, if he —

- (a) is a minor;
- (b) is of unsound mind;
- (c) has applied to be adjudicated as an insolvent and his application is pending;
- (d) is an undischarged insolvent;
- (e) has been convicted by a court of law for an offence involving moral turpitude;
- (f) has been debarred from holding such office under any provision of this Act;
- (g) is lacking fiduciary behaviour and a declaration to this effect has been made by the Court under section 212 at any time during the preceding five years;
- (h) does not hold National Tax Number as per the provisions of Income Tax Ordinance, 2001 (XLIX of 2001):

Provided that the Commission may grant exemption from the requirement of this clause as may be notified.

- (i) is not a member:

Provided that clause (i) shall not apply in the case of,—

- (i) a person representing a member which is not a natural person;
- (ii) a whole-time director who is an employee of the company;
- (iii) a chief executive; or

a person representing a creditor or other special interests by virtue of contractual arrangements;

- (j) has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution;

(k) is engaged in the business of brokerage, or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house:

Provided that clauses (j) and (k) shall be applicable only in case of listed companies

³171. **Vacation of office by the directors.**—(1) A director shall *ipso facto* cease to hold office

if—

- (a) he becomes ineligible to be appointed as a director on any one or more of the grounds enumerated in section 153;
- (b) he absents himself from three consecutive meetings of the board without seeking leave of absence;
- (c) he or any firm of which he is a partner or any private company of which he is a director—

- (i) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser; or
- (ii) accepts a loan or guarantee from the company in contravention of section 182.

(2) Nothing contained in sub-section (1) shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on any grounds additional to those specified in that sub-section.

8. The Public Sector Companies (Corporate Governance) Rules, 2013 and the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 (hereinafter called **Guidelines, 2015**) mandate that appointment to the position of Chief Executive in a public sector company shall be made through an open, transparent and merit-based process and advertisement as provided in *Schedule-1⁵* of the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015. Paragraph 2 of Schedule-I of the Guidelines, 2015 sets out the detailed requirements for the appointment of a Chief Executive. In the present case, these mandatory requirements were not complied with. For ease of reference, the relevant provision is reproduced below:

“2. Advertisement for the Position. - (1) *The Board shall initiate the appointment process, at least three months before the term of the incumbent chief executive is going to expire, by issuing a public advertisement in the print media, inviting applications for appointment against the vacant position. The advertisement shall also be posted on the website of the public sector company or that of the line ministry. Direct applications shall also be acceptable, and the fact may be specified in the advertisement.*

(2) The applicant shall be required to complete and sign an Application Form, as per Annexure “A” to these Guidelines, to demonstrate his fitness and propriety for the position of the chief executive. Copies of the degrees/testimonials, duly verified by the Higher Education Commission or the professional body or association, whichever is relevant, shall also be provided along with the application.

(3) The applicant shall also submit a declaration on a non-judicial stamp paper of requisite value, as per Annexure “B” to these Guidelines, that he is not ineligible to act as a chief executive, in accordance with the provisions of the Ordinance, the Rules and these Guidelines.

⁵Schedule-1(Procedure for the Appointment of Chief Executive), of the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015

(4) The appointing authority may hire the services of an executive search agency for assistance in the appointment process, including issuance of the advertisement.”

9. So far as the contentions raised by learned counsel for the petitioner regarding extension of petitioner’s tenure is concerned, we find no provision in the Companies Act, 2017 which recognizes the concept of “extension” of tenure of a chief executive. The statute contemplates appointment for a term not exceeding three years and thereafter re-appointment, subject to eligibility and compliance with prescribed procedure. The attempt to characterize the impugned decision as “re-appointment” does not cure the defect if mandatory procedural requirements were not observed. More so, Articles of the Association cannot override or dilute statutory commands. Corporate instruments operate in subordination to parliamentary legislation.

10. The record reveals that neither any fresh advertisement was issued, nor any competitive process was undertaken or any panel of candidates was evaluated prior to the Cabinet’s approval of the petitioner’s continuation. In matters of public office within a public sector company wholly owned by the Government, adherence to transparency and equal opportunity is not a matter of form but of constitutional substance. When the law requires that a thing be done in a particular manner, it must be done in that manner alone. Departure therefrom renders the action void. We, therefore, find ourselves in agreement with the High Court that the petitioner’s so-called re-appointment was made in disregard to the mandatory statutory scheme and was unsustainable in law.

11. It is an admitted position that 100% shareholding and voting rights in KP-EZDMC vest in the Government of Khyber Pakhtunkhwa. Under Section 190(2)⁶ of the Companies Act, 2017, where more than seventy-five percent voting rights are held by the Government, it retains the power to remove the chief executive. The petitioner's tenure being contractual and statutory in origin, and his re-appointment being legally infirm, no vested right accrued in his favour to insist upon continuation. The plea of violation of natural justice is misconceived. The principles of *audi alteram partem* presuppose the existence of a legally protectable right. An appointment void ab initio confers no enforceable entitlement.

12. Articles 4⁷ and 9⁸ guarantee protection of law and due process. The petitioner was dealt with strictly in accordance with the governing statute. No arbitrariness is demonstrated. The High Court correctly appreciated the statutory scheme and reached a conclusion consistent with settled principles of administrative and corporate law.

⁶190. **Removal of chief executive.**—(1) The board by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.

(2) Notwithstanding anything contained in this section, the Government or an authority or a person authorized by it shall have the power to remove chief executive of a company where more than seventy-five percent of the voting rights are held by the Government.

⁷4. **Right of individuals to be dealt with in accordance with law, etc.**— (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not required him to do.

⁸9. Security of person. No person shall be deprived of life or liberty save in accordance with law

13. Ordinarily, this Court cannot enforce a contract of personal service or review the employer's discretion regarding termination, except where an action is without jurisdiction or in violation of a statutory provision, neither of which applies here.

14. Accordingly, the Court finds no illegality, infirmity, or jurisdictional defect in the impugned judgment to warrant interference. Therefore, the instant petition is dismissed and leave is refused.

Judge

Judge

Islamabad
23.02.2026
Zahid Hussain/
Approved for Reporting