

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 4511 of 2026
(Naeem Ahmed Versus National Industrial Relations Commission & others)

DATE	ORDER WITH SIGNATURE OF JUDGES
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing & orders: 21.8.2026

Petitioner Naeem Ahmed present in person.
Ms. Wajiha Mehdi, Assistant Attorney General.

O R D E R

Adnan-ul-Karim Memon, J. Petitioner Naeem Ahmed has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

“i. Declare that the Notification dated 18.05.2026, whereby Respondent No. 3 has been entrusted with the functions of the Chairman, National Industrial Relations Commission, is without lawful authority, unconstitutional, and of no legal effect.

ii. Declare that, in the absence of a Chairman appointed in accordance with the Industrial Relations Act, 2012, the National Industrial Relations Commission is not lawfully constituted.

iii. Direct Respondent No. 2 to appoint a Chairman of the National Industrial Relations Commission strictly in accordance with the provisions of the Industrial Relations Act, 2012 and the applicable rules, and until such appointment is made, restrain Respondent No. 1 from functioning, exercising or performing its statutory functions.

iv. Pending the final adjudication of the present Petition, suspend the operation of the impugned Notification dated 18.05.2026 and restrain Respondent No. 1 from functioning until a Chairman is appointed in accordance with law.”

2. The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, challenging the Notification dated 18.05.2026 whereby Respondent No.3 was/is entrusted with performing the functions of Chairman, National Industrial Relations Commission (NIRC), on an interim basis pending appointment of a regular Chairman. The Petitioner submits that the Industrial Relations Act, 2012 contains no provision authorizing the appointment of an Acting Chairman or any interim/stopgap arrangement, and therefore the impugned Notification is without lawful authority. Relying upon **PLD 2014 SC 232**, it is asserted that where appointment of a statutory Chairman is a mandatory requirement for constitution of the Commission, no such body can

lawfully function in the absence of a duly appointed Chairman unless the legislature expressly provides otherwise. The Petitioner further contends that Sections 53 and 54 of the Act require the Commission to include a Chairman, while the Explanation to Section 56 applies only to temporary absence of a Chairman and cannot be invoked where the office itself is vacant. It is also asserted that Respondent No.3 is neither the senior-most Member nor qualified for appointment as Chairman under the applicable regulations and rules. The Petitioner therefore seeks declaration that the impugned Notification is without lawful authority and of no legal effect, that the NIRC is not lawfully constituted in the absence of a duly appointed Chairman, and that Respondent No.2 be directed to appoint a Chairman strictly in accordance with law; meanwhile, the operation of the impugned Notification and functioning of the NIRC be restrained until such appointment is made.

3. The Petitioner who is also an advocate present in person contends that the Industrial Relations Act, 2012 does not provide for appointment of an Acting Chairman or delegation of the Chairman's functions during a vacancy and, therefore, the impugned arrangement is without lawful authority. He prayed to allow this petition.

4. Vide order dated 17.07.2026, notices were issued to the respondents regarding the interpretation of the relevant provisions, lawful constitution of NIRC and the Federal Government's authority in the absence of a Chairman. However, no comments have been furnished on the aforesaid points.

5. The learned Assistant Attorney General submitted that this petition is not maintainable under Article 199 of the Constitution; however, argued on the legal points and added that appointment of the Chairman is within the competence of the Federal Government and that Respondent No.3 had merely been entrusted with the Chairman's functions until a regular appointment was/is made, therefore, this petition is frivolous and liable to be dismissed, hence, agreed for regular appointment of Chairman NIRC as per law.

6. However, after arguing the matter at some length both parties in principle agreed for disposal of the petition in terms that the regular Chairman of NIRC shall be appointed as per law. The request seems to be reasonable.

7. We have heard the learned counsel for the parties present in court and examined the Notification dated 18.05.2026, the Industrial Relations Act, 2012, particularly Sections 53 to 56 thereof, and the Appointment of Chairman and Members (Qualifications) Rules, 2022.

8. The controversy essentially turns upon the question whether, during the vacancy of the office of Chairman of the National Industrial Relations Commission, the Federal Government could lawfully entrust a serving Member of the

Commission, who does not possess the prescribed qualification for appointment as Chairman, with the functions of Chairman as a temporary or stopgap arrangement.

9. Section 53 of the Industrial Relations Act, 2012 makes the statutory scheme clear. Under sub-section (1), the Federal Government is required to constitute the National Industrial Relations Commission; under sub-section (2), the Commission is to consist of not less than ten full-time Members, including the Chairman; sub-section (3) makes the qualifications for appointment as Member or Chairman subject to prescription by rules; and sub-section (4) expressly provides that the Chairman and other Members shall be appointed by the Government in the prescribed manner. Thus, the legislature has not merely contemplated the existence of a Chairman as a matter of administrative convenience; rather, the office of Chairman forms an express component of the statutory composition of the Commission.

10. The prescribed qualification rules reinforce this statutory distinction. The Appointment of Chairman and Members (Qualifications) Rules, 2022 provide that a person cannot be appointed as Chairman unless he is or has been a Judge of the Supreme Court of Pakistan or a High Court. The same regulatory framework separately recognizes qualifications for Members, which include a retired District and Sessions Judge. Therefore, the distinction between the offices of Chairman and Member is deliberate and substantive. A person qualified to be appointed as a Member *prima facie* does not, merely by reason of his membership of the commission become qualified for appointment as Chairman. The Federal Government's power of appointment must consequently be exercised within the limits prescribed by the parent Act and the Rules framed thereunder, therefore, the competent authority needs to look into the matter as per law and policy on the subject issue and take remedial measure as per law.

11. The impugned Notification dated 18.05.2026, significantly, does not state that Sardar Tahir Sabir has been appointed as Chairman. Rather, it records that, consequent upon Cabinet approval, he has been entrusted, in his capacity as a Member of NIRC, with the responsibility of performing the functions of Chairman as a stopgap arrangement until appointment of a regular Chairman, *prima-facie*, this distinction is important. The notification cannot itself be treated as an appointment to the office of Chairman because such an appointment would be inconsistent with the prescribed qualification requirement. At the same time, the nomenclature used in the notification cannot, by itself, confer upon a Member a statutory power which the Act has vested in the Chairman, since the Cabinet has taken decision, we will not travel to that policy decision. However, we have expressed our point of view on the legal aspects of the case on the aforesaid analogy.

12. The Explanation to Section 56 expressly provides that the expression “Chairman of the Commission” includes such Member of the Commission, to be known as the Senior Member, as the Chairman may nominate to perform the functions and exercise the powers of the Chairman during his absence. The language of the Explanation is therefore significant: it contemplates a situation in which a Chairman exists but is temporarily absent. It does not expressly provide a mechanism whereby, upon a permanent vacancy caused by expiry, retirement, removal or non-appointment of the Chairman, the Federal Government may unilaterally create an Acting Chairman from amongst the Members. Moreover, the statutory mechanism refers to nomination by the Chairman himself, which creates an additional difficulty in applying the Explanation to a situation where the office of Chairman is vacant.

13. “Absence” ordinarily denotes a temporary inability of an existing office-holder to discharge his functions, whereas “vacancy” means that the office itself is unoccupied. Consequently, the Explanation to Section 56 cannot readily be expanded through interpretation so as to supply a power to the Federal Government which the legislature has not expressly conferred. Had Parliament intended to authorize an Acting Chairman during a vacancy, it could have expressly provided so, as legislatures frequently do in statutes establishing tribunals and commissions. In the absence of such provision, the Court must be slow to add words to the statute.

14. This is the settled principle that where the law prescribes that a particular act is to be performed in a particular manner, it must be performed in that manner and not otherwise. The Supreme Court has reiterated this principle and emphasizes that the rule of law excludes arbitrary governmental power. The same principle has also been applied in labour jurisprudence, including the proposition that where statutory authority is conferred in a prescribed manner, an alternative method cannot ordinarily be adopted for the single reason that this principle is particularly applicable here because Section 53(4) does not simply confer an unrestricted power of appointment; it expressly requires appointment of the Chairman and Members in the prescribed manner. The expression “in the prescribed manner” incorporates the applicable rules into the statutory scheme. Consequently, the Federal Government may exercise its appointment power, but cannot bypass the prescribed qualification and appointment mechanism by describing the assumption of the Chairman's functions by an otherwise unqualified Member as a temporary arrangement. In other words, the executive cannot achieve indirectly, through an administrative notification, what it could not lawfully achieve directly by appointing the same person as Chairman. This principle has been recognized by the Supreme Court in matters concerning the limits of executive authority.

15. The judgment reported in PLD 2014 SC 232, relied upon by the Petitioner, is also relevant to the extent that it emphasizes the importance of a statutory

appointment where the legislature has made the existence of a particular office-holder a condition of the functioning of a statutory tribunal. The subsequent decision also records the legal significance attached to the appointment of the Chairman of a statutory tribunal; in the context of a tribunal which had become functional after the requisite appointments were made. The principle, however, should not be mechanically extended to declare every act of NIRC void merely because the office of Chairman is temporarily vacant, particularly in view of the express statutory provisions concerning the constitution and functioning of Benches in terms of policy decision as discussed supra, further Section 55 is material in this regard it provides that the Chairman exercises general superintendence over the affairs of the Commission and constitutes the Full Bench and other Benches for the efficient performance of the Commission's functions. It further provides that no act, proceeding, decision or award of the Commission or Bench shall be invalid merely on the ground of absence of or existence of a vacancy in, or defect in, the constitution of the Commission or Bench. Thus, while the Federal Government must fill the office of Chairman on regular basis according to law.

16. In such circumstances without touching the merits of the case and with the consent of the parties on the proposition that regular Chairman of NIRC shall be appointed, therefore, we dispose of the petition with direction to the Federal Government to appoint a regular Chairman of NIRC, possessing the qualifications prescribed by the Appointment of Chairman and Members (Qualifications) Rules, 2022, within a reasonable period.

JUDGE

JUDGE

Shahzad Soomro