

**Pakistan Information Commission**  
**Government of Pakistan**

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**In the Pakistan Information Commission, Islamabad**

**Appeal No 1351-09/21**

**Irfan Jahangir Watto**

**(Appellant)**

**Vs.**

**Ministry of Law & Justice**

**(Respondent)**

**ORDER**

**Date:** April 05, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated September 20, 2021, to the Commission, stating that he submitted an information request to the Secretary to Government of Pakistan November 27, 2021 under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:

*"Kindly refer to the three general complaints filed by the undersigned on PMDU asking therein certain questions/opinion on 3 very important legal issues which have been responded to by the Law and Justice Division today, i.c. 23 of August, 2021. These complaints were interlinked and the result was expected to be like 2+2-4 but unfortunately the result was not like that and that has resulted of this notice under Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 as amended read with the provisions of Right of Access to Information Act, 2017 and the Rules made thereunder. The details are as follows:*

*In complaint # IS100821-88871188 dated 10-08-2021, it was asked by the undersigned "Secretary Law and Justice Division is kindly requested to state as to who is the designated authority to frame rules for carrying out the purposes of FPSC Ordinance, 1977 under Section 10 of FPSC Ordinance, 1977 and who has the power to notify the rules framed under Section 10 of FPSC Ordinance, 1977." (ANNEX A). The reply of the Law and Justice Division was: "Dear Citizen, under section 10 of the Federal Public Service Commission Ordinance, 1977 the Federal Government is empowered to make rules under said Ordinance." (ANNEX-B).*

*In complaint # IS100821-88871245 dated 10-08-2021 it was asked. by the undersigned "Will the Secretary Law and Justice Division be pleased to state that can Federal*

*Government or any other authority delegate the executive authority of the Federal Government to any other authority or officer without observing the provisions contained in Article 98 of the Constitution of Pakistan, 1973 as amended and if anybody ignores the provisions of Article 98 as aforesaid and starts exercising authority of the Federal Government for framing rules for which Federal Government had the exclusive authority, then what would be legal status of the rules so framed or action so taken? (ANNEX-C). The reply of the Law and Justice Division was as follows: "Dear Citizen, yes the Federal Government and such other authority may, subject to enabling provision of law in this behalf, delegate its power further. Any deviation therefore, is unlawful." (ANNEX-D).*

*In complaint # IS100821-88871299 it was asked by the undersigned as follows: "Will the Secretary Law and Justice Division be pleased to state if the SRO No. 1452(1)/2018 dated 27-11-2018 was issued with the concurrence of Law and Justice Division and if Law and Justice Division had concurred it then were the provisions of Section 10 of FPSC Ordinance, 1977 and that of Article 98 of the Constitution of Pakistan, 1973 were kept in view before issuing concurrence." (ANNEX-E).*

*The reply of the Law and Justice Division was as follows:*

*"Dear Citizen, under rule 14 of the Rules of Business, 1973 all the statutory instrument to be issued by the Federal Government are vetted by the Law and Justice Division. In the instant complaint the Law and Justice Division adhered to section 10 of Ordinance of 1977 as well as Article 98 of the Constitution of the Islamic Republic of Pakistan, S.R.O. No. 1452(1)/2018 dated 27-11-2018 correctly vetted by this Division." (ANNEX-F).*

*In view of my questions and replies of the Law and Justice Division the following facts have been established:*

*(a) That the authority to make Rules under Section 10 of FPSC Ordinance to carry out the purposes of FPSC Ordinance, 1977 rests with the federal Government; and*

*(b) That the delegation of powers made in violation of the provisions of Article 98 of the Constitution of Islamic Republic of Pakistan, 1973 and the action taken thereon will be void.*

*3. That kind attention of Secretary Law and Justice Division is drawn towards the opening sentence of the S.R.O. No. 1452(1)/2018 dated 27-11-2018 issued by the Federal Public Service Commission (FPSC) which reads as follows:*

*"S.R.O. No. 1452(1)/2018- In exercise of the powers conferred by sections 7A and 10 of the Federal Public Service Commission Ordinance, 1977 (XLV of 1977), the Chairman of the Federal Public Service Commission, with the approval of the Federal Government, is pleased to make the following rules, namely: - Short title and commencement. - (1) These rules shall be called the CSS*

*Competitive Examination Rules, 2019." (ANNEX-G). That a bare reading of the aforementioned rules (ANNEX-G)*

*4. indicates that the same were framed by the Chairman FPSC purportedly exercising powers under Sections 7-A and 10 of FPSC Ordinance, 1977 wherein powers under Section 10 were exclusively Federal Government and powers under Section 7-A of FPSC Ordinance, 1977 were to be used for conduct of business of Commission and not for to be used by the carrying out the purposes of the Ordinance. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The manner of framing Rules for carrying out*

*the purposes of the FPSC Ordinance having clearly settled in Section 10 *ibid*, it is thus clear that the Chairman FPSC and FPSC acted against the law in framing of Rules as aforesaid. Reliance is placed in this regard on the case law reported as*

*(i) Khyber Tractors (PVT) Ltd through Manager versus Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad (PLD 2005 SC 842);*

*(ii) Atta Muhammad Qureshi Versus The Settlement Commissioner, Lahore Division, Lahore and 2 others' (PLD 1971 SC 61);*

*(ii) Raja Hamayun Sarfraz Khan and others versus Noor Muhammad, (2007 SCMR 307); and (iv) Muhammad Akram Versus Mst. Zainab Bibi" (2007 SCMR 1086).*

*5. It is also known that the Federal Government has never requested the Parliament to let them delegate their powers vested under Section 10 of FPSC Ordinance, 1977 to the Chairman FPSC or the FPSC, then under what circumstances and with what justification the Law and Justice Division, Islamabad vetted the rules made through S.R.O. No. 1452(1)/2018 dated 27-11-20182*

*6. The bold and underlined portion of paragraph 5 ante is a question under the rights given to the undersigned vide Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 as amended read with the provisions of Right of Access to Information Act, 2017 and the Rules made thereunder for Honourable Secretary Law and Justice Division, Islamabad which may kindly be answered and expedited at an early date as per law and rules mentioned above.*

**B. Proceedings:**

3. As a consequence of proceedings at the commission, both the Appellant and the Respondent submitted their responses.

4. Through a letter dated December 14, 2021, the Respondent submitted its response which is as under:

"I am directed to refer to your letter dated 6- 12- 2021 on the subject noted Service Commission Ordinance, 1977 the Federal Government is empowered to make the rules under said ordinance

1. This issues with the approval of competent authority".

5. Through a letter dated December 28, 2021, the Appellant submitted rejoinder and its text is as under:

"Kindly refer to your letter F. No. 7(58)/2021: Sol. 1 dated 14-12-2021 received through Pakistan Information Commission in appeal # 1351-09/21 which requires further clarification and wherein in Para 1 you have stated as follows;

"I am directed to refer to your letter dated 6-12-2021 on the subject noted above and to inform that under section 10 of Federal Public service Commission Ordinance, 1977, the Federal Government is empowered to make rules under said Ordinance." Copy of the aforementioned letter is appended as ANNEX-A.

2. That being the correct legal position, i.e., the power to frame rules under Section 10 of the Federal Public Service Commission Ordinance, 1977 resting with the Federal Government as per definition of Federal Government settled position in law that jurisdiction on court cannot be conferred even by consent, unless it is so conferred by or under Constitution and or law,"

Worthy Secretary Law and Justice Division must also be cognizant about another reported judgment 2021 SCMR 1979 wherein it was observed as follows: "The popular principle of law that when a statute/faw describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all is settled in the very old case of Taylor v. Taylor (1876) Ch.D. 426. This principle has been reiterated in a number of judgments by this Court as well and the same squarely applies in the present case"

3. Foregoing in view, I request worthy Secretary Law and Justice Division to state clearly about the following legal matters:

(a) Whether Chairman Federal Public Service Commission is vested with any powers implied or expressed under Section 10 of Federal Public Service Commission Ordinance, 19772

(b) Whether Federal Public Service Commission can issue a Gazette Notification under any of the provisions of Federal Public Service Commission Ordinance, 1977 or not?

(c) What would be the legal status of a Gazette Notification issued by an incompetent authority?

6. Kindly adhere to the timelines fixed by the provisions of the Right of Access to Information Act, 2017 and the rules made thereunder for provision of record/information”.

#### **C. Issues:**

7. The instant Appeal has brought to the fore following question for the consideration of this commission:  
Can legal opinions of public officials pertaining to different provisions of legal instruments be sought under the provisions of the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?

#### **D. Discussion and Commission’s Views on Relevant Issues:**

8. In response to the information request of the Appellant, the Respondent provided the requested information when it stated that under “*Rule 14 of the Rules of Business, 1973 all the statutory instrument to be issued by the Federal Government are vetted by the Law and Justice Division. In the instant complaint the Law and Justice Division adhered to section 10 of Ordinance of 1977 as well as Article 98 of the Constitution of the Islamic Republic of Pakistan, S.R.O. No. 1452(1)/2018 dated 27-11-2018 correctly vetted by this Division.*” The Respondent again shared with the Appellant that under section 10 of Federal Public service Commission Ordinance, 1977, the Federal Government is empowered to make rules under said Ordinance”.

9. *This commission holds that ‘information means records available with the public body or information based on those records. As such, legal opinions sought by the Appellant through letter dated December 28, 2021, do not constitute information based on the record under Section 2 (v) of the Right of Access to Information Act, 2017. Therefore, queries and legal opinions such as whether Chairman Federal Public Service Commission is vested with any powers implied or expressed under Section 10 of Federal Public Service Commission Ordinance, 19772, whether Federal Public Service Commission can issue a Gazette Notification under any of the provisions of Federal Public Service Commission Ordinance, 1977 or not and as to what would be the legal status of a Gazette Notification issued by an incompetent authority cannot be treated as request for information.*

10. The Appellant could have sought certified copies of records containing these legal opinions if already available with the Respondent but the Appellant cannot ask the Respondent to present legal opinions based on legal instruments of the country.

**D. Order**

11. The Appeal is disposed of. Legal opinions of public officials pertaining to different provisions of legal instruments cannot be sought from public officials, if not earlier formulated and available in shape of records.
12. Copies of this Order be sent to the Respondent and the Appellant for information.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on: April 05, 2022

This order consists of 5 (five) pages, each page has been read and signed