

GOVERNMENT OF
THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT

NOTIFICATION

Dated 15th August 2000

No. Legis:1(4)/2000/4457.. The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:.

**THE NORTH-WEST FRONTIER PROVINCE
REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE, 2000
N.W.F.P ORDINANCE NO. V OF 2000**

**AN
ORDINANCE**

to provide for dismissal, removal, compulsory retirement from service and reduction to lower post or pay scale of certain persons from Government service or corporation service.

WHEREAS, in view of prevailing circumstances, it is expedient and necessary in the public interest, and for furtherance of good governance, to provide for measures, inter-alia, relating to dismissal, removal, etc., of certain persons from Government service or corporation service as hereinafter appearing;

AND WHEREAS, it is necessary to provide for speedy disposal of such cases and for matters connected therewith or ancillary thereto;

AND WHEREAS, under the provisions contained in Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, the Governor of a province, on the instructions of the Chief Executive of Pakistan, may issue and promulgate an Ordinance if the circumstances exist which render it necessary to take immediate action;

AND WHEREAS the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers aforesaid and all other powers enabling him in that behalf, the Governor of the North-West Frontier Province, on the instructions of the Chief Executive of Pakistan, is pleased to make and promulgate the following Ordinance:

1. Short title, extent, commencement and application.---(1) This Ordinance may be called the North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000.

- (2) It extends to the whole of the North-West Frontier Province.
- (3) It shall come in force at once.
- (4) It shall apply to persons in Government service and/or corporation service.

2. Definitions.---In this Ordinance, unless there is anything repugnant in the subject or context:

- ¹ (a) “competent authority” means the Chief Minister and where, in relation to any person or class of persons, the Chief Minister authorizes any officer or authority, not being inferior in rank to the appointing authority prescribed for the post held by the person against whom action is proposed to be taken, to exercise the powers of competent authority under this Ordinance, that officer or authority and, in relation to an employee of a Court or tribunal functioning under Government, the appointing authority, or the Chairman or Presiding Officer of the Court or the Tribunal:

² Provided that in relation to the employees of Universities incorporated by law in the North-West Frontier Province, in respect of which the Governor is the Chancellor, the North-West Frontier Province Board of Technical Education and the Boards of Intermediate and Secondary Education in the North-West Frontier Province, the competent authority shall mean the Governor;

- (b) “Government” means the Government of the North-West Frontier Province;
- (c) “misconduct” includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such as may cause embarrassment in the performance of official duties or functions;
- (d) “persons in corporation service” mean every person in the employment of a corporation, corporate body, authority, statutory body or other organization or institutions set up, established, owned, managed or controlled by Government, by or under any law for the time being in force, or a body or organization in which Government has a controlling share or interest and includes the Chairman and the Managing Director, and the holder of any other office therein; and
- (e) “persons in Government service” include every person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include:
- (i) a person who is on deputation to the Province from the Federation or any other Province or other Authority;

¹ Section 2(a) substituted and proviso added. by N.-W.F.P. Act No. II of 2004.

² Proviso added by NWFP Act No. II of 2004.

- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a “worker” or “workman” as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman’s Compensation Act, 1923 (Act VIII of 1923);

but includes any employee serving in any court or tribunal set up or established by Government, except a Judge of the High Court or a court subordinate to the High Court and any employee thereof; and

- (f) “Province” means the North-West Frontier Province.

3. Dismissal, removal and compulsory retirement, etc. of certain persons in Government or corporation service, etc.—(1) Where, in the opinion of the competent authority, a person in Government or corporation service is-

- (a) inefficient, or has ceased to be efficient for any reason, or is guilty of habitually absenting himself from duty without prior approval of leave, or
- (b) guilty of misconduct; or
- (c) corrupt, or may reasonably be considered as corrupt, because,-
 - (i) he, or any of his dependants or any other person, through him or on his behalf, is in possession of pecuniary sources or of property, for which he cannot reasonably account for, and which are disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his known sources of income; or
 - (iii) he has a persistent reputation of being corrupt; or
 - (iv) he has entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily; or
- (d) engaged, or is reasonably believed to be engaged, in subversive activities and his retention in service is prejudicial to national security or he is guilty of disclosure of official secrets to any unauthorized persons; or
- (e) found to have been appointed or promoted on extraneous considerations in violation of law and the relevant rules,

³ Section 3 substituted by NWFP Ordinance V of 2001.

⁴the competent authority, after inquiry by an Inquiry Officer or the Inquiry Committee appointed under section 5, may notwithstanding anything contained in any law, or the terms and condition of service of such person, by order in writing, dismiss or remove such person from service, compulsorily retire him from service or reduce him to lower post or pay scale, or recover from pay, pension or any other amount payable to him, the whole or a part of any pecuniary loss caused to the organization in which he was employed or impose one or more minor penalties as prescribed in the North-West Frontier Province Government Servants (Efficiency and Discipline) Rules, 1973, made under section 26 of the North-West Frontier Province Civil servant Act 1973 (N.W.F.P Act No. XVIII of 1973.)

(2) Before passing an order under sub-section (1), the competent authority shall,-

- (a) by order in writing, inform the accused of the action proposed to be taken with regard to him and the grounds of the action; and
- (b) give him a reasonable opportunity of showing cause against that action within seven days or within such extended period as the competent authority may determine:

Provided that no such opportunity shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity; or
- (ii) the accused is dismissed under clause ⁵[(a) of sub-section (2) of section 3A] or where the competent authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to give the accused an opportunity of showing cause.

(3) The dismissal or removal or premature retirement from service or reduction to lower post or pay scale of a person under sub-section (1) shall not absolve such person from liability to any punishment to which he may be liable for an offence committed by him under any law, while in service.

⁶3A. Procedure in case of conviction by a court of law.---(1) Where a person in Government service or in corporation service on conviction by a court of law is sentenced to imprisonment or fine, the competent authority shall examine the facts and the grounds on which the order convicting such person was passed by a court of law.

(2) Where on examination the competent authority finds that order of imprisonment or fine is based on-

- (a) established charges of corruption or moral turpitude, it shall pass order of dismissal from service of the delinquent person in Government service or in corporation service

⁴ Substituted by NWFP Ordinance No VIII of 2002

⁵(a) of sub-section (2) of Section 3A added by Act No.XII of 2003.

⁶ Section 3A added by N.-W.F.P. Ord. No. XII of 2003.

which shall be effective from the date of his conviction by a court of law; or

- (b) charges other than corruption or moral turpitude it may, in the light of the facts and circumstances of the case, decide as to whether it is a fit case for taking departmental action under this Ordinance, and if it so decides it may, subject to the provisions of sub-section (2) of section 3, impose any penalty provided by this Ordinance as it may deem fit.

4. Suspension.--- A person against whom action is proposed to be taken under sub-section (1) of section 3 may be placed under suspension with immediate effect if, in the opinion of the competent authority, suspension is necessary or expedient:

Provided that the competent authority may, in an appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave, as may be admissible to him, from such date as may be specified by the competent authority.

⁷5. Power to appoint an Inquiry Officer or Inquiry Committee.--(1) Subject to the provisions of sub-section (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry Officer or, as the case may be, the Inquiry Committee, shall-

- (a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;
- (b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and
- (d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or, as the case may be, the Inquiry Committee, is satisfied that the accused is hampering, or attempting to hamper, the progress of the Inquiry, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it deems proper in the interest of justice.

(3) The Inquiry Officer or, as the case may be, the inquiry Committee, shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

⁷ Section 5 Substituted. by N.-W.F.P. Ord. No. V of 2001.

(4) The Competent authority may dispense with the inquiry under sub-section (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

Provided that show cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit.

6. Powers of the [Inquiry Officer or] Inquiry Committee.---The Inquiry Officer or, as the case may be,] the Inquiry Committee shall have powers-

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.

7. Procedure to be followed by the Inquiry Officer or Inquiry Committee.---The Inquiry Officer or, as the case may be, the Inquiry Committee shall, subject to any rules made under this Ordinance, have power to regulate its own procedure including the fixing of place and time of its sitting and deciding whether to sit in public or in private, and, in the case of a committee constituted for a person in corporate service, to act notwithstanding the temporary absence of any of its members.

8. Order to be passed upon a finding.---Every finding recorded by an Inquiry officer or, as the case may be the Inquiry Committee under section 5 shall, alongwith the recommendation provided for in that section, be submitted to the competent authority and the competent authority may pass such orders thereon as it may deem proper in accordance with the provisions of this Ordinance.

⁸9. Representation.---(1) A person on whom a penalty is imposed under section 3, may, within fifteen days from the date of communication of the order, prefer a representation to-

- (a) the Chief Minister or an Officer or authority designated by him, if the order has been passed by an officer or authority authorized by the Chief Minister;
- (b) the Governor or an officer or authority designated by him in any other case; provided that where the order has been made by the Governor, such person may, within the aforesaid period, submit a ⁹[review petition] to the Governor; and

⁸ Section 9 substituted by N.-W.F.P. Act No. II of 2004,

⁹ The word "representation" substituted by the word [review petition] vide NWFP Removal from Service (Special Powers) (Amendment) Act 2005 (NWFP Act No III of 2005) dt 29-1-2005

- (c) the Governor, where an order as competent authority has been passed by the Chief Minister.

(2) The Governor, the Chief Minister or an officer or authority, as may be designated for the purpose by the Governor or the Chief Minister, as the case may be, may, on consideration of the representation or, as the case may be, the ¹⁰[review petition] and any other relevant material, confirm, set aside, vary or modify the order in respect of which such representation or ¹¹[review petition] is made.

10. Appeals.--- Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by any final order under section 9 may, within thirty days of the order, prefer an appeal to the Service Tribunals established under the North-West Frontier Province Service Tribunals Act, 1974 (N.-W.F.P. Act No. I of 1974):

¹²Provided that where a representation ¹³[*****] has been preferred under section 9, but no decision has been received by, or communicated to, the applicant or, as the case may be, the petitioner, within a period of sixty days of its submission to the prescribed authority, he may prefer an appeal to the Service Tribunal, established under section 3 of the North-West Frontier Province Service Tribunals Act, 1974 (N.-W.F.P. Act No. I of 1974), within thirty days of the expiry of the aforesaid period.

11. Ordinance to override other laws.---The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the North-West Frontier Province Civil Servant Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), and the rules made thereunder, and any other laws for the time being in force.

12. Proceeding under this Ordinance.---All proceedings initiated on the commencement of this Ordinance in respect of matters and persons in service provided for in this Ordinance shall be governed by the provisions of this Ordinance and rules made thereunder:

¹⁴Provided that the Provincial Government may, by notification in the official gazette, exempt any class or classes of employees of a corporation, a corporate body, authority, statutory body or other organization or institution set up, established, owned, managed or controlled by it, or a body or organization in which it has a controlling share or interest, from the provisions of this Ordinance and such class or classes of employees shall, notwithstanding anything contained in this Ordinance, be proceeded against and dealt with under the laws and rules applicable to such employees before the commencement of this Ordinance.

13. Pending proceedings to continue.---For the removal of doubts, it is hereby provided that all proceedings pending immediately before the commencement of this Ordinance against any person, whether in Government service or service of a corporation, under the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), and rules made thereunder, or any other law or rules, shall continue under the said laws and rules in the manner provided thereunder.

¹⁰ The word "representation" substituted by the word [review petition] vide NWFP Act No III of 2005

¹¹ The word "presentation" substituted by the word [review petition] vide NWFP Act No III of 2005

¹² Proviso added by NWFP ordinance No XXV of 2002

¹³ The word "or review petition" omitted vide NWFP ordinance No XLV of 2002

¹⁴ Proviso to section 12 added by ordinance No. XXXIII of 2001

14. Pensionary benefits, etc.---Notwithstanding anything contained in this Ordinance, the payment of pension or other benefits to a person retired or reduced to lower post or pay scale under this Ordinance shall, if admissible, be regulated in accordance with the law for the time being in force relating thereto.

¹⁵**14 A. Indemnity.**--- No suit, prosecution or other legal proceedings shall lie against the competent authority or an officer or authority authorized by it for anything which is in good faith done or intended to be done under this Ordinance or the rules, instructions or directions made or issued thereunder.

14 B. Jurisdiction barred.--- Save as otherwise provided, no order made or proceedings taken under this Ordinance, or the rules made thereunder by the competent authority or an officer or authority authorised by it shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made or proceedings taken in pursuance of any power conferred by, or under, this Ordinance, or the rules made thereunder.

15. Power to make rules.---Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

16. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Governor may make such Order, not inconsistent with the provisions of this Ordinance, as may appear to him to be necessary for the purpose of removing the difficulty.

Peshawar, Dated the
11th August 2000.

LT.Gen(RTD) MUHAMMAD SHAFIQ,
Governor of the North-west Frontier Province.

SALIM KHAN,
Secretary to Government of
North-West Frontier Province, Law Department.

¹⁵ Section 14A & 14B added by NWFP ordinance No VIII of 2002