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### **IHC sets aside Sukhera's dismissal as tax ombudsman**

ISLAMABAD: In a setback to the government, the Islamabad High Court (IHC) on Thursday reversed the termination of Mushtaq Ahmed Sukhera's service as Federal Tax Ombudsman (FTO) and held that the law ministry had misled Prime Minister Imran Khan in doing so.

IHC Chief Justice Athar Minallah issued the detailed order on the petition filed by Mr Sukhera against the termination of his service. He observed that it would have been better if the president and the prime minister had sought advice from the Supreme Court before acting upon the law ministry's opinion.

Mr Sukhera, a retired Grade 22 officer of Police Service of Pakistan (PSP), was appointed FTO on Aug 31, 2017. The Pakistan Tehreek-i-Insaf (PTI) government in February this year 'removed' Mr Sukhera through an executive order.

Mr Sukhera challenged his dismissal before the IHC. He assailed the notification of June 12 that informed him about withdrawal of the notification of his appointment against the post of FTO in August 2017.

According to the petition, the appointment and removal of FTO is governed under the establishment of the Office of FTO Ordinance, 2000, and the Federal Ombudsman Institutional Reforms Act, 2013 according to which the FTO could be removed through the Supreme Judicial Council.

Attorney General Anwar Mansoor, on the other hand, contended before the court that Mr Sukhera was appointed FTO illegally and notification for his appointment was void ab initio.

He argued that the president had appointed Mr Sukhera upon the advice of the prime minister which was in violation of the legislative intent of vesting the power of appointment in the president; the power of appointing a person as tax ombudsman is exclusive to the president.

The court observed that the law ministry initiated the summary for removal of Mr Sukhera on May 17, 2019 was misleading. The court order stated that "the summary was based on misleading interpretation which had led to the issuance of the impugned notification [for removal of Sukhera].

Subsequently, the court suggested to the top authorities that instead of blindly relying upon the law ministry's opinion, "in view of protecting the integrity and independence of the office of the Tax Ombudsman, the Prime Minister and the President, before acting upon the opinion of the ministry of law and justice, could have considered other options including invoking the advisor jurisdiction of the august Supreme Court conferred under Article 186 of the constitution."

“This court cannot ignore the lack of care exercised by the ministry of law and justice in initiating the summary dated May 17...the ministry of law and justice was expected to have taken extra ordinary care while initiating the summary because what had been proposed had serious consequences for an essential salient feature of the constitution, i.e. parliamentary form of the government and democracy, besides the independence of statutory adjudicatory public office.”

The court further observed that “the ministry of law and justice was proposing a course of action based on interpretation of section 3(1) of the Ordinance of 2000 which was drastic departure from the interpretation that had led to appointment made from time to time for almost two decades.”

The order states that “this court expects that in future in such matters of public importance the Ministry of Law and Justice and other authorities would exercise extreme care and caution in order to avoid undermining the integrity and independence of adjudicatory public offices because it is better to err on the side of caution rather than committing an illegality amounting to violation of the scheme of the constitution”.