

IN THE HIGH COURT OF SINDH, ATKARACHI

C.P No. D-3387 of 2018

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Petitioner Through Mr. Jawed Ahmed Kalwar Advocate

Date of hearing: **15.05.2018**

J U D G M E N T

Adnan-ul-Karim Memon J. Through the instant Petition, the Petitioner has asked for issuance of Writ of quo warranto against the Respondents No. 16 to 43 to vacate the office of Excise & Taxation inspectors, Government of Sindh on the premise that they do not meet the criteria to hold the public office thus not entitled to hold the aforesaid posts hence their appointment is in violation of the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements. Petitioner further claims that all the Respondents No. 16 to 43 are political appointees, who are appointed in the Government service without adopting the legal and codal formalities as provided under the law. Petitioner has added that their testimonials/antecedents are not genuine which need to be verified by the Higher Education Commission of Pakistan in order to reach to a just decision in the instant case. Petitioner is being aggrieved by the direct induction of the Respondents No.16 to 43 in Excise and Taxation

Department Government of Sindh and holding the aforesaid posts, without lawful authority.

2. Mr. Javed Ahmed Kalwar, learned counsel for the Petitioner has argued that the Respondents No. 16 to 43 are holders of the Public Office as embodied under Article 199 (1) (b) (ii) of the Constitution; that this petition has been filed on the ground that the Respondents No. 1 & 2 be directed to forward the degrees/certificates/testimonials of the private Respondents No. 16 to 43 for verification, which they filed at the time of their appointment as Excise & Taxation Inspector and the Respondents No. 3 to 15 be directed to submit their reports after verification of their degrees to this Court and thereafter this Court may pass necessary orders and till the final order is passed by this Court the Respondents No. 16 to 43 may be restrained from performing their duties. He lastly prayed for issuance of Writ in the nature of quo warranto against the Respondent No. 16 to 43 to meet the ends of justice.

3. On the previous date the learned counsel for the Petitioner, at the very outset, was put on notice to satisfy this Court with regard to the maintainability of this petition. Today when he was asked the same question about the maintainability of the petition he replied that it is a writ of quo warranto and any person can come to the High Court in case any incumbent is found to be illegally occupying the post and in support thereof relied upon the decisions in the cases of Hafiz Hamdullah Vs. Saifullah Khan and others (PLD 2007 Supreme Court 52) and Shah Ahmed Khan Vs. Government of Punjab through Chief Secretary, Punjab and another (PLD 2007 Lahore 191).

4. We have heard the learned counsel for the Petitioner at length as well as perused the case law cited at the bar.

5. We are cognizant of the fact that the post of Excise & Taxation Inspector is a Public Office, therefore falls within the Purview of Sub-Clause (1) (b) (ii) of the Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that Office. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of a Public Office is not entitled, if the office in question of that post, it comes to the conclusion that incumbent has no authority to hold the same and the person invoking the jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself within the meaning of an aggrieved person. Any person can move to a Court and challenge the usurpation or unauthorized occupation of a Public Office by an incumbent of that office and he is not required to undergo the stringent criteria to establish his locus-standi.

6. Prima-facie the basic intention of the Petitioner is to seek order from this court for verification of the testimonials/antecedents of the Respondent No. 16 to 43 by the Higher Education Commission of Pakistan so that he may have knowledge whether they are legally appointed or otherwise. Per petitioner the documents submitted by them at the time of initial appointment are not genuine.

7. Record reflects that the assertion of the Petitioner appears to be wholly misconceived and the instant petition is not maintainable on the grounds that prima-facie the petitioner has approached this Court for verification of the documents/testimonial of the Respondents No. 16 to 43 in a writ jurisdiction, whereas it is a settled principle of law that this Court, while exercising its powers under Article 199 of the Constitution of the Islamic Republic of Pakistan cannot enquire into factual controversies that whether testimonials of the Respondents No. 16 to 43 were genuine or otherwise or whether they have obtained the jobs on the basis of some fake and forged documents, which require evidence and the same is outside the scope and ambit of Article 199 of the Constitution. Though the learned counsel for the Petitioner has tried to explain that the appointments of the Respondent No. 16 to 43 were illegal but this could only be done after making extensive enquiry and investigation with regard to the testimonials as furnished by them at the time of their appointment to the respective respondents. We are fortified in this regard by a judgment given by the learned Division Bench of the Lahore High Court in the case of Agha Muzamil Khan through general Attorney and 8 others Vs. Consolidation Officer, Lahore and 62 others (PLD 2005 Lahore 422) wherein, relying upon several decisions of the Hon'ble Supreme Court of Pakistan, following has been observed:-

“7....We are firm in our view that the appellants have raised factual controversies and disputed questions of facts, which cannot be decided without recording evidence and such an exercise cannot be taken by this Court in exercise of its constitutional jurisdiction and amply falls within the domain of the Courts of plenary jurisdiction. It is settled law that this Court can in exercise of its jurisdiction vested in it under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, neither enter into factual controversies nor decide disputed questions of facts. Reliance is placed on

Muhammad Younas Khan and 12 others Vs. government of NWFP through Secretary Forest and Agriculture, Peshawar and others (1993 SCMR 618). Umar Hayat Khan Vs. Inayat Ullah Butt and others (1994 SCMR 572), Muhammad Ali and another Vs. Government of Sindh through Chief Secretary and 2 others (1986 CLC 1123), Mst. Kaniz Fatima through Legal heirs Vs. Muhammad Salim & others (2001 SCMR 1493) and Secretary to the Government of the Punjab, Forest Department, Punjab Lahore thorough Divisional Forest Officer Vs. Ghulam Nabi and 3 others (PLD 2001 SC 415)”

8. It is a cardinal proposition of law that the Court has to guard against frivolous litigation as well as entering into factual controversies and also avoid fishing and roving enquiries under the garb of quo warranto about the ascertainment of the genuineness of the degrees/certificates/testimonials furnished by the Respondents No. 16 to 43 in respect of their appointment. How this instant petition is maintainable thus has not been satisfactorily explained. It is also a settled principle of law that while exercising the discretion under quo-warranto writ cannot be issued as a matter of course or in ordinary parlance and the bona fides are always to be given prime importance that whether the petitioner has approached the Court with clean hands.

9. We have gone through the contents of the memo of Petition, which prima-facie shows that the relief claimed is based upon factual controversies, enquires, investigation, collection of evidences and disputed questions of facts, which in our view could not be done under Article 199 of the Constitution, since the same is beyond the scope and mandate of a writ falling under quo warrnato. Furthermore, in absence of any malafide or illegality, with respect to the appointment cannot be interfered with in Constitutional Jurisdiction of this Court, unless it is shown that the incumbent is not fulfilling the criteria set forth by the Competent Authority.

10. For the aforesaid facts, reasons and circumstances of the case, we are of the view that Article 199 of the Constitution casts an obligation on the High Court to act in aid of law and to protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259).

11. Petitioner has failed to produce any cogent material to substantiate and prove his claim thus, as observed above, on the face of it this petition does not seem to be maintainable.

12. The decision relied upon by the learned counsel surely are distinguishable from the facts obtaining in the instant matter.

13. This petition thus is found to be misconceived and not maintainable and is accordingly dismissed in limine along with the pending application(s).

14. Foregoing are the reasons for our short order dated 15.5.2018, whereby we have dismissed the instant petition in limine.

JUDGE

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