

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

### **Present:**

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

### **C.P No.D-3486 of 2016**

Jawaid Alam ..... Petitioner

Versus

Federation of Pakistan and others ..... Respondents

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### **Dates of hearing: 12.09.2018 and 24.09.2018**

Mr. Faizan Hussain Memon Advocate for the Petitioner.  
Mr. Moin Azhar Siddiqui and Mr. Ali Ahmed Turabi Advocates for  
the Respondent No.2 to 6.  
Mr. Sheikh Liaqat Hussain, AAG.

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## **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 under Article 199 (1) (b) (ii) of the Constitution against the  
Respondent No.6 to vacate the office of an Associate Professor in  
BPS-20 and the post of Acting Director of Sheikh Zayed Islamic  
Centre University of Karachi, thus, impugned the meeting of  
Selection Board dated 30.10.2014 and the meeting of Board of  
Governors dated 5.06.2016, issued by the Respondent University  
as illegal, abinitio-void and of no legal effect.

2. Gist of the case is that the Petitioner is an employee of  
Sheikh Zayed Islamic Research Centre University of Karachi and  
basically claimed that the Respondent No.6 is not qualified and

entitled to hold public office as an Associate Professor in BPS-20 and the post of Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi, hence her appointment on the aforesaid posts is in violation of the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements. Petitioner has submitted that the Respondent No.6 does not meet the criteria to hold the public office either as an Associate Professor in BPS-20 or as an Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi, having no qualification and experience as required under the advertisement dated 05.01.2013 thus is not qualified to hold the offices as discussed supra, which is without lawful authority. Petitioner has submitted that the Respondent No.6 does not have teaching/ research experience to hold the aforesaid posts.

3. Notice was issued to the Respondents who filed their para-wise comments and denied the allegations leveled against them.

4. Mr. Faizan Hussain Memon Advocate at the very outset has not pressed the petition so far as Respondents 7 & 8 are concerned, which observation has already been recorded when the matter was partly heard on 12.09.2018. Hence the instant petition so far as these Respondents are concerned stands dismissed. The learned Counsel for the Petitioner argued that the Respondent No.6 is holder of a Public office not qualified to hold the same as an Associate Professor in BPS-20 or as an Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi; that as per Public Notice, dated 5.1.2013 for the appointment of

Associate Professor in BPS-20 in the Respondent university, the qualification and experience is provided, whereas the Respondent No. 6 did not meet the same, therefore, she cannot hold the said posts; that Respondents have violated the terms of Protocol arrived between Government of Pakistan and the United States of Arab Emirates on the status of Sheikh Zayed Islamic Research Centre University of Karachi as well as Rules and Regulations which caused colossal loss to the Public at large by appointing the Respondent No 6 on the aforesaid posts; that due to the illegal actions of the Respondent No. 6, the Petitioner has suffered mental torture and agony as he is a willing worker of Sheikh Zayed Islamic Research Centre University of Karachi; that her appointment is called in question under Article 199 (1)(b)(ii) of the Constitution of Islamic Republic of Pakistan 1973, being a holder of Public Office without lawful authority. He lastly prays for issuance of Writ in the nature of quo-warranto against the Respondent No.6 to meet the ends of justice.

5. Mr. Moin Azhar Siddiqui, learned counsel for Respondents No. 2 to 6, contended that the instant Petition is not maintainable in law; that the issues raised by the learned counsel for the Petitioner involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked. He has further added that the Petitioner is an employee of Sheikh Zayed Islamic Research Centre University of Karachi and has personal vendetta thus not entitled for grant of any relief from this Court therefore Writ Petition is not maintainable against the Respondent No 6; that the Petitioner is not an aggrieved person within the meaning of Article 199 (1)(a)(b)(ii) of the

Constitution of Pakistan, therefore, is not entitled for any relief; that the Petitioner has raised multiple frivolous grounds to harass Respondents; that the Petitioner has not approached the Court with clean hands and has also not disclosed the true facts before this Court; that the Respondent No.6 has sufficient experience and expertise in the relevant field to hold the post of an Associate Professor in BPS-20 or as an Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi; that Respondent No.6 was validly appointed by the Competent Authority under the law and fulfills all the codal formalities as required for the post of Associate Professor in BPS-20 under the relevant law and code of Respondent-University; that the allegations of the Petitioner regarding violation of Protocol arrived at between Government of Pakistan and United States of Arab Emirates on the status of Sheikh Zayed Islamic Research Centre University of Karachi and Rules and Regulations of Respondent-University and infringement of his rights and other ancillary matters are baseless and Petitioner may be put to strict proof thereof; therefore these factual controversies cannot be resolved in a Writ Petition. Per learned counsel, anybody, who qualifies and having sufficient experience in the relevant field, can be appointed as an Associate Professor in Sheikh Zayed Islamic Research Centre University of Karachi. He further added that Respondent No 6 is well experienced and was validly appointed by the Competent Authority for the aforesaid posts, hence there is neither any defect or inherent disqualification, under the law, therefore the instant Petition is misconceived. He concluded by saying that the instant Petition is not maintainable under Article

199 of the Constitution and lastly prayed for dismissal of the instant petition.

6. Mr. Sheikh Liaqat Hussain, learned Assistant Attorney General representing Respondent No.1 supported the contention of the learned counsel for the Respondent No. 2 to 6.

7. We have heard learned Counsel for the parties and perused the material available on record.

8. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. As per profile, the Respondent-University is a Public sector university. The post of Associate Professor in Sheikh Zayed Islamic Research Centre University of Karachi is a Public Office/Public Sector Post, 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 Public Office is not entitled if it comes to the conclusion that incumbent has no authority to hold the same in accordance with law. The Office of an Associate Professor of the Respondent-University is a Public Office and for that reason they are amenable to the writ jurisdiction of this Court under Article 199 of the Constitution. We are fortified on this issue by the decision rendered by the Honorable Supreme Court of

Pakistan in the case of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 SC 244). It is well settled law that 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. But, 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.

9. Much emphasis has been laid on the point of law that when the matters pertaining to the terms and conditions of service of Employees of a Respondent-University, Constitutional jurisdiction of this Court cannot be invoked, on the premise that the terms and conditions of the employees of the Respondent-University are not governed by any Statutory Rules and the relationship between the Respondent-University and its employees is that of "Master and Servant". The same principle has been reiterated in the case of the Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14). There is no cavil to the aforesaid proposition set forth by the Honorable Supreme Court of Pakistan, regarding the issue of Non-Statutory Rules of Service.

10. We are cognizant of the fact that this Court earlier in the case of Aamir Jamil vs. University of Karachi and others in C.P. No. D-1547 of 2016, vide Judgment dated 18.10.2017, the objection about the maintainability of the Petition against the

Respondent-University was sustained on the premise that Petitioner was seeking declaration to the effect that his services may be reinstated which fell within the ambit of the enforcement of service rules of the Respondent-University by relying upon the aforesaid judgment maintained by the Hon'ble Supreme Court of Pakistan in C.P. No. 663-K of 2017 vide order dated 26.06.2018 and we reiterate our view as discussed in the case of Aamir Jamil supra. However in the present matter Petitioner is not seeking enforcement of the terms and conditions of the Respondent-University but has called in question the basic appointment of the Respondent No.6, which falls within the ambit of Article 199 (1) (a) (b) (ii) of the Constitution of Pakistan. So the arguments of the learned counsel for the Respondents No. 2 to 6 that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the Respondent-University is not sustainable under the law and in our view Petition is maintainable under Article 199 of the Constitution and can be decided on merits.

11. On merits, the Petitioner has mainly impugned the appointment of the Respondent No.6 on the premise, inter alia, that she does not qualify to hold the Public Office and that she has no qualification and experience for the post of an Associate Professor in BPS-20 or to hold the post of Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi in terms of the Public Notice dated 05.01.2013 issued for the aforesaid appointment in SZIC of the Respondent-University.

12. We have gone through the contents of the Public Notice/Advertisement, published on 05.01.2013, which prima-facie show that SZIC invited applications on prescribed application form for the posts of Associate Professor in B-20, on the following terms and conditions:-

**“10 Years teaching/Research Experience in HEC recognized University or a Post Graduate Institution or Professional Experience in the relevant field in a National or International Organization OR**

**“5 Years teaching/Research Experience in an HEC recognized University or a Post Graduate institution or Professional Experience in the relevant field in a National or International Organization**

**The Applicant must have 10 Research Publications with at least 4 Publications in Last 5 Years in HEC recognized Journals or the Journals of National or International repute.”**

13. Today, Mr. Moin Azhar Siddiqui, learned counsel for the Respondents has placed on record a statement which prima facie show that Respondent No.6 obtained PhD Degree in the month of July, 2006 from the Respondent-University in the faculty of Islamic Studies. As per record, the Respondent No.6 was appointed as Lecturer (Islamic Studies) in BPS-17 in SZIC vide letter dated 18.1.2006, thereafter she was awarded PhD Degree in Quran & Sunna and appointed as Assistant Professor (Temporary) for holding PhD degree vide letter dated 6.7.2006 and thereafter she was recommended by the Selection Board for her appointment as Associate Professor in Islamic Studies in BPS-20 at SZIC.

14. From the above, prima facie, the academic record of the Respondent No.6 reflects that she meets the eligibility criteria as



set forth in the public notice dated 05.1.2013 as has been observed by the Board of Governors of SZIC vide Minutes of 11<sup>th</sup> Meeting held on 15.11.2014 an excerpt of the same is reproduced as under:-

**Reported Items:**

**Item No.7:** To endorse the approval of the proceedings of the meeting of selection board held on 30<sup>th</sup> Oct 2014, for the appointment of One Professor and 2 Associate Professors at the Centre. Approval was accorded by the worthy Chairman BOG on behalf of the Board of Governors.

**Resolution No.7:** The Board unanimously endorsed the approval of the worthy Chairman BOG for the proceeding of the meeting of selection Board and confirmed recommendation of the selection Board for the appointment of the following:

Dr. Noor Ahmed Shahtaz (Professor BPS-21)  
Dr. Abida Parveen (Associate Professor –BPS-20)  
Dr. Umar Hayat Asim Siyal (Associate Professor –BPS-20)

15. It is a well settled principle of law that merit includes qualification for certain posts in Statutory/Public Sector universities. The power to prescribe or modify the said criteria vests in the Selection Board of the Respondent-University pursuant to Section 6 & 7 of the Code of University of Karachi. An excerpt of the same is as under:-

***“Selection Board: - The Selection Board shall consist of:-***

- (i) the Vice Chancellor (Chairman);***
- (ii) the Chairman, or a member of the Sindh Public Service Commission to be nominated by the Chairman;***
- (iii) the Dean of the Faculty concerned;***
- (iv) the Chairman of the Teaching Department concerned;***  
***And***
- (v) one member of the Syndicate and two other men of eminence, to be appointed by the Syndicate, provided that none of the three are employees of the University;***

- (2) *the members mentioned in sub-clause (v) of clause (1) shall hold office for two years.*
- (3)(a) *Four members shall form the quorum for the selection of a Professor or an Associate Professor, and three members of the selection of other Teachers.*
- (b) *In case of Officers other than teachers, the Selection Board shall consist only of members at sub-clauses (i),*
- (ii) *and (v) of clause (1).*
- (4) *No members who is a candidate for the post to which appointment is to be made shall take part in the proceedings of the Board.*
- (5) *In selecting candidates for the posts of Professors and Associate Professors, the Selection Board shall co-opt or consult three experts in the subject concerned, and in selecting candidates be nominated by the Vice-Chancellor, from a standing list of experts for each subject approved by the Syndicate on the recommendation of the Selection Board and revised from time to time.*
7. *Functions of Selection Board* ①) *The Selection Board shall consider the applications received in response to advertisement and recommend to the Syndicate the names of suitable candidates for appointment to teaching and other posts.*
- (2) *The Selection Board may recommend the grant of higher initial pay in a suitable case for reasons to be recorded.*
- (3) *The Selection Board may recommend to the Syndicate the appointment of an eminently qualified person to a Professorship in the University on the terms and conditions other than those prescribed.*
- (4) *In the event of an unresolved difference of opinion between the Selection Board and the Syndicate, the matter shall be referred to the chancellor whose decision shall be final.”*

16. The aforesaid code vests exclusive power to make appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Competent Authority of the Respondent-University is well within its right to prescribe criteria under the

code. Responsibility of fixing criteria for appointment of Associate Professor of Public Sector University primarily falls on the Competent Authority/Syndicate/Chancellor of the Respondent-University, subject to law. It is also settled law that Courts ordinarily refrain from interfering in policy making domain of the Executive of the Public Sector Universities, until and unless the same offends the fundamental rights of the parties.

17. In view of the above facts and circumstances of the case, we are constrained to observe that under the code of the Respondent-University, it is the prerogative of the Respondent-University to appoint a person of Public Sector University in accordance with fitness and capability required for the post in accordance with law.

18. We are fortified with the decision rendered by the Hon'ble Supreme Court in the case of Ghulam Rasool Vs. Government of Pakistan & others (PLD 2015 SC 6), wherein the Hon'ble Supreme Court has held in Paragraph No.9 that Courts ordinarily refrain from interfering in policy making domain of the Executive. Furthermore, in absence of any malafide or illegality, the Competent Authority's decision with respect to the appointment cannot be interfered with in a Constitutional Jurisdiction of this Court, unless it is shown that the incumbent does not fulfill the criteria set forth by the Competent Authority.

19. Record reflects that the Respondent-University advertised the posts of Associate Professor in BPS-20 on 05.01.2013, on which two candidates were short listed, who were

interviewed by the Selection Board of the Respondent-University on merits, though there was one vacancy available for the aforesaid post however it was for the Respondent-University to account for that. Record further reflects that the Board assessed Respondent No.6 to be the competent person for the post of an Associate Professor in BPS-20 and thereafter she was allowed to be posted as Acting Director of Sheikh Zayed Islamic Research Centre University of Karachi. Respondent No.1 supported the decision of the Selection Board for appointment of the Respondent No.6 as an Associate Professor in BPS-20 on merits. Consequently Respondent-University issued office order dated 05.11.2014 for appointment of Respondent No.6 as an Associate Professor in BPS-20. No illegality and infirmity has been pointed out by the learned counsel for the Petitioner in above procedure. In our view, Petitioner has failed to produce any cogent material to substantiate and prove his claim.

20. Reverting to the claim of the Petitioner that quorum was not complete for the Selection of the Respondent No.6 as an Associate Professor in BPS-20. The aforesaid claim of the Petitioner is refuted by the learned counsel for the Respondent-University by referring to Section 6 of the code of the Respondent-University as discussed supra and argued that the quorum was complete for the Selection of an Associate Professor in BPS-20 with further assertion that no vested right had accrued in favor of the Petitioner to call in question the competency of the Selection Board constituted under the code of the Respondent-University. In the meanwhile the

learned counsel for the Petitioner raised another objection that it is the prerogative of the Federal Government to make appointment of an Associate Professor under protocol agreement arrived between the Government of Pakistan and the Government of United Arab Emirates on status of SZIC in Pakistan. Learned counsel for the Respondent-University again objected on the aforesaid question and argued that the Government of Pakistan Ministry of Education vide Notification dated 1<sup>st</sup> April 2010 transferred SZIC to the respective university i.e. University of Karachi. Be that as it may, we are of the considered view since the Respondent-University has advertised the aforesaid post, which prima facie show that they have the control on the affairs of the SZIC, University of Karachi, therefore this plea of the learned counsel for the Petitioner has no force in the eyes of law. Apropos the question of appointment of Respondent No.6 as Acting Director of the Respondent-University is concerned, on the aforesaid issue, we have already disposed of the Constitution Petition No. D-1749 of 2016 vide order dated 05.09.2017 in the following terms:-

***“Learned DAG has drawn our attention to the parawise comments already filed by him on behalf of respondent nO.1 wherein it has been stated that after 18<sup>th</sup> constitutional amendments the Ministry of Education has been devolved to the Provincial governments, the control of all center was assigned to Ministry of IPC and now the entire business of respondent No.2 are being run by the rules and regulation of University of Karachi. Per learned counsel for the petitioner the petitioner is only seeking relief in respect of prayer clause (ii) & (iii), which are as follows:-***

***(ii) Declare that the appointment of Respondent NO.3 as Professor in the meeting of Selection board held on 31.10.2014 is illegal, unlawful, malafide and void ab-initio.***

***(iii) Direct the Respondent NO.1 to immediately appoint regular Director of Sheikh Zayed Islamic***

**Centre, in accordance with the provision of Protocol and decision of JAC in its meeting held on 1<sup>st</sup> May, 1999.**

**On query, learned counsel for the respondent NO.2 submits that Dr. Abida Parveen, Associate Professor was appointed as acting director of the respondent No.2 in May, 2016 and she is performing her duty as acting director of the respondent No.2 throughout.**

**By consent of the learned counsel for the parties, we dispose of this petition with direction to the Competent Authority to initiate process of appointing permanent director of respondent No.2 within a period of thirty (30) days, which shall be completed preferably within sixty (60) days time and submit compliance report to this Court through MIT-II.**

**The petition stands disposed of in the above terms along with pending application(s).”**

21. In view of the aforesaid order passed by this Court, we are of the considered view that there is no need of any further deliberation on the issue of the appointment as Acting Director in the Respondent-University.

22. In the light of facts and law discussed above, the appointment of the Respondent No. 6 does not seem to suffer from any inherent defect under the law, besides the Petitioner has also failed to point out any legal flaw in the appointment of the Respondent No 6, to warrant interference by this Court under Constitutional Jurisdiction. Therefore the instant Petition is inappropriate, and is dismissed along with the listed applications.

Karachi  
Dated: 27 .09.2018

JUDGE

JUDGE