

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –2849 of 2020

(Shahabuddin Siddiqui and 06 others v. Federation of Pakistan & 04 others)

Constitutional Petition No. D –2850 of 2020

(Shahabuddin Siddiqui and 06 others v. Federation of Pakistan & 03 others)

Mr. Ali Asadullah Bullo, advocate for the petitioners

Mr. Muhammad Nishat Warsi, DAG

M/s. Sajid Zahid, Muhammad Zeeshan Khan, and Jawad

Raja Azhar, advocates for the respondents / SSGC

Date of hearing : **24.02.2022**

ORDER

Through these petitions, the petitioners have prayed for issuance of the writ of quo warranto against the private respondents to vacate the offices of Senior General Manager (Human Resources), Senior General Manager (Engineering Services), respectively, of the Sui Southern Gas Company Limited (**SSGCL**), *inter-alia*, on the ground that they are not qualified to hold the aforesaid offices, either due to lack of academic qualification and experience or they have crossed the upper age limit; hence, their initial appointments are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

As per petitioners, they are serving in SSGCL and have narrated their voice of concern in CP No.D-2849 of 2020 with the assertion that in the year 2015 an advertisement was published in daily national newspapers, wherein applications were invited from amongst the aspiring eligible, fit and proper person/candidates against the aforesaid positions in SSGCL; that the above referred advertisement reveals that it was mandatory that a person should be possessing strong employment track record along-with requisite qualification, post-qualification experience and be within the prescribed age limit for the post of Senior General Manager (Human Resources), but the respondent No. 4 knowingly that he was ineligible and not possessing the pre-requisites applied for the post of Senior General Manager (Human Resources); that at the time of scrutiny of the qualification, experience and age limit, he managed to get himself crossed from the barriers of mandatory requirements and was recommended and appointed as Senior General Manager (Human Resources) in the SSGCL on regular basis by the then Management of the SSGCL in the year 2015. Petitioners have further averred that discrepancy and illegality regarding his employment came on surface when the respondent No.5 initiated an enquiry against the alleged appointment of Respondent No.4 in the year 2017 but nothing came to surface due

to misuse of official position by the private respondent; that all the positions as per advertisement were filled in through a third party selection process wherein the Respondent No. 4 was recommended by HRSG Global (third party agency) without disclosing his eligibility and fitness, but such illegality was pointed out by the Audit department of Government of Pakistan vide letter dated 27-1-2017 to the Respondent No. 2 & 3 for clarification who in turn failed to justify the same and hushed up the matter for extraneous considerations; that the requisite post qualification experience was mandatory to be at least 17 years' experience, however the incumbent in question possessed 12 years of experience in irrelevant fields other than the Human Resources and at the time of recruitment and selection process, the Respondent No. 4 was over 52 years which straightaway made him unfit and ineligible, but he in connivance with the then Management of SSGCL, got himself recommended and appointed in flagrant disregard of the merit; that upon initiation of enquiry against the illegal appointment of the Respondent No. 4 on the basis of a complaint with proofs, the Respondent No. 5 has not yet finalized the same and it shows that either they have been compromised or succumbed to the pressure of the private respondent; even they failed and neglected to conclude the enquiry and lodge criminal case against the incumbent in the instant proceedings, on account of his appointment; in this regard number of eligible and fit candidates had lost their right to be selected on merit and concept of good governance has been brushed aside; that vide letter dated 13-2-2020, the Transparency International Pakistan wrote a letter to the Respondent No. 3 regarding illegality and irregularity in the appointment of respondent No.4 as General Manager (Human Resources) in SSGCL by the then Management through 477th Meeting of Board of Directors held on 19-12-2015, but nothing could be done; besides such disclosure the Respondents are reluctant and causing hurdles in initiating departmental enquiry and its consequences in order to secure illegal and wrong actions of their predecessors.

Mr. Ali Asadullah Bullo, learned counsel for the petitioners in CP No.D-2849 of 2020, has argued that the official respondents have failed to discharge and perform their official and mandatory duty by not conducting the requisite departmental enquiry against the alleged illegal and irregular appointment of the respondent No. 4 against the post of Senior General Manager (Human Resources) and reluctant to pass the order, hence committed criminal breach of trust and caused loss to the public exchequer; that the respondents 1 to 3 are trying to escape from reviewing and taking punitive / penal action against the respondent No. 4 and want to save not only their blue eyed baby / incumbent but the then Management as well, on whose illegal orders and recommendations the post of Senior General Manager (Human Resources) was filled in utter disregard of the directions as well as principles as set forth by the Hon'ble Supreme Court of Pakistan in number of judgments; that the respondent No. 5 has also failed to perform its obligatory Constitutional duty by not finalizing the

important enquiry of an important organization of the Government of Pakistan, which has always proved as one of the parts of back bone of the Country, hence liable to be taken into account for what they are required to do under writ of mandamus; that besides all infirmities, illegalities and irregularities and malafide on the part of the then management of the SSGCL, the Respondents have kept themselves aloof from taking any action against Respondent No. 4 which speaks volumes about their alleged involvement towards irreparable loss of the organization as well as negation to the dicta laid down by the apex court regarding merit in every public sector organization; that the respondents malafidely and in clear violation of the SSGCL Service Regulations had issued appointment orders of the Respondent No 4 who even at the time of appointment did not possess the requisite and prerequisites of the position of Senior General Manager (Human Resources), and such act of the Respondents proves it as Coram Non Judice and the employment of the private respondent in question need not only to be recalled formally but penal action may also be taken against all including the beneficiary in accordance with law; that the Respondent No 1 to 4 including the private respondent in question have adopted course of pressures and other tactics to minimize the voices and resistance of the employees of SSGCL towards his illegal appointment which act is not sustainable in the eyes of law and needs to be redressed by this Hon'ble Court in the instant proceedings; that the whole exercise from advertisement till 477 Meeting of the Board of Directors, was concocted and just to grant and favor the Respondent No. 4 to retain him for which he was not qualified and fit to be appointed for the subject post, hence the instant constitutional petition under the writ of quo warrant and writ of mandamus; that the Respondent No.4 never possessed the experience of H.R. Head in such reputable organizations which he mentioned malafidely in his service record while applying within and without the territory of Pakistan, and it can be seen through the detailed and discreet enquiry of the Respondent No. 5 which never came out with substantive action as required under the Federal Investigation Agency Act, 1974 which bounds it's every official and officer to conclude every enquiry with material evidence in either of the situations; besides clear evidence and proofs as required under the law, the Respondents are avoiding to perform their duties and are continuously trying to save the Respondent No. 4 and the then Management which took part in causing colossal loss to the organization as well as public exchequer; that the impugned appointment of the Respondent No. 4 is nothing but a worst example of misuse of authority and corrupt practices which come within the meaning as defined under National Accountability Bureau Ordinance, 1999; that the Respondent No. 4 is continuously performing the job for which he is not entitled to do so, therefore his every action taken in the capacity of Senior General Manager (Human Resources) can be struck down by this Court in it's Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; that the

impugned act of the Respondents regarding illegal appointment is deliberate, arbitrary, malafide, without lawful authority and this Court has Supervisory jurisdiction to take cognizance of the matter. In support of his contentions, he relied on Articles 4, 25 & 18 of the Constitution of the Islamic Republic of Pakistan, 1973. He lastly prayed for allowing the instant petitions as prayed.

Learned counsel for the petitioners in CP No.D-2850 of 2020, has argued that the private respondent is not a professional engineer in terms of the Pakistan Engineering Council Act, 1976; and, he is performing his duties as an Engineer in SSGCL in violation of settled law and decision of the Honorable Supreme Court in the case of *Maula Bux Shaikh and others v. Chief Minister Sindh and others*, **2019 PLC (C.S) 282**. Learned counsel further submitted that every action taken by him in the capacity of Senior General Manager (Engineering Services and/or another capacity) is not supported by law, therefore, his all actions are liable to be struck down. Per learned counsel, his initial appointment does not align with the recruitment rules of SSGC and violates the terms of the advertisement published in the year 2012-13.

The aforesaid stance of the petitioners in CP No.D-2850 of 2020 has been refuted by Mr. Sajid Zahid, learned counsel for SSGCL by raising the question of maintainability of this petition and referred to the Counter Affidavit filed by SSGC, and submitted that the private respondent is qualified and has approximately 22 years' experience in terms of public notice. Per learned counsel, the Wayne State University wherefrom the private respondent had acquired the Masters' degree is a chartered university of the United States of America as confirmed by the Higher Education Commission of Pakistan, which recognizes Master of Science in Engineering Management Degree held by the private respondent, which is equivalent to corresponding Master's degree involving 18 years schooling/M.Phil. in General Stream from Pakistan. Per learned counsel, private respondent does not suffer from inherent disqualification as portrayed by the petitioners and referred to various contents of Counter Affidavit and ground raised therein.

Learned Counsel again raised the question of maintainability of both the petitions on the ground that the petitioners were/are not the aggrieved person and none of their service rights were violated and they had also no locus standi or cause of action to file the constitutional petitions; that the qualification and experience of the person under attack in quo warranto is to be judged on the date of issuance of such writ meaning thereby that in case of age, qualification and experience is acquired pending action under quo warranto then keeping such change, quo warranto may not be issued. Learned counsel also took the plea that Writ of quo warranto would not be a remedy for a person to air his private vengeance; that a writ of quo warranto is not available to one set of Public Servants against another set of Public Servants and if a colleague is allowed to challenge

another colleague's appointment, there would be no end to this; there will be anarchy in the Service structure; the issues raised by the learned counsel for the Petitioners involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked; that private respondents are employees of respondent-company and are governed by Master and Servant relationship; therefore constitution petition is not maintainable against the SSGCL/ private respondents; that the Petitioners have raised multiple frivolous grounds to harass private respondents; that the Petitioners have not come with clean hands and not disclosed the true facts before this Court; that private respondents have sufficient experience and expertise in the relevant field to hold the offices of Senior General Manager (Human Resources), and Senior General Manager (Engineering Services), respectively, in SSGCL; that private respondents are validly appointed by the Competent Authority of SSGCL under the law and fulfill all the codal formalities for the posts of Senior General Manager (Human Resources), Senior General Manager (Engineering Services), respectively; that the allegations of the Petitioners regarding violation of Rules and Regulations of respondent-company and infringement of their alleged fundamental rights and other ancillary matters are baseless and Petitioners are put to strict proof thereof; therefore the same factual controversy cannot be resolved in the Constitutional Petition. Per learned counsel, anybody, who qualifies and has sufficient experience in the relevant field, can be appointed as Senior General Manager (Human Resources), and Senior General Manager (Engineering Services), in SSGCL, and cap of upper age limit to the extent of two months is condonable in the Rules and Guidelines issued by the competent Authority. Learned counsel in support of his contentions has relied upon the cases of Muhammad Rafique and 2 others v. Muhammad Pervez and 2 others, **2005 SCMR 1829**, PIA Corporation v. Syed Suleman Alam Rizvi and others, **2015 SCMR 1545**, Pakistan Airline Pilots Association and others v. Pakistan International Airline and another, **2019 SCMR 278** and Dr. Amir Bux and others v. the Federation of Pakistan and others, **2018 PLC (CS) 398**. He lastly prayed for the dismissal of the instant petitions.

Mr. Muhammad Nishat Warsi, learned DAG, has supported the stance of the learned counsel representing the respondent company and raised the question of the maintainability of the instant Petitions. However, he added that respondent-company is a non-statutory body, having non-statutory rules of service; and the appointment of the private Respondents was made by the competent authority of SSGC under the Human Resource Manual and service rules. He further added that prima-facie, private respondents are well experienced and validly appointed by the Competent Authority for the posts of Senior General Manager (Human Resources) and Senior General Manager (Engineering Services), thus do not suffer from any inherent defect or disqualification under the law, therefore the instant Petitions are

misconceived. He concluded by saying that the instant Petitions are not maintainable under Article 199 of the Constitution.

We have heard the contentions of learned counsel for both the parties and have perused the record and case-law cited at the bar.

We have examined this case minutely as to whether the private respondents in both the petitions meet the qualification for the posts of Senior General Manager (Human Resources), and Senior General Manager (Engineering Services) in SSGCL, or otherwise. For convenience sake, an extract of the advertisement published in the year 2015 concerning the post of Senior General Manager (Human Resources), SSGCL is as under:

“Position Specifications:

- *Masters in Business Administration or higher qualification in Human Resources from a reputable national or international institute.*
- *Minimum 17 years experience in the field of Human Resources including 5 years as Departmental Head. Experience of large Public and/or Oil and Gas sector shall be considered as an added advantage.*
- *Age should not exceed 52 years”*

Turning to the case of the private respondent (in C.P. No.2849 of 2020), he was appointed on 21.12.2015 to the post of Senior General Manager (Human Resources) in terms of the aforesaid advertisement. The private respondent urged that he was duly appointed on merits, after publication in the press and on selection by the properly constituted Board of Directors headed by its Managing Director vide minutes of the meeting dated 19.12.2015.

At this juncture, learned Counsel for SSGC has submitted that private respondents are qualified and experienced people to hold the subject posts, having the requisite Degree and experience in the relevant field. In this regard, he referred to the counter-affidavits and relied upon the CVs of the private respondents, and submitted that the instant petitions are based on personal vengeance as depicted from the memo of the petitions, as such they want to settle their score with the private respondents. Be that as it may, we are only concerned with the maintainability of these petitions under Article 199 (1) (b) (ii) of the Constitution, 1973, therefore we deem it fit and proper to have a glance at the Curriculum vitae of private respondents. An excerpt of the CVs of the private respondents is reproduced as under:-

“Atad Saeed Khan

Employment Summary:

Marie Stopes-subsidiary of marine stopes international, U.K

Nov 2013-

till to date

Marie Stopes International based in U.K, is a leading international healthcare organization operating in 42 countries. In Pakistan, it has been operating for the last 22 years.

ACADEMIC ACHIEVEMENTS:

- 1990-1992 MBA in International Business-Johnson & Wales University, Providence, USA
- 1983 -1987 –BS in Mechanical Engineering – University of Engineering & Technology, Lahore”

“Saeed Rizvi

Educational Background:

- MS Engineering Management
- Project Management Professional (PMP®) Certification

Career History:

July 2005 – Oct 2010 Alsons Autoparts
May 2011 to date Agriuto Industries Ltd

Details of Relevant Job

Currently, Mr. Saeed Rizvi is working as Head of the Quality department at Agriuto Industries Ltd. since May 2011, and before that, he served Magna Powertrain systems Canada as Value Stream Manager. He has also worked with Alsons Auto Parts (tier-1 automotive supplier) as General Manager Engineering & Development for five years, where he supervised Produced Development, Design Office, Machine & Fixture Development, Dies/Mould Manufacturing, Business Development & the Sales / Marketing Department.

From the above extract, prima facie, the evaluation made by an Expert Committee of respondent-SSGCL ought not to be easily interfered with by this Court under Article 199 (1) (b) (ii) of the Constitution, 1973, which does not have the necessary expertise to undertake the exercise that is necessary for such purpose. It is a settled proposition that the competent authority, within its power to make its assessment, has to assess the candidature of a candidate for appointment. It is settled law by a catena of decisions that the Court cannot sit in judgment over the wisdom of the competent authority, in the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 3CMR 157).

In the instant case, prima-facie, the competent authority has assessed the candidature of the private respondents in both the petitions and appointed them in the respondent-company, which does not require interference at our end under Article 199 (1) (b) (ii) of the Constitution, 1973. Since the allegations leveled by the petitioners are severe, however, it is for the competent authority of respondent-SSGCL to look into all aspects including the Audit Paras pointed out by the Auditor General of Pakistan as this Court cannot record evidence of the parties to determine the veracity of these documents in Constitution petition. Primarily the allegations and counter-allegations leveled by the parties in the present proceedings could not be looked into under the aegis of Article 199 (1) (b) (ii) of the Constitution, 1973. An excerpt of the meetings of the 477TH & 423rd Board of Directors of SSGCL are reproduced as under:-

‘Meeting of the 477TH Board of Directors

6.2 Appointment of SGM (HR)/GM (HR):

The MD apprised the Board that as authorized by the Board Human Resource and Remuneration Committee he met with recommended candidate Mr. Asad Saeed Khan to negotiate the salary package. He agreed to join at a Basic Salary of Rs.575,000/- per month.

The Board concurred with the recommendation of the Board Human Resource and Remuneration Committee and approved the name of Mr. Asad Saeed Khan for appointment as Senior General Manager HR.

The Board authorized the Managing Director to issue offer letter to Mr. Asad Saeed Khan at a basic salary of Rs.575,000/-“

“Meeting of the 423rd Board of Directors of JSGL

Direct Recruitment

Board considered Managements tabled note dated 28 December 2012

Chairman HRC Director Mr. Shahid Aziz Siddiqui informed the Board that the Management had advertised the positions of Director General (Scrutiny) and General Manager (Manufacturing). After receiving applications against these advertised positions, Management had conducted initial interviews and had shortlisted suitable candidates who were then interviewed by the HR Committee.

HR Committee after having interviewed the candidates have found Brig (R) Waqar Hussain suitable for the position of DG (Security) and Mr. Saeed Rizvi for the position of GM (Manufacturing) and therefore, have recommended to the Board of their appointment.

After deliberations and based on the recommendation of the HR Committee, the Board approved and authorized the Management to appoint Brig (R) Waqar Hussain as DG (Security) in Grade VII and Mr. Saeed Rizvi as GM (Manufacturing) also in Grade VII on salaries to be finalized by the Management within the pay and scale of Grade VII.”

In our view in such a situation, issuing a Writ of Quo Warranto would not be feasible, when nothing concrete evidence has been brought on record to the extent that there was/is a violation of law in the appointment of the private respondents as discussed supra. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of Muhammad Liaquat Munir Rao v. Shams-Ud-Din and others (2004 PLC (C.S.) 1328, Dr. Khalil ur Rehman v. Government of Punjab through Chief Secretary, Punjab and 5 others (2015 PLC (C.S.)793).

Progressing further, on the essential elements of the writ of quo warranto. Primarily, sub-clause (1) (b) (ii) of Article 199 of the Constitution, which permits the High Court to issue a "Writ of Quo-warranto" requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority, he can hold that office. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, 1973 the High Court, if satisfied, could declare that holder of such Public Office is not entitled to such office. Quo warranto means to supplement by what authority and it is an effective measure to prevent people from taking over public offices who do not qualify for the same. While considering a writ like quo warranto, it is imperative to consider the intent and motive of the petitioner and if it is manifest that a petitioner has invoked the jurisdiction of the Court with an ulterior motive then jurisdiction

ought to be declined. Quo warranto is an extraordinary discretionary jurisdiction and the Court is not bound to exercise such jurisdiction in every case; especially in matters of minor discrepancies, sheer curable technicalities, or where the approach is doctrinaire unless it is shown that non-interference would result in grave injustice or would amount to endorsing the retention of illegal gains.

In principle, the writ of quo warranto is issued by the courts to judicially review such a situation against a person when he assumes an office on which he has no entitlement. There is no prohibition in law as to who can file the writ of quo warranto. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme court in the cases of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others [PLD 1975 SC 244]. Lt. Col. Farzand Ali and others v. Province of West Pakistan through Secretary Department of Agriculture, Govt. of West Pakistan (PLD 1970 SC 98), Umar Baz Khan v. Syed Jehanzeb and others PLD 2013 SC 268; Farzand Raza Naqvi and others v. Muhammad Din through Legal Heirs and others 2004 SCMR 400; Muhammad Rafique and 2 others v. Muhammad Pervez and 2 others, 2005 SCMR 1829; State Bank of Pakistan v. Imtiaz Ali Khan and others 2012 SCMR 280, 2012 PLC (C.S.) 218, (Asghar Khan and others v. Province of Sindh and others 2014 PLC (C.S.) 1292. Masudul Hassan v. Khadim Hussain and another PLD 1963 SC 203; Hafiz Hamdullah v. Saifullah Khan and others PLD 2007 SC 52; Imran Ahmad Khan Niazi vs. Mian Muhammad Nawaz Sharif PLD 2017 SC 265; Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others PLD 2013 SC 482; Aftab Shahban Mirani v. President of Pakistan and others 1998 SCMR 1863; Capt. (Retd.) Muhammad Naseem Hijazi v. Province of Punjab and others 2000 SCMR 1720; Workers' Party Pakistan v. Federation of Pakistan and others PLD 2013 SC 406 and Allah Dino Khan Bhayo v. Election Commission of Pakistan PLD 2020 SC 591. and Ammad Ahmad v. National Highway Authority (2018 PLC [C.S.] Note 187).

The Honorable Supreme Court in the case of Asif Hussain and others Vs., Sabir Hussain and others 2019 SCMR 1720 has settled the proposition put forward by the learned Counsel for the respondents and held as under:-

“No doubt a writ in the form of quo warranto is an extraordinary discretionary jurisdiction and the Court is not bound to exercise such jurisdiction in each and every case especially where on account of laches the matter has lost its significance or in cases of minor discrepancies, sheer curable technicalities or where the approach is doctrinaire unless it is shown that non-interference would result in the grave injustice or would amount to endorsing the retention of illegal gains. However, in cases where the eligibility of a public servant is under attack on the ground that such public servant did not fulfill the substantive condition of

eligibility to such office on the cutoff date prescribed in the process, then such violation of the substantive statutory requirement could not be overlooked merely on the ground that pending action, the Court such government servant has met the required condition of such office.”

Another aspect of the matter is that the private respondent in CP No.D-2849/2020 was appointed in the year 2015, under the advertisement in the press, after selection by the Board of Directors headed by the Managing Director of SSGCL; and, the petitioners filed the instant petition after five years when the private respondent was already on his job, whereas the petitioners in CP No.D-2850/2020 has filed the instant petition on 13.06.2020 after 07 years of the appointment of the private respondent as per Minutes of 423rd meeting of Board of Directors held on 1st January 2013. Prima facie, both the petitions suffered from gross laches without there being any justifiable explanation.

In this case, some minor irregularities, i.e. 2 months age issue and degree of engineering have been pointed out, which aspect, we leave it for the competent authority to look into after providing meaningful hearing to the parties within the reasonable dispatch.

The assertions made by the petitioners in both the petitions are not sufficient for the issuance of a writ of quo warranto against the private respondents. Additionally, this Court is conscious of the fact that the power to issue this writ is discretionary and nobody can claim that this Court is bound to issue this writ in the private affairs of the employees of SSGCL, until and unless it is shown that grave illegalities have been committed by the management of SSGC.

The above discussions lead us to the conclusion that the instant petitions are entirely misconceived and are dismissed along with the pending application(s) with no orders as to cost. However, the petitioners are at liberty to approach the competent authority of respondent-SSGCL for redressal of their grievances, if they feel that their cause of action still subsists against the private respondents as discussed in the preceding paragraph.

These are the reasons for our short order 24.05.2022, whereby we have dismissed the instant petitions.

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Nadir*