

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No.D-265 of 2020**

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<b>Date</b>	<b>Order with signature(s) of Judge(s)</b>
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**Present**

**Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Arshad Hussain Khan**

Mohammad Salman Khan Baloch.....Petitioner

Versus

Syed Mustafa Kamal & others.....Respondents

Date of Hearing: 09.12.2020.

Petitioner present in person.

Mr. Hassaan Sabir, Advocate for Respondent No.1.

Mr. Jawad Dero, Addl. A.G. Sindh.

Mr. Hussain Bohra, Assistant Attorney General.

M/s. Abdullah Hanjrah, Senior Law Officer & Hamid Hussain, Election Officer, Election Commission of Pakistan.

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**Muhammad Ali Mazhar, J.** This petition has been brought to entreat declaration that election of the respondent No.1 (Syed Mustafa Kamal) was null and void and he should be disqualified since the date of filing of nomination papers on 24.08.2002 for the elections of Provincial Assembly Sindh and for Local Government elections in 2005.

2. The petitioner in person argued that the respondent No.1 was elected as member of Provincial Assembly of Sindh from P.S. 117 Karachi (East) on the ticket of Muttahida Qaumi Movement (MQM) in general elections held on 10.10.2002. he was also

elected as City Nazim (Mayor) for the then City District Government Karachi in the year 2005. The respondent No.1 was given ticket by Muttahida Qaumi Movement for the elections of Senate in the year 2013. It was avowed that the respondent No.1 from his very first election in the year 2002 was not qualified as he failed to fulfill the qualifications specified under Article 62 of the Constitution as he concealed his employment with Karachi Medical and Dental College, Karachi Metropolitan Corporation. This fact was unearthed by the Mayor of Karachi in his interview that respondent No.1 was employed by Karachi Medical and Dental College, KMC and the record reveals that he remained in service as regular employee of Karachi Medical and Dental College, KMC and was dismissed from service on the charges of misconduct on 02.07.2002. The respondent No.1 submitted a false declaration at the time of filing his nomination papers by concealing the fact of his employment in KMDC, KMC whereas he was under legal obligations to declare all his credentials and antecedents but he deliberately avoided to do and usurped the office of Member Provincial Assembly as well as Cabinet Minister for about two to three years without any lawful authority and also participated in Local Government Elections of 2005 and got elected as City Nazim in 2005.

3. Quite the reverse, the learned counsel for the respondent No.1 argued that the petitioner himself belongs to Muttahida Quomi Movement (MQM) and filed this petition to harass the respondent No.1 with sole intention to defame him. It was further contended that the respondent No.1 at present is not holding any public office, however at present he is Chairman of "Pak Sarzameen Party" (PSP) and he also remained Senator, MNA, MPA Sindh (IT Minister) and duly elected Nazim (Mayor) of Karachi City during the period from 2005 to 2010. The petitioner remained member of National Assembly since 2013 till 2018 on a party ticket of MQM, he left MQM and joined PSP but due to his nefarious designs, illegal and immoral activities, he was sacked by Respondent No. 1

from PSP. The petitioner has suppressed the facts that before obtaining any party ticket the respondent No.1 had resigned from his services in the year 2000. The petitioner also failed to give any plausible justification as to why he was prevented not to disclose the alleged facts before the Election Commission of Pakistan in the year 2002, 2005 or in year 2013 and why after passing considerable period of time he approached this court at the time when respondent No.1 is not holding any public office. It was further argued that the petitioner has failed to show any documentary evidence with regard to the statement of Respondent No.4. At the time of filing of nomination papers nothing was concealed by Respondent No.1 from Election Commission of Pakistan. Ample time was provided to file the objections upon the candidature or the contents and documents filed in support of the nomination papers of the respondent No.1 by the Election Commission of Pakistan but no objections were filed by the petitioner. So far as the documents with regard to the alleged dismissal from service, the learned counsel argued that the said documents appear to be fabricated, no show cause notice was ever received by the respondent No.1, in fact, the respondent No.1 resigned from the office in the year 2000 and his resignation was duly accepted by the competent authority. Annexure K with the memo of petition appears to have signed by Ms. Nargis, (political worker of MQM) who is bias against the respondent No.1 and his party and fabricated annexed documents pertaining to the alleged service record which cannot be proved unless evidence is recorded.

4. In the case of **Sohail Baig Noori Versus High Court of Sindh through Registrar and others (2017 PLC (C.S) 1142)** (judgment authored by one of us **Muhammad Ali Mazhar-J**), the concept of writ of quo warranto was discussed in detail which is in fact in the nature of writ of right for the king against any subject who claim or usurp any office, to enquire by what authority he supported his claim in order to determine the right. Quo warranto proceeding

affords a judicial remedy by which any person who holds an independent substantive public office or franchise or liberty is called upon to show by what right he holds the said office. In other words this specie of writ gives judiciary a weapon to control executive action from making appointment to public office against the law. The purpose of writ is to pose a question to the holder of a public office where is your warrant of appointment by which you are holding this office? In the writ of quo warranto no special kind of interest in the relator is needed nor is it necessary to explain what of his specific legal right is infringed. It is enough for its issue that the relator is a member of the public and acts bona fide. This writ is more in the nature of public interest litigation where undoing of a wrong or vindication of a right is sought by an individual for himself but for the good of the society or as a matter of principle. For the purpose of maintaining writ of quo warranto there is no requirement of an aggrieved person, but a whistle blower need not to be personally aggrieved in the strict sense may lay the information to the court to enquire from the person holding public office. The conditions necessary for issuance of writ of quo warranto are that the office must be public and created by a statute or constitution itself; the office must be substantive one not merely the function of an employment of a servant at the will during the pleasure of others; there has been contravention of the Constitution or a statute or statutory instrument and appointing such person to that office, while essential grounds for issuing writ of quo warranto are that a holder of the post does not possess the prescribed qualification; the appointing authority is not competent authority to make appointment and that the procedure prescribed by law has not been followed and the burden of proof is upon the appointee who has to demonstrate that his appointment is in accordance with law and rules. The Halsbury's Laws of England, 3rd Edition Vol. II, dealt with writ of quo warranto in the following terms: "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to

enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

5. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. It is quite interesting to quote the case of **Dr. B. Singh vs. Union of India and Others, (2004) 3 SCC 363**, in which the court held that only a person who comes to the court with bona fides and public interest can have locus. Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public spirited men. They masquerade as crusaders of justice. They pretend to act in

the name of pro bono publico, though they have no interest to the public or even of their own to protect.

6. The petitioner relied on following judicial precedents:

- I. **Masudul Hassan vs. Khadim Hussain and another. (PLD 1963 S.C. 203)**, the apex court held that now obsolete writ of quo warranto was in its nature an information lying against a person who "claimed or usurped an office, franchise or liberty" and was intended "to enquire by what authority he supported his claim in order that the right to the office may be determined." It was necessary for the issue of the writ that the office should be one created by the State, by charter or by statute, and that the duty should be of a public nature. It was necessary also that the respondent should be in possession of the office.
- II. **Hafiz Hamdullah vs. Saifullah Khan and others. (PLD 2007 S.C. 52)** Object of writ of quo warranto is to determine legality of the holder of a statutory or Constitutional office and decide whether he was holding such office in accordance with law or was unauthorizedly occupying a public office. Where a person prays for a writ of quo warranto, the Court would be under an obligation to inquire whether the incumbent is holding the office under the orders of a competent authority and also to examine whether he would be legally qualified to hold the office or to remain in the office. For issuance of a writ of quo warranto, the person invoking the jurisdiction of High Court under Art.199 of the Constitution is not required to fulfill the stringent conditions required for bringing himself within the meaning of an aggrieved person.
- III. **Imran Ahmad Khan Niazi vs. Mian Muhammad Nawaz Sharif (PLD 2017 S.C. 265) Constitution of Pakistan. Articles 62, 63, 184(3) & 199.** Constitutional petition before the High Court or the Supreme Court seeking disqualification of a Member of Parliament. Maintainability. Constitutional petition in the nature of a writ of quo warranto was maintainable against a Member of the Majlis-e-Shoora (Parliament), if he was disqualified or did not possess or had lost his qualification, in such behalf. Such Constitutional petition could always be filed before the High Court under Article 199 of the Constitution and before the Supreme Court under Article 184(3) of the Constitution. Power to disqualify a member in cases where for some reason he escaped disqualification at the time of filing his/her nomination papers but such fact/event was discovered subsequently, could, in appropriate cases and subject to availability of admitted facts or irrefutable evidence be exercised by the High Court under Article 199 and by the Supreme Court under Article 184(3) of the Constitution.
- IV. **Mian Najeeb-ud-Din Owasi and another vs. Amir Yar Waran and others. (PLD 2013 S.C. 482) Representation of the People Act (LXXXV of 1976). Sections 78(3)(d), 12 & 14. Constitution of Pakistan Articles 62, 63 & 218(3).** Members of National and Provincial Assemblies and the Senate who had submitted bogus/fake degrees (educational qualifications) at the time of getting their nomination papers during the general elections held in 2008. Duty of Election Commission of Pakistan to de-notify such Members. Scope. Supreme Court observed that when a Member of the Parliament was disqualified, before or after the election, on the account that he made a false declaration on his/her nomination form (stating) that he fulfilled the conditions laid down under Arts.62 and 63 of the Constitution, he would have no right to hold office as a Parliamentarian or Member of National

**Assembly/Provincial Assembly or the Senate and in such a situation it was obligatory upon the Election Commission of Pakistan to proceed against such member by de-notifying him....**

- V. Aftab Shahban Mirani vs. President of Pakistan and others. (1998 SCMR 1863) Interference by High Court in exercise of jurisdiction under Art. 199 of the Constitution. Generally in an election process the High Court cannot interfere by invoking its Constitutional jurisdiction in view of Article 225 of the Constitution. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion against an order of election functionary which is patently illegal/without jurisdiction and the effect of which is to disenfranchise a candidate, he can press into service Constitutional jurisdiction of the High Court.**
- VI. Capt. (Retd.) Muhammad Naseem Hijazi vs. Province of Punjab and others. (2000 SCMR 1720) Writ of qua warranto. Under Article 199 of the Constitution of the Islamic Republic of Pakistan the High Court in exercise of its Constitutional jurisdiction is competent to enquire from any person, holder of a public office to show that under what authority he is holding the said office.**
- VII. Workers' Party Pakistan vs. Federation of Pakistan and others. (PLD 2013 S.C. 406) Constitution of Pakistan. Articles 62 & 63. Qualification/disqualification of candidate for National or Provincial Assembly. Candidate who came forward for election was supposed to provide his complete credentials to the voters enabling them to cast votes in favour of such person who was honest, believed in fairness and was free from any disqualification under Article 63 of the Constitution and was also qualified under Article 62 of the Constitution.**

7. The niceties of Sub-Article (1) (b) (ii) of Article 199 of the Constitution explicates that under the constitutional jurisdiction a High Court may make an order on the application of any person requiring a person within the 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. The crux of this petition expounds that in essence or predominantly the petitioner has challenged the office of respondent No.1 which he was holding in past that was elapsed by efflux of time much before the date of presentation of this writ petition. The petitioner avowed that the respondent No.1 was elected member of Provincial Assembly of Sindh from P.S.117 on the ticket of Muttahida Qaumi Movement (MQM) in general elections held on 10.10.2002. He was also elected City Nazim in the year 2005 thereafter he was given ticket by the same party for contesting elections in Senate in the year 2013 and he was elected as Senator on the ticket of MQM. The nucleus of this petition is that the respondent No.1

from his very first elections in 2002 was not qualified because he failed to live up to or complement the qualifications enumerated under Article 62 of the Constitution for the reasons that he concealed employment with Karachi Medical and Dental College, KMC (KMDC) which fact according to the petitioner was unearthed by the then Mayor of Karachi in his media interview. According to the petitioner, the respondent No.1 submitted false declaration at the time of filing of his nomination papers by camouflaging the truth vis-à-vis his employment in KMDC, KMC while he was under obligation to speak out his credentials and antecedents but he consciously circumvented and usurped the office of Member of the Provincial Assembly, Cabinet Minister and also under the false declaration contested the elections of City Nazim as well as the Senate. Though the respondent No.1 denied all these lines of arguments and articulated that the petitioner himself belongs to MQM and he filed this petition to harass and disparage the reputation of the respondent No.1. His learned counsel made much emphasis that at the present time the respondent No.1 is not holding any public office but he is Chairman of Pak Sarzameen Party (PSP). He remained Senator, MNA, MPA Sindh (IT Minister) and duly elected Nazim (Mayor) of Karachi City during the year 2005 to 2010. No such objection was ever taken nor any such petition was filed during the currency of the respondent No.1's tenure. It was stated by the respondent No.1 that the petitioner himself remained as Member National Assembly since 2013 to 2018 on party ticket of MQM thereafter he left MQM and joined PSP but due to some reasons, he was sacked by respondent No.1 from PSP. In our view, if the petitioner was so aggrieved or exasperated by the alleged wrong declaration of respondent No.1, he could have filed objection at the time of filing nomination papers and even after elections of the respondent No.1 through an election petition for challenging his candidature or the office by means of writ of quo warranto but nothing was done by the petitioner and after lapse of highly considerable time and deep slumber, this petition has been filed

when the respondent No.1 does not hold any public office. Seemingly the respondent No.1 is not holding any public office since 2010 and the petitioner has also failed to rationalise that if he was so passionate and ardent in the public interest or wanted to act as whistle-blower then why he maintained prolonged muteness during the period when the respondent No.1 was holding different public offices and why after lapse of his tenure, this petition has been filed in the year 2020 with the entreaty that the respondent No.1 should be declared disqualified from the beginning or inception of his first public office which he possessed pursuant to first nomination papers.

8. Normally in the writ of quo-warranto laches do not come to oust or non-suit the petitioner but since the basic spirit of the writ of quo-warranto is calling upon a person to show under what authority of law he is holding public office and not to conduct an inquiry with regard to any public office held by incumbent in past or after lapse of tenure by efflux of time. Laches is a doctrine which expounds and converses that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. No exception to the rule that delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if remedy of constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids vigilant and not an indolent. Laches in the simplest form meant failure of a person to do something which should have been done by him within a reasonable time, if remedy of constitutional petition was not availed within reasonable time the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of conduct of a person invoking constitutional jurisdiction. Ref: **PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400**

(Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others). Constitution of Pakistan. So in our considerate view, the doctrine of laches will also come in to rescue simply for the reason that neither at present nor at the time of filing this petition, the respondent No.1 was holding any public office, hence in the peculiar circumstances of the case, the petition is also hit by laches. In these proceedings it cannot be declared that respondent No.1 is not sagacious, righteous, non-profligate, honest and amen as there is no declaration to the contrary by a court of law. The paramount prerequisites mentioned under Article 62 of the Constitution envisioned that a person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora unless he fulfils the conditions mentioned in clauses (a) to (g) with the exception that clauses (d) and (e) shall not apply to a person who is a non-Muslim but such a person shall have good moral reputation. The niceties of the provisions embodied under the Constitution to deal the writ of quo-warranto do not permit to call upon a person to show authority of law under which he was holding his past or previous offices which are not in existence or at the time of questioning it by somebody as past and closed transaction. In the recent case of **Allah Dino Khan Bhayo vs. Election Commission of Pakistan (PLD 2020 S.C. 591)**, the honourable Supreme Court held that *“a disqualification under Article 62(1)(f) of the Constitution can only be imposed by or under a declaration made by a court of law. By such prescription Article 62(1)(f) creates a lawful, transparent and fair mechanism for an election candidate to contest an allegation that he is disqualified under one or more of the grounds listed in the said Constitutional provision. Accordingly, in the case reported as Sardar Yar Muhammad Rind v. Election Tribunal Balochistan, Quetta and others (PLD 2020 SC 137) this Court held that a judicial declaration disqualifying a candidate under Article 62(1)(f)*

*of the Constitution must necessarily be based on oral or documentary evidence. In the case reported as Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265), the learned Judge speaking for the majority elaborated that even an Election Tribunal can only disqualify a candidate when its declaration is issued on the basis of evidence before it. Such a requirement is implicit in Article 10A of the Constitution which makes both due process and fair trial a fundamental right in lawful judicial proceedings. Thus the determination of a dispute relating to a right or liability, the recording of evidence including the right of cross-examination, a hearing of the arguments of the parties and a reasoned judgment are essential attributes of a court of law (ref: Tariq Transport Co., Lahore v. Sargodha Bhera Bus Service (PLD 1958 SC (Pak) 437) and Mollah Ejahar Ali v. Government of East Pakistan (PLD 1970 SC 173)".*

9. Now we would like to deliberate the precedents allude to by the petitioner in furtherance of his line of arguments. In the case of Masudul Hassan, (supra) an appeal was brought by special leave against an order of High Court of West Pakistan refusing to the petitioner, (who was member of Pind Dadan Khan Municipal Committee) a writ of mandamus addressed to the Collector of the district to remove forthwith the respondent Khadim Hussain from the office of the member of the Town Committee. Whereas in the next case of Hafiz Hamdullah (supra), the election of Balochistan Provincial Assembly was challenged in the Balochistan High Court which was allowed and the election of the appellant as a member of Balochistan Provincial Assembly was declared illegal. So far as the case of Imran Ahmad Khan Niazi (supra) a constitution petition was filed in the apex Court for seeking disqualification of Prime Minister for acquiring wealth and assets through corrupt and illegal practices and misuse of authority and indulging in money-laundering. Some information was revealed from Panama papers with regard to the properties situated abroad owned by the then Prime Minister's children through offshore

companies. The case of Mian Najeeb-ud-Din Owasi (supra) pertains to the issues relating to the fake degrees. According to information passed on to the Election Commission of Pakistan, the degrees of 54 parliamentarians were found fake, whereas 189 degrees of parliamentarians were remained unverified for last considerable period. The apex Court held that ECP must adopt a distinction in between making of a declaration which is against the provisions of Articles 62 and 63 of the Constitution and the process of criminal proceedings as a result of making misrepresentation. Once a person has filed a declaration under his signatures declaring that he fulfills the conditions of Articles 62 and 63 of the Constitution and he undertakes that the statement is correct and if such declaration is incorrect, the ECP shall de-notify him for such misrepresentation retrospectively. Whilst in the case of Aftab Shahban Mirani (supra) the petition for leave to appeal against the judgment of full bench of Lahore High Court was challenged against the rejection of nomination papers for the office of the President of Pakistan by the learned Acting Chief Election Commissioner acting as Returning Officer under the Presidential Elections Rules, 1988. The case of Capt. (Retd.) Muhammad Naseem Hijazi (supra) is indeed related to the challenge to the office of Deputy Director BS-18 which was found to be contrary to Service Regulations. This position of Deputy Director was challenged and the honourable apex court held that because the appointment of petitioner as Deputy Director in BS-18 was contrary to the Service Regulations, therefore, his subsequent absorption and promotion in grade-19 was not sustainable. Whereas in the case of Workers' Party Pakistan (supra) the apex court held that a candidate who comes forward for election is supposed to provide his complete credentials to the voters enabling them to cast votes in favour of such person who is honest and believes in fairness and is free from any disqualification under Article 63 of the Constitution and is also qualified under Article 62 of the Constitution. The apex Court declared in that judgment that ECP in compliance of Article 218

(3) read with Article 222 of the Constitution and Sections 103 and 104 of Representation of Peoples Act, 1976 as well as the judgment in the case of Workers' Party Pakistan has prepared/improved nomination papers for the forthcoming General Elections of Pakistan for National and Provincial Assemblies in accordance with the Constitution and the law. We have surveyed all aforesaid pronouncements and found it distinguishable to the facts and circumstances of the case in hand as in no case, the public offices of the incumbents were challenged after lapse or expiry of their tenures. The petitioner attempted to challenge the past public offices and filed this petition at belated stage on 16.1.2020 when the respondent No.1 is not holding any public office and his disqualification as prayed from the date of filing nomination papers on 24.10.2002 for contesting elections of provincial assembly, his nomination papers for contesting elections of local government and in 2005 for City Nazim is not physically possible due to inordinate delay and deep slumber on the part of petitioner.

10. In the wake of above discussion, this petition is dismissed.

**Judge**

**Judge**

**Karachi.**

**Dated: 04.06.2021.**