

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 2201 of 2017

Date	Order with Signature of Judge(s)
------	----------------------------------

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

**Muhammad Asif Ansari
& another**, Petitioners, through : Mr. Muhammad Umar Lakhani,
advocate along with Mr. Ishfaq
Ahmed, advocate

Pakistan Television Corporation,
respondent No.1 through : Mr. Moiz Ahmed, advocate

Respondents No.2, 5, 8 & 11
through : Mr. Mukhtar Ahmed Janjua,
advocate along with Ms. Fouzia
Mushtaq, advocate

Respondents No.2, 3, 4, 5, 6, 8, 9,
11 and 12 : Malik Khushhal Khan, advocate

Federation of Pakistan through : Mr. Muhammad Nishat Warsi,
DAG.

Dates of hearing : 29.4.2021, 26.5.2021, 28.5.2021 &
01.06.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – Through this petition, the petitioners have prayed for issuance of a writ of quo warranto against the private respondents to vacate the office presently they are holding in respondent-Pakistan Television Corporation Limited (henceforth 'PTVC'), inter-alia, on the ground, that they are not qualified to hold the office and their re-designation / induction as Producer Programs (G-5) in the year 2003 via Circular dated 29.01.1999 is unlawful, ultra vires of the Constitution, malafide and of no legal consequences.

2. We asked the learned counsel to satisfy this Court as to how the re-designation / induction of the private respondents as Producer Programs (G-5) is suffering from inherent disqualification as their respective posts were re-designated by the competent authority, consequently they were inducted as Producer Programs in service in the year 2003 and in the meantime have earned promotion on the present posts based on their qualification and length of service, as per PTV Employees Service Rules.

3. Mr. Muhammad Umar Lakhani, learned counsel for the petitioners, has argued that the private respondents are holders of Public Office as embodied

under Article 199 (1) (b) (ii) of the Constitution; that they are not qualified to hold a public office of the Producer Programs and subsequent their promotions in PTVC was also illegal. As per the learned counsel, no advertisement was made and the respondents do not fulfill the basic qualification required for the post of Producer Programs. He stated that the power of appointing private respondents as Producer Programs was not available with the respondent-PTVC under the PTV Employees Service Rules and the process was just 'cherry picking' being in violation of the law and the Constitution and various judgments pronounced by the Honorable Supreme Court; that no transparent procedure of inducting them was adopted, i.e. publishing an advertisement to gauge the talent pool available for such post of Producer Programs, filtering and then assessing the best candidates for the post in accordance with the criteria laid down in the PTV Employees Service Rules. Per learned counsel the aforesaid process started in the year 1999 and ended in 2003 with their induction, and was therefore person-specific, rendering the entire exercise colourable and tainted with nepotism and mala fide. He emphasized that the former Managing Director ('MD') of the respondent-PTVC grossly violated rules and regulations in the re-designation/induction of the private respondents in production program (G-5), hence, the re-designation/induction of the private respondents is liable to be declared null and void; that the former MD acted without authority conferred upon him by the PTV Employees Service Rules, therefore, impugned orders and notifications whereby the private respondents have been re-designated/inducted subsequently promoted and or got training for such promotion are liable to be set-aside and declared as null and void; that there is no provision in PTV Service Rules that allows MD to waive and relax the rules without the approval of the Boards of Directors, therefore, the exemption given in the related experience of 05 years in program production to the private respondents was unlawful; that the re-designation/induction of the private respondents is in violation and in breach of fundamental rights of the petitioners as well as public at large as guaranteed under the various Articles of the Constitution of the Islamic Republic of Pakistan, 1973, hence, all the orders and notifications are liable to be set-aside by this Court; that all the promotions under re-designated/induction policy of the private respondents are illegal, malafide, without lawful authority, ultra-vires of the Constitution and of no legal effect; that from the conduct of the former MD it is evident that the re-designation/induction of the private respondents was politically motivated and based on nepotism and in complete violation of PTV Service Rules and also violation of the Constitution and law; that this act of the former MD promotes political and executive interference in the appointment and re-designation/induction and promotion is inconsistent to the concept of good governance as per the Constitution and the Supreme Court's decisions. In

support of his contentions, learned counsel for the petitioners, has relied upon the cases of Let. –Gen (R) Salahuddin Timizi v. Election Commission of Pakistan, PLD 2008 Supreme Court 735, Qazi Mustafa Kamal v. Federation of Pakistan through Secretary Establishment Division and others, PLD 2014 Islamabad 123, Faiz Najmuddin Abdul Ali v. The Capital Development Authority, Rawalpindi and another, PLD 1976 Karachi 1084, Barrister Sardar Muhammad v. Federation of Pakistan and others, PLD 2013 Lahore 343, Rashid Latif v. Federation of Pakistan through Secretary Ministry of Inter Provincial Coordination and 2 others, PLD 2014 Sindh 135, Luqman Zareen and others v. Secretary Education, N.W.F.P and others, 2006 SCMR 1938, Mirza Luqman Masud v. Government of Pakistan, Establishment Division through Secretary and 14 others, 2015 PLC (C.S) 526, Messrs Seth and Sethi Sons through Humayun Khan v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others, 2012 PTD 1869, LPG Association of Pakistan through Chairman v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others, 2009 CLD 1498, Sabir Din v. Government of Pakistan through Secretary, Ministry of Defence and others, 1979 SCMR 555, Messrs Ali-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others, 1985 SCMR 758, Abdur Rashid v. Special Judge, Central Lahore and another, PLD 1977 Lahore 145, Abdul Ghaffar Lakhani v. Federal Government of Pakistan and 2 others, PLD 1986 Karachi 525.

4. Mr. Moiz Ahmed, learned counsel representing respondent-PTVC, has objected to the maintainability of the captioned petition and contended that the respondent-PTVC has acted in accordance with law, rules and regulations of the Corporation as such had not violated any fundamental rights of the petitioners. Learned counsel further contended that PTVC Rules are basically an agreement between PTVC and its employees endorsed by the National Industrial Relations Commission (NIRC) being non-statutory hence a writ under Article 199 is not maintainable. In support of his contention, he relied upon the cases of Sohail Abbas Bokhari v. Secretary information and Broadcasting/Chairman, Pakistan Television Corporation Federal T.V. Complex, Islamabad (2009 PLC (C.S.) 565), the order passed in the case of Muhammad Ilyas Bhatti v. Secretary Ministry of Information and others (Civil Petition No.1362/2009), Muhammad Ramzan v. Federation of Pakistan through Ministry of Information & three others (2017 PLC (C.S.) Note 71) and Pakistan Television Corporation Ltd. V. Capital Development Authority and others (2011 SCMR 1117). He prayed for the dismissal of this petition.

5. Malik Khushhal Khan, learned counsel for the respondents No.2, 5, 8 & 11, has raised the question of maintainability of the instant petition and relied upon the case of Mirza Luqman Masud v. Government of Pakistan, Establishment Division through Secretary and 14 others, **2015 PLC (CS) 526** and argued that this Court has no territorial jurisdiction to call in question the appointments of the private respondents as such this petition is liable to be dismissed. He relied upon the statement dated 26.03.2021 and placed on record a copy of the order dated 01.02.2021 passed by the learned Single Bench of the Islamabad High Court, Islamabad in Writ Petition No.2383/2013.

6. Mr. Muhammad Nishat Warsi, learned DAG, has supported the stance of the learned counsel for the respondents and prayed for the dismissal of this petition. In support of his contention, he relied upon the judgment passed by the Honourable Supreme Court in the cases of Sohail Abbas Bokhari v. Secretary information and Broadcasting/Chairman, Pakistan Television Corporation, Islamabad, etc. (**Civil Petition No.331/2009**), the judgment passed in the case of Wajahat Ali Siddiqui & others v. Pakistan Television Corporation Ltd. through its M.D. Islamabad & others (**Civil Petition No.1456-L/2010**), the judgment passed in the case of Pervaiz Akhtar Bhatti v. Federation of Pakistan & others (**W.P. No.2250/2019**), Muhammad Mubeen-us-Salam and others v. Federation of Pakistan (**PLD 2006 SC 602**), order dated 11.8.2020 passed by learned Full Bench of NIRC in the case of Muhammad Hasnain Malik, Producer (Programmes), PTV Home v. Learned Member, NIRC Bench No.II, Islamabad and 21 others (**Appeal No.12A(03)2020**), and order dated 13.12.2019 passed by learned NIRC Islamabad in the case of Muhammad Hasnain Malik, Producer (Programmes), PTV Home v. Managing Director PTV Headquarters (**Case No.4A(36)/2011**).

7. We have heard the learned counsel for the parties and have perused the entire material available on record and the case law cited at the bar.

8. In the first place, we would like to examine the issue of the maintainability of the instant petition under Article 199 of the Constitution.

9. The PTVC is not a Statutory Corporation but incorporated as a Public Limited Company registered under the Companies Act 1913, and has own Service Rules namely Pakistan Television Corporation Limited-Service Rules 1978, published in the Gazette of Pakistan (Extraordinary) on May 25, 1978. Pakistan Television Corporation though incorporated as a limited Company yet the Government having controlling shares in it from its inception and it is fully controlled and run by the Government also a Public Service Corporation, hence,

PTVC, is a public sector company as provided in Rule 2(1) (g) of the Public Sector Companies (Corporate Governance) Rules, 2013 as amended up to date and is a person performing functions in connection with the affairs of the Federation. It is the Government, which appoints the General Manager or the Managing Director, respectively, of the PTVC and their salaries are paid from public exchequer as such, this Court has the jurisdiction to interfere in the subject affairs of PTVC under its Constitutional jurisdiction. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme Court in the case of (In the matter regarding the appointment of Managing Director, Pakistan Television Corporation), (2019 SCMR 1).

10. Further about the jurisdiction of this Court with regard to issuance of a writ of quo warranto, primarily under the quo warranto proceeding in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. Basically, the issuance of this writ protects a citizen from usurpers of public office to which he may have a right. However 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. The writ of quo warranto is primarily inquisitorial and not adversarial for the reason that a relator need not be a person aggrieved, therefore, keeping in view the nature of such proceedings this Court can undertake such an inquiry as it may deem necessary in the facts and circumstances of a particular case including examination of the entire relevant record so regarding objection that no writ could be issued is prima-facie irrelevant to dilate upon further on the subject.

11. On merits, the foremost questions involved in the present proceedings are whether the re-designation / induction of the private respondents as Producer Programs (G-5) was/is suffering from inherent disqualification under the PTVC rules, and whether the private respondents are holders of the public office, therefore, fall within the purview of sub-clause 1(b) (ii) of Article 199 of the Constitution and this Court has jurisdiction to entertain this petition?

12. During arguments, we have been informed that the private respondents had joined Pakistan Television Corporation Limited in the following years in the capacities as mentioned against each and their posts were re-designated in the

year 2003 under the policy decision of respondent-PTVC via Circular dated 29.01.1999:

S. No.	Name	Current Designation	Designation on the first appointment	Date of appointment	Academic Qualification	Re-designation as
1.	Muhammad Shujaat Ullah	GM, TV Centre Karachi.	Typist-cum-Junior Assistant	1997	M.Sc. in Zoology	Producer Programs (G-5)
2.	Abdul Hameed Qazi (Retired)	Ex GM, PTV Home.	Junior Admin Assistant (G-3) H	1980	M.A. in Political Science & History	Producer Programs (G-5)
3.	Muhammad Ameen Memon (Retired)	Ex GM, TV Centre Karachi	Steno typist	1982	M.A. in Political Science & Islamic Studies	Producer Programs (G-5)
4.	Saifuddin	GM, TV Centre Lahore.	Typist	1985	M.A. in Punjabi	Producer Programs (G-5)
5.	Sohail Zafar Naik	Ex CPA.	Steno typist	1981	M.A. in Political Science & History	Producer Programs (G-5)
6.	Muhammad Fareed	Officer (G-9) Program Production Cadre	Admin and Personal Officer	---		Producer Programs (G-5)
7.	Muhammad Idrees	Controller (IR)	Telephone Operator	1988	M.A. in Islamic Studies	Producer Programs (G-5)
8.	Syed Muhammad Amir Zia	GM PTV Academy	Data Entry Operator	1988	M.Sc. (Mathematics)	Producer Programs (G-5)
9.	Malik Khalid Latif	Officer (G-9)	Assistant Computer Operator	1990	M.A. in Political Science	Producer Programs (G-5)
10.	Mirza Amjad Javed	GM PTV Home	Associate Engineer	1982	M.A. in Anthropology	Producer Programs (G-5)
11.	Muhammad Ayub Babai	GM TV Centre Quetta	Air Conditioner Helper	1989	---	Producer Programs (G-5)

13. To begin from the initial stage, it appears from the record that the Controller (Administration & Personnel) Pakistan Television Corporation Limited, Islamabad, through vacancy circular dated 25.7.2002 invited applications from internal candidates for their re-designation to the post of Producer Programs (Group-5). According to the circular, the qualification required was a master's degree in any discipline with five (05) years of experience in program production. The applications were invited against the 20% quota for induction/re-designation of all the employees of PTVCL. It is urged that the employees of Program Production Department were already promoted in the year 2002 against their fixed quota of 20%. However, in response to the aforesaid circular, approximately 133 candidates applied for the subject posts and respondent-PTVC constituted a selection board to look into the process of re-designation/induction. After shortlisting, 12 applicants, including the private respondents, were finally selected and inducted into the programs production department as Producer Programs

(Group-V) in the year 2003. However, it was incumbent upon the selected applicants to complete the requisite training at the PTV Academy, which was later on done by them. On 25.2.2003, the petitioners and three successful individuals joined the group as producers. Following the end of the probation period, private respondents were confirmed as producers on the very date. At this stage, learned counsel for the respondents pointed out that the private respondents have already produced many programs of local, national and international level which received appreciation from the public and acknowledgement from the concerned quarters. Be that as it may, record reflects that the aggrieved colleagues of the private respondents called in question their induction in respondent-PTVC by filing Service Appeal No.627(R)/CE/2003 before the learned Federal Service Tribunal (FST). Similarly, 06 other appeals were filed on different dates and the same were heard together and finally allowed vide judgment dated 20.09.2004 by declaring the process/exercise of their induction in Group-5 as null and void and set aside the same with certain directions to the respondent-PTVC to convene the Selection Board afresh and consider all the candidates in the light of policy conveyed vide letter dated 29.10.2001. The private respondents and others in the aforesaid proceedings being aggrieved by and dissatisfied with the impugned judgment dated 20.9.2004 filed Civil Petition for Leave to Appeal No.2469/2014 before the Hon'ble Supreme Court of Pakistan in which initially leave was granted vide order dated 01.06.2005. They have informed that after post remand proceedings as per judgment of Honorable Supreme Court in the case of Muhammad Mubeen-us-Salam and others v. Federation of Pakistan (PLD 2006 SC 602), the matters were not pressed vide order dated 25.05.2010, however, the aggrieved person preferred to approach the learned Labour Court through Grievance Petition, however, during the pendency of the said Grievance Petition, which was later stated to be withdrawn; they also filed Writ Petition before the learned Bench Islamabad High Court, Islamabad, which was later on also withdrawn and thereafter they served the grievance notices upon respondent-PTVC on 06.01.2011 but when no response was received from them they filed Grievance Petition before the learned Single Bench of NIRC which was contested and finally their Grievance Petition was dismissed vide order dated 13.12.2019 and the same was maintained by the Full Bench of NIRC vide order dated 11.08.2020. However, the present petitioners continued to agitate the matter before this Court after lapse of 18 years from the date of alleged cause of action under the Garb of Writ of Quo-Warranto.

14. Prima-facie there is no denial of the fact that the private respondents have possessed the prescribed academic qualification however only the issue of

experience of the subject post has become a bone of contention between the parties.

15. We have noticed that in pursuance of Circular dated 29.01.1999, initially their applications were entertained by the respondent-PTVC and after scrutinizing their service record and interview, they were recommended by the Selection Committee for the subject posts and consequently their posts were re-designated in the year 2003, as discussed supra.

16. Learned counsel for the respondents has taken us to the memo of Civil Petition for Leave to Appeal No.2469/2004 in which the qualification and experience of the private respondents had been mentioned, as discussed supra. Consequently, it was contended that the private respondents not only possessed the prescribed qualification but also acquired experience in the subject field during their tenure of service. It is further contended that the qualification and experience of the person under attack in quo-warranto could not be judged by this Court on the premise that they had not only the prescribed qualification but during the service they had obtained the required experience as Program Officer by gaining sufficient experience in the relevant field.

17. In the light of foregoing factual as well as the legal aspect of the case, in our view the petitioners' objection regarding lack of experience, could not be sustained for the simple reason that this Court cannot take upon itself the function of the appointing authority to judge the suitability of the candidates; besides nothing has been pleaded or brought before us to demonstrate that the private respondents were either lacking the requisite qualification for the subject post. Besides above, we do not concur with the learned counsel for the Petitioners with regard to his explanation about the laches and are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioners filed the instant Petition in the month of March 2017 whereas the alleged cause of action accrued to them in the month of February 2003, i.e. approximately 18 years prior to the filing of the instant Petition.

18. Coming to the main point about the maintainability of this petition, no doubt, a writ in the form of quo-warranto is an extraordinary discretion and the Court is not bound to exercise such jurisdiction in every case, especially on account of laches, which in this case is about 18 years, prima-facie, the matter has lost its significance as the question with regard to lack of experience has already been cured by rendering service for more than 18 years in respondent-PTVC unless it is shown noninterference would result in grave injustice or would

amount to endorsing the retention of illegal gains. This is not the case in hand. However, in cases where the eligibility of a public servant is under attacked on the ground that such public servant did not fulfil the substantive condition of eligibility to such office on the cut-off date prescribed in the process, then such violation of the substantive statutory requirement could not be overlooked, such government servant has met the required conditions of such office. In our view, if a person during the pendency of constitutional petition fulfilled the requisite qualification to hold such a post then a writ of quo-warranto could not be issued against such person on the ground that such employees no more suffer disqualification to hold the post in question. It is well-settled law that the crucial date would determine the qualification of a person to hold the post is not only the date of appointment but also the date of issuance of the writ petition and if pending disposal of the writ petition, a person fulfils the qualification to hold such a post, writ of quo-warranto is not to be issued against such a person.

19. In view of the above, we cannot subscribe to the view so taken by the petitioners for issuance of the writ of quo warranto against the private respondents for the reasons discussed supra. Thus, we are not inclined to entertain this Constitutional Petition based on the proposition put forward by the petitioners.

20. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed along with listed applications with no order as to costs.

JUDGE

JUDGE

Nadir*