

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1058 of 2020

(Mukhtiar Ahmed v. The P.O. Sindh & others)

C.P. No. D – 632 of 2021

(Faheem Ahmed v. P.O. Sindh & others)

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearings: 23.11.2021, 14.12.2021, 23.12.2021,
22.02.2022, 08.03.2022 & 24.03.2022

Date of Order: 17.05.2022

Mr. Nisar Ahmed Bhanbhro, assisted by M/s Irfan Mehdi Soomro and Sheeraz Fazal, Advocates for the Petitioner in C. P. No. D-1058 of 2020.

Syed Mahmood Alam Rizvi, Advocate for the Petitioner in C. P. No. D-632 of 2021.

Mr. Riazat Ali Sahar, Advocate for Respondents No.9, 11, 13, 14, 15, 17, 18, 21, 27 & 30 in C. P. No. D-632 of 2021.

Mr. Mukesh Kumar G. Karara, Advocate for Respondents No.8, 11, 12, 17 & 20 to 22 in C. P. No. D-1058 of 2020 and for Respondents No.24 & 28 in C. P. No. D-632 of 2021.

Mr. Shahzeb Akhtar Khan, Advocate for Respondents No.11, 12, 19 & 20 in C. P. No. D-1058 of 2020 and for Respondents No.14, 15, 17, 26, 27 & 30 in C. P. No. D-632 of 2021.

Mr. Muhammad Zubair Malik, Advocate for Respondent No.6 in C. P. No. D-1058 of 2020.

Mr. Shafi Muhammad Chandio, Additional Advocate General & Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

Mr. Fayyaz Ahmed Jatoy, Secretary (Services), along with Ghulam Ali Brahmani, Additional Secretary (Services), Services and General Administration Department, Government of Sindh,

ORDER

Muhammad Junaid Ghaffar, J. – Both these petitions involve a common question seeking an identical relief to the effect that Notification(s) dated 12.08.2020 and 29.09.2020, whereby the private Respondents have been promoted from BS-18 to BS-19 and from BS-19 to BS-20 respectively, are illegal and liable to be set-aside; hence, are being decided this common order. C.P.No.D-1058 of 2020 has been filed

by one Mukhtiar Ahmed, who himself is a Civil Servant and is presently working as Superintendent Engineer (BS-19) in Irrigation Department, Government of Sindh and he has sought the following prayers:

- (a) That this Honourable Court may graciously be pleased to issue writ in favour of the Petitioner declaring thereby the acts of Respondents No.1 to 4 of convening the meetings of Provincial Selection Board I & II and approving the promotion of officers in Grade 19 & 20 from lower positions against non-permanent posts as illegal, null & void & without any lawful authority.
- (b) In terms of provisions contained in clause 1(b) (ii) of the Article 199 of, The Constitution of Islamic Republic of Pakistan, of 1973, QUO WARRANTO, the Respondents No. 5 to 22 may be required and directed by this Honourable Court to show under what authority of law they are claiming public office of the Chief Engineer BS-20 & Superintending Engineer BS-19.
- (c) To set aside the Notifications dated 12.08.2020 & 29.09.2020 and may further be pleased to direct the Respondents to follow the provisions of Sindh Civil Servants Act 1973 for promotion of officers.
- (d) To suspend the operation of impugned Notifications dated 12.08.2020 & 29.09.2020 till the final disposal of the petition.
- (e) Any other relief deemed fit and proper under the circumstances of the case".

2. Insofar as C.P. No. D- 632 of 2021 is concerned, same has been filed by a private person claiming to be a pro bono public interest litigation and he has sought the following relief(s):

- (a) That the promotions to the post of Chief Engineer (BS-20) & Superintending Engineer (BS-19) in Irrigation department have been done in violation of the rules, promotion policy as well as in contradiction of the orders passed by the Honourable Court by misusing the official powers by the respondents for which this Honourable Court may be pleased to declare the said promotions as illegal and unlawful and to pass orders for cancellation of the said promotion orders being illegal & unlawful, void, ab-initio in the eyes of law.
- (b) That this Honourable Court may be pleased to direct the respondents (body of Sindh Selection Board No.I) to abide by the Sindh Civil Servants Act, 1973 and other rules & regulations in vogue for promotions.
- (c) That this Honourable Court may be pleased to pass orders for disciplinary action against the respondents for doing illegal & unlawful promotions in violation of the rules, policy and in contradiction of the orders of Honourable Court and recovery of the salary & allowances taken by the beneficiary officers due to illegal promotion.
- (d) That this Honourable Court may be pleased to restrain the private respondent No.8 to 30 beneficiaries of the above referred illegal promotions, to stop working and the recovery of benefits enjoyed by the respondents be made immediately.

- (e) That this Honourable Court may be pleased to pass orders for referring the matter to the NAB authorities for thorough enquiry and action be taken against the responsible officers for misusing official powers to meet with the ends of justice.
- (f) Any other relief which this Honourable Court deems fit and proper under the circumstances of the case may be granted.
- (g) To award the cost of petition”.

3. In essence, and as argued, both the petitions seek identical relief, though not so similarly worded; but in effect have impugned the two notifications as above, as being illegal and without jurisdiction and authority in law.

4. At the very outset we may state, and this is without any disrespect to any of the learned Counsel, either for the petitioners or the respondents that their arguments have been noted and recorded in this judgment collectively for ease, convenience and to avoid overlapping, if any. Learned Counsel for the Petitioners¹ have contended that all promotions through impugned Notifications have been made in violation of Sindh Civil Servants Act, 1973 and the relevant rules; that there are no available sanctioned posts in BS-19 and BS-20, to which the private Respondents have been promoted; that there are only project posts on which certain vacancies were available and there is no concept of promotion to the project posts; that all the projects are funded by the World Bank or Asian Bank or other donor agencies and involve huge financial implications; whereas, earlier the Respondents were being posted under their Own Pay Scale (OPS), which is deprecated by the Courts and thereafter a new mechanism has been evolved to once again post the same officers by promoting them to a higher grade against project posts; that Respondent No.3 vide letter dated 17.12.2019 addressed to the Respondent No.4 had raised various objections on such promotion as the same are in violation of Sindh Civil Servants Act, 1973, but despite such objections of one Department of Government of Sindh, the promotions were made without complying Rule 14 of The Sindh Government Rules of Business, 1986; that these Petitions are maintainable inasmuch as all actions of the Respondents are *mala fide* and without lawful authority; that the Petitioners are seeking a writ of *quo warranto* for which it is not mandatory that only an aggrieved person shall approach the Court; that the Court must exercise its discretion in this matter to restrain the Respondents from

¹ Mr. Nisar Ahmed Bhanbhro, assisted by M/s Irfan Mehdi Soomro and Sheeraz Fazal, Advocates for the Petitioner in C. P. No. D-1058 of 2020; Syed Mahmood Alam Rizvi, Advocate for the Petitioner in C. P. No. D-632 of 2021.

acting illegally and benefiting themselves by placing officers to deal with the huge financial matters. In support of their contention, they have relied upon various reported and unreported judgments² of the Apex Court as well as of the High Court(s).

5. On the other hand, the Respondents' Counsel³ have opposed these Petitions on the ground that C.P.No.D-1058 of 2020 was filed by an employee / Civil Servant whose Petition, on the face of it, is incompetent and not maintainable, and after such objections were raised, another Petition No.D-632 of 2021 has been filed through a private person, however, memo of Petition and prayer clause(s) are verbatim same; hence both these Petitions are incompetent and are liable to be dismissed; that as to C.P.No.D-1058 of 2020 is concerned, there is a bar under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 inasmuch as if the petitioner is an aggrieved person, he being a Civil Servant has to approach the Service Tribunal under Section 4 of the Sindh Civil Tribunals Act, 1973; that insofar as the connected Petition No.D-632 of 2021 is concerned, the same is also not maintainable as it is not a case of *quo warranto* as the Respondents are fully qualified to be promoted, whereas, nothing has been attributed against them as to they being disqualified; that the Petitioners have attempted to mislead the Court by arguing that the private Respondents cannot be promoted to the project posts inasmuch as it is not the case of the project employees being regularized or absorbed against project posts, but is a case of regular Civil Servants, whose promotions were due and have been granted after fulfillment all requisite conditions against regular as well as project posts; that ultimately upon completion of the project(s) and retirement of various other officers, respondents would be automatically absorbed and adjusted

² **Mr. Nisar Bhanbhro**; Capt. (Retd.) Muhammad Naseem Hijazi v. Province of Punjab (2000 S C M R 1720), Government of Khyber Pakhtunkhwa v. Muhammad Younas (2021 P L C (C.S.)1194), Asif Hussain v. Sabir Hussain (2019 S C M R 1720), and Imran Ahmed v. Federation of Pakistan (2019 P L C (C.S) Note 19).

Mr. Mehmood Alam Rizvi; Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (P L D 2013 Supreme Court 195), Muhammad Yasin v. Federation of Pakistan (P L D 2012 Supreme Court 132), Zarai Taraqati Bank Limited v. Said Rehman (2013 S C M R 642), Gen. (Retd.) Pervez Mushrraf v. Pakistan (P L D 2014 Sindh 389), Khalid Habib v. Pakistan Telecommunication Corporation Ltd. (2014 P L C (C.S) 203 Lahore High Court), Hassan Shahjehan v. FPSC (P L D 2017 Lahore 665), Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue (P L D 1997 Supreme Court 334), Sajid Hussain v. Shah Abdul Latif University (P L D 2012 Sindh 232), Amna Imran v. Federation of Pakistan (2019 P L C (C.S.) 134 Islamabad High Court), Karamat Ullah Khan Chaudhry v. Federation of Pakistan (2018 P L C (C.S.) 555 Lahore High Court), Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui (1991 S C M R 1129), Order dated 30-07-2020 in C.P No.D-691/2020, passed by this Court at Circuit Court, Hyderabad and Order dated 11-01-2022 passed in C.P No.D-909/2021 at Sukkur Bench.

³ Mr. Riazat Ali Sahar, Advocate; Mr. Mukesh Kumar G. Karara, Advocate; Mr. Shahzeb Akhtar Khan, Advocate;
Mr. Muhammad Zubair Malik, Advocate.

against the permanent sanctioned posts; that in constitutional jurisdiction, the eligibility of a civil servant for promotion cannot be looked into by this Court under Article 199 of the Constitution; that no writ of *quo warranto* can be entertained in the facts and circumstances of the case; that neither any provision of the Sindh Civil Servants Act, 1973, has been violated; nor for that matter, any rule thereof; that compliance of Rule 14 of the Rules of Business has been fully made by the competent authority i.e. the Chief Minister, Sindh; that the letter of the Respondent No.3 dated 17.12.2019 has been dilated upon by the Selection Board presided by the Chairman / Chief Minister and final opinion has been given by the competent Authority, whereby such advise has been overruled; hence no case is made out to that effect; that even otherwise, entire exercise of the Respondents is pursuant to a policy decision and therefore this Court cannot interfere in such policy matters as law to this effect has been settled by the Apex Court. In support of their contention, they have relied upon various reported and unreported judgments⁴ of the Apex Court as well as of the High Court(s).

6. Learned AAG has also opposed these Petition on the ground that policy decision has been taken by the Government of Sindh which cannot be interfered with by this Court; whereas, Chief Minister Sindh presiding the Provincial Selection Board has impliedly exercised his powers under Rule 14 of the Sindh Government Rules of Business, 1986 and therefore no exception can be drawn to the impugned Notifications, hence both these Petitions are liable to be dismissed.

7. We have heard all learned Counsel for the Petitioners and private Respondents as well as learned Assistant A.G and perused the record.

⁴ **Mr. Shahzeb Akhtar;** Government of Khyber Pakhtunkhwa v. Sher Aman (2022 S C M R 406), Chief Executive Officer, Multan Electric Power Company Ltd. v. Muhammad Ilyas (2021 S C M R 775), Federation of Pakistan v. M. Y Labib-ur-Rehman (2021 S C M R 1554), Chief Secretary, Government of Punjab v. Ms. Shamim Usman (2021 S C M R 1390), Mst. Shahida v. Board of Intermediate and Secondary Education (P L D 2001 Supreme Court 26), Sakhijan v. Shah Nawaz (2020 S C M R 832), Mirza Abdul Rehman v. Federation of Pakistan (2017 P L C (C.S) 1327) and Imtiaz Ahmed v. Ghulam Ali (P L D 1963 Supreme Court 382).

Mr. Mukesh Kumar G. Karara; Dr. Azim-ur-Rehman Khan Meo v. Government of Sindh (2004 S C M R 1299), Sajid Hussain v. Shah Abdul Latif University (P L D 2012 Sindh 232), Federation of Pakistan v. Haji Muhammad Saifullah Khan (1988 S C M R 1996), M.U.A. Khan v. M. Sultan (1981 S C M R 74), Amna Imran v. Federation of Pakistan (2019 P L C (C.S) 134 Islamabad High Court), Karamat Ullah Khan Chaudhry v. Federation of Pakistan (2018 P L C (C.S) 555 (Lahore High Court), Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui (1991 S C M R 1129) and Sandalbar Enterprises (Pvt.) LTD. v. Central Board of Revenue (P L D 1997 Supreme Court 334);

Mr. Zubair Malik; Muhammad Ismail v. Province of Punjab (1979 S C M R 498).

8. The gist of the petitioners case is that the two impugned notifications are illegal, unlawful and an act of mala fides. It would be advantageous to refer to the two impugned Notifications which read as under:

SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT
Karachi, dated 12th August, 2020

NOTIFICATION

On the recommendation of the Provincial Selection Board No.I and with the approval of the Competent Authority / Chief Minister Sindh, the following Superintending Engineers (Civil) (BS-19) are hereby promoted to the post of Chief Engineer (Civil) (BS-20), Irrigation Department, on regular basis with immediate effect:

1. Mr. Masood Ahmed Sehar
2. Syed Sardar Ali Shah
3. Mr. Saeed Ahmed Channar
4. Mr. Haji Khan Jamali
5. Mr. Muhammad Ayub Soomro
6. Mr. Jamaluddin Mangan
7. Mr. Ikramullah Qureshi
8. Mr. Pritam Das
9. Mr. Ghulam Yasin Qureshi

NO.SOIII(S&GAD)7-1/2020

MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH
Karachi, dated 12th August, 2020

NO.SOIII(S&GAD)7-2/2020
GOVERNMENT OF SINDH
SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT
Karachi, dated 29th September, 2020

NOTIFICATION

On the recommendation of the Provincial Selection Board No.II and with the approval of the Competent Authority / Chief Minister Sindh, the following Executive Engineers (Civil) (BS-18) are hereby promoted to the post of Superintending Engineer (Civil) (BS-19), Irrigation Department, on regular basis with immediate effect:

1. Mr. Zaheer Ahmed Memon
2. Mr. Muhammad Ali Zardari
3. Miss Farida Memon
4. Mr. Javed Hakeem Memon
5. Mr. Akbar Azam Rashidi
6. Mr. Iqbal Ahmed Palijo
7. Mr. Ghulam Mujtaba Dhamrah
8. Mr. Abdul Ghaffar Qureshi
9. Mr. Niaz Ahmed Memon

NO.SOIII(S&GAD)7-2/2020

MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH
Karachi, dated 29th September, 2020

9. Perusal of the above Notifications reflects that private Respondents, on the recommendations of Provincial Selection Board-I and with the approval of the competent authority have been promoted to the post(s) of Superintendent Engineer (Civil) (BS-19) and Chief Engineers (Civil) (BS-20) from their existing posts. Though very extensive arguments have been made by the Petitioners' Counsel on merits of the case to the effect that there were less sanctioned posts available as against the promotions; whereas there cannot be any promotion to a project post and therefore these promotions are invalid and illegal. However, before dilating upon the very merits of the case, first we would like to deal with the question of maintainability of these Petitions.

10. Insofar as Petition bearing No.D-1058 of 2020 is concerned, admittedly the same has been filed by a Civil Servant, who also works in the Irrigation Department in BS-19. He is presently at serial No.23 of the seniority-list and while confronted the Petitioner's Counsel has conceded that insofar as the Petitioner is concerned, he is not seeking any relief for himself; but has come to the court challenging the illegalities committed by the Respondents. Insofar as this Petition is concerned, apparently the Petitioner is not an aggrieved person *per se* nor admittedly he has claimed any relief for himself, therefore, in all fairness, his Petition is not maintainable; whereas, he also does not qualify to be a Petitioner for seeking the relief of *quo warranto*. The fitness of the private respondents is not under challenge before us; nor for that matter, this petitioner could have had any locus standi, being very junior at Serial No.23 of the seniority list, to agitate the same. As to eligibility of private respondents, again the remedy, if at all, lies before the Service Tribunal in terms of section 4 of the Sindh Service Tribunals Act, 1973. In that case the said petition is on the face of it is misconceived and not maintainable; hence, liable to be dismissed, and it is so ordered accordingly.

11. As to the second petition bearing No.D-632 of 2021 filed subsequently is concerned, it appears that it is by a private person who claims to be a pro bono litigant and has approached this Court to highlight the alleged unlawful and illegal acts of the respondents. A writ of *quo warranto* is provided under Article 199 (1)(b)(ii)⁵ of the Constitution of

⁵ **199. Jurisdiction of High Court.**- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

Pakistan, which gives the Judiciary a weapon to control the Executive from making the appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or because of its apathy. It will, thus, be seen that before a person can effectively claim a writ of *quo warranto*, he has to satisfy the Court that the *office in question is a public office and is held by a usurper without legal authority* and that inevitably would lead to the inquiry as to whether the appointment of the alleged usurper has been made under law or not⁶. At the same time, it is settled law that even in a writ of *quo warranto* if such a petition is filed by an interested person, the same is not maintainable. Insofar as the present Petition is concerned it may be of relevance to observe that in fact, admittedly it is not the eligibility of private Respondents, which is under question, as we have not been assisted in any manner as to how if at all private Respondents are not eligible to be promoted. It is not the case of the present petitioner that private respondents do not qualify to hold such posts as assigned to them by way of the two impugned notifications. In fact these two notifications are of promotion of these respondents and have been issued after the approval of the competent authority in law. Hence, there appears to be no valid objection as to the eligibility of the respondents for being promoted. Even if so, then the question of eligibility of a person to be promoted cannot be looked into by this Court as there is a complete bar under Article 212 of the Constitution, read with Section 4 of the Sindh Service Tribunal Act, 1973. In fact, this Petition cannot by any imagination, strictly be called a writ of *quo warranto* inasmuch as it is only challenging the Notifications of promotion on the ground that there are no available posts to which the private Respondents have been promoted. In that case, how a relief under a *quo warranto* is being sought is not understandable. A writ of *quo warranto* only lies against a person who is holding some post for which he is otherwise not eligible or disqualified. Here this is not the case; nor we have been assisted in any manner as to how and why private

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- (b) on the application of any person, make an order-
 - ii) 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;

⁶ Muhammad Salman v Government of Sindh (unreported judgment of Sindh High Court dated 16.02.2022 in CP No.6779 of 2021)

Respondents cannot be promoted to a higher grade, notwithstanding the fact that as claimed there are no regular vacant posts available for such promotions. In any event, it is not for private respondents to show that how they have been promoted to a higher post which was not available. We do not see any reason or justification to hold that in the given facts and circumstances a writ of *quo warranto* in terms of Article 199(1)(b)(ii) can be entertained. In that case, even if CP No.1058 of 2020 is treated as a writ of *quo warranto* the same along with C.P.No.D-632 of 2021 also appears to be not maintainable as it does not fall within a writ of *quo warranto*.

12. As to the merits of the case are concerned, even if we were to entertain C.P.No.D-632 of 2021 filed by the private person as a petition of public interest on the ground that some irregularities, as alleged, have been committed in promoting the private respondents (though apparently none have been pointed out), the same again seems to be misconceived. The Petitioners' case to that extent is that private Respondents have been promoted to the posts which are project posts and are not sanctioned posts or permanent posts. It is their further case that this is in violation of various provisions of the Sindh Civil Servants Act and the Rules thereof. However, when looked into in juxtaposition with the available facts and the ground reality including the fact that the said posts are to be held by the officers of higher grades while dealing with such huge projects and for the reasons that posting on OPS basis has been deprecated by the Hon'ble Supreme Court in a number of judgments, the Respondent Government has been left with no choice; but to take it as a policy matter in the better interest and administration of the projects in question, and looking at that has decided to promote the private respondents. In that case, Courts must also restrain themselves from interfering in such policy matters of the Government. If at all, for some reasons, the project post(s) in question do not remain available due to completion of the project(s) or otherwise, it is for the Government to look into this aspect so as to adjust them somewhere else against the post(s) corresponding to their qualification and status; or there may be a case where new projects are conceived and initiated; or even revert them until such posts are again available, as the case may be; but for the present purposes, definitely no cause of action has accrued to the petitioners; nor for that matter, falls within a writ of *quo warranto*. Per settled law, executive policy making is not the domain of the

High Court in the scheme of Constitution and, is the prerogative of the executive to ascertain on the basis of its need, requirement, available resources and fiscal space, which posts it wishes to keep and which it wishes to abolish. Separation of powers is a well entrenched principle of jurisprudence which requires that the Court cannot step into the shoes of the Executive⁷. Per settled law, even otherwise, Departmental Selection Committee is vested with discretion and is competent to appoint and promote a person on acting charge basis by even relaxing the rules as to length of service, if otherwise eligible on the basis of academic qualifications⁸. 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 specially 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 grave injustice or would amount to endorsing the retention of illegal gains⁹. It is also needless to observe that a writ of *quo warranto* is a discretionary relief which can be denied by the Court if it thinks that it will not be proper to issue the same¹⁰. A writ of *quo warranto* is not issued as a matter of course on hyper-technicalities¹¹.

13. In view of hereinabove facts and circumstances of this case, we are of the considered view that no case for indulgence is made out so as to exercise any discretion in the matter so vested in this Court under Article 199(1)(b)(ii) of the Constitution; hence, these Petitions are not maintainable. As a consequence thereof, no further adjudication is required on merits. Accordingly, the same are hereby **dismissed** being not maintainable with pending applications. **Office to place a signed copy of this order in captioned connected matters.**

Dated: 17.05.2022

J U D G E

J U D G E

Ahmad

⁷ Government of Khyber Pakhtunkhwa v Saeed-ul-Hasan (2021 SCMR 1376)

⁸ Abdul Ghafoor v National Highway Authority (2002 SCMR 574)

⁹ Asif Hassan v Sabir Hussain (2019 SCMR 1720)

¹⁰ Dr. Bushra Ashiq Siddiqui v Muhammad Aslam (1989 MLD 1351)

¹¹ Muhammad Liaquat Minir Rao v Shams-Ud-Din [2004 PLC (CS) 1328]