

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

**Constitutional Petition Nos. D-1649 of 2021  
and 1302 of 2021**

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**Order with signature of Judge(s)**

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1. For hearing of Misc. No.29497/2021
2. For hearing of Misc. No.29498/2021
3. For hearing of Misc. No.5405/2021
4. For hearing of main case

**19.1.2023**

Mr. Shahzeb Akhtar Khan, advocate for the petitioner in both petitions

Mr. Ali Safdar Depar, AAG.

Mr. Shoaib Mohiuddin Ashraf, advocate alongwith Mr. Ameeruddin,  
advocate and Ms. Adeela Ansari, advocate for respondent No.3 alongwith

Mr. Asif Mukhtar, Director (Legal), University of Karachi

Mr. Qaim Ali Memon, advocate for respondent No.4

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**ORDER**

These are the petitions for the issuance of writ of quo warranto under Article 199 (1)(a)(ii) of the Constitution of Islamic Republic of Pakistan, 1973, filed by Muhammad Asim against Dr. Danish Ahmed, respondent No.4, challenging therein his appointment as Assistant/Associate and /or professor (BS-21) Karachi University Business School, inter-alia on the ground that he does not meet the criteria/qualification as set forth in the advertisement dated 14.2.2019 published in daily Dawn Newspaper, with the prayer to declare his appointment on the aforesaid posts as illegal, violative of law laid down by the Honorable Supreme Court. Petitioner has prayed as under:-

“It is therefore prayed that this Honorable Court may be pleased to: Declare that the action of the Respondent No.3 to appoint Respondent No.4 as the Assistant Professor and Associate Professor Karachi University Business School is illegal, malafide and unconstitutional. Declare that the Respondent No.4 is ineligible for the candidature of Professor (BPS-21) Karachi University Business School as per Advertisement dated: 14.02.2019.”

2. Mr. Shahzeb Akhtar Khan learned counsel for the petitioner has submitted that the syndicate of respondent-university, through their actions have acted in a manner which is in derogation of Articles 4, 18 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 and have thereby caused harm to the fundamental rights of the Petitioner as well as other faculty members of the Karachi University Business School and the students

thereof, and, are also malafide in fact as well as in law. That the Respondents should uphold the law laid down by the Karachi University Act, 1972, and accreditation standards as laid down by NBEAC Standards for Karachi University Business School formed in pursuance of Section 10(e) of the Ordinance, 2002. That the Karachi University Business School along with the students will immensely suffer if someone who does not have the requisite qualification is appointed as Professor (BPS-21) of Karachi University Business School. The students have put their trust in the Karachi University Business School to provide them with quality education and appointing someone as Professor who does not have requisite qualification to teach a Business School will be grave injustice to the students who are investing their time, energy and hard earned money in an Institution which would not be able to provide them the quality of education as anticipated. That the private respondent No.4 being the son of Professor Dr. Pirzada Qasim Raza Siddiqui, former Vice Chancellor University of Karachi and using his influence was appointed as the Assistant Professor and Associate Professor at Karachi University Business School, in therefore, now will be appointed as the Professor of Karachi University Business School which would be an epitome of nepotism which is clearly malafide and illegal. Such actions should not be encouraged as they will set a negative impression on the impeccable reputation of the Institution. Moreover, it will cause irreparable harm to the reputation of Karachi University Business School, as well as the students studying and the faculty (which includes the Petitioner) serving therein which should not be allowed on the behest of the benefit of certain individuals. Learned counsel has submitted that the petitioner has called in question inter alia the legality and reasonableness of the actions by respondent-university on the touchstone of fundamental rights generally and in particular Articles 4, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. That the interference of this Court is sought based on law regulating executive action and exercise of powers in which, inter alia, the failure to act fairly, with "procedural impropriety", "malafides" and "irrationality" have been held to be valid grounds for setting aside impugned actions and orders, and for issuing writs of mandamus and /or now quo warranto where such officials are found to be not acting in pursuance of powers vested in them, additionally when the respondent No.4 is appointed without lawful authority, having no requisite qualification in the relevant field. That the principle of legitimate expectation requires a public authority to conduct

itself in a legitimate expectation to follow a certain course, thus, it would be unreasonable if the authority were permitted to follow a different course to the detriment of a body that has followed the legitimate expectation and acted on it. The doctrine of legitimate expectation is rooted in fairness.

3. In their para-wise comments, the respondents have asserted that appointment and posting of respondent No.4 were made strictly under the law with the narration that the above petitions are barred by the Doctrine of Laches, as the petitioner has challenged, the appointments of the respondent No. 4, who was appointed as Assistant Professor on 26-08-2010 and promoted to the post of Associate Professor on 20-11-2014 and then Chairman Karachi University Business School (`KUBS`) on 26.02.2015.

4. Mr. Shoaib Mohiuddin Ashraf learned counsel for the respondent university raised the question of maintainability of the instant petition and submitted that the above petition has been filed, being the proxy of the petitioners in CPD No. 888 of 2021, to malign the Former Vice-Chancellor Dr. Pirzada Qasim Raza Siddiqui, who had honorably completed two tenures, as Vice-Chancellor of the University of Karachi as such, the petitioner does not qualify the test of the bonafide relator, seeking of the writ of Quo Warranto against the respondent No.4. Learned counsel further averred that the bonafide of the relator is shrouded with his desires to be appointed on his post; that petitioner has not approached with the clean hand and his intentions are based on his high altruistic motive, for vindication for the public rights. Per learned counsel petitioner has misconceived the legal position of the case and in his abortive attempt to mislead this court, by mentioning that respondent No 4 is MA (Economics), while the curriculum vitae of respondent No. 4, reflects that he is MBA from IBA, in 2002 and CAF (Level-1) from CFA Institute USA in 2006. In support of his contentions, he relied upon the cases of Aziz-ur-Rehman Chowdhury v. M. Nasiruddin and others, **PLD 1965 SC 236**, Muhammad Hanif Abbasi v. Jahangir Khan Tareen, **PLD 2018 SC 114**, Dr. Aziz-ur-Rehman Khan Meo v. Government of Sindh and another, **2004 SCMR 1299**, Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary M/o Law, Islamabad, **PLD 2013 SC 413**, and Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam ad others, **PLD 1969 SC 42**. He lastly prayed for dismissal of these petitions.

5. Mr. Qaim Ali Memon, learned counsel for respondent No.4, has adopted the arguments advanced by the learned counsel representing the

respondent University, however, he submitted that these petitions are not maintainable against the appointment of respondent No.4. He prayed for dismissal of these petitions.

6. Primarily, the respondent university, in support of the case of respondent No.4 has submitted that the Faculty of Economics is administrative unit, under the Faculty of Arts. Reasons being, subsidiary for B. Sc (Honors) Degree. On the legal aspect of the case, respondent-university asserted that National Business Education Accreditation Council HEC Islamabad (NBEAC) is not a Statute, rather it is a guideline for the accreditation process, for Business Educational Institutes and clause 24 of the NBEAC, is defining relevant areas and not the subjects for the Faculty. The areas are also included but do not exclude any other area or subject. However, respondent-university admitted to extent that the petitioner and respondent No. 4 were/are candidates, for the post of Professor (BPS-21), at Karachi University School. Respondent-university has asserted that the appointment of respondent No.4, as Associate Professor has been challenged on the sole ground that he holds a Ph.D. in Economics. Per learned counsel for the respondent university, the list reflects the name of distinguished professors, Assistants, and Associate professors having Ph. D (Economics), some of them headed and remained part of different Business Schools in Pakistan. Respondent university added that the petitioner failed to point out any law and kind of writ, whereby any person could be restrained from applying for any post or restrain the scrutiny committee or selection board to process the applications and selection of any person, as such entire case of the petitioner is based on the aforesaid decisive factor. On the issue of the writ of quo warranto, Respondents submitted that the same could only be issued against the person, who holds the public office of Professor (BS-21) which is yet to be filled.

7. Before dilating upon the merits of the case, we deem it appropriate to first decide the locus standi of the petitioner to challenge the impugned appointment notifications in favor of the private respondent No.4 on the aforesaid posts, it is important to understand the nature of relief under Article 199(1)(b)(ii) of the Constitution, ordinarily and more popularly referred to as writ of quo warranto, which is reproduced hereunder for ready reference:

(1) subject to the constitution, a High Court may if it is satisfied that no other adequate remedy is provided by law:-

(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 law he claims to hold that office."

8. A plain reading of Article 199(1)(b)(ii) of the Constitution makes it crystal clear that any person, and not necessarily an aggrieved person, can seek redressal from the High Court against the usurpation of a public office by a person who is holding it "without lawful authority" on that account it cannot be doubted that the petitioner has only to show his bona fide, for the reason that 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 so that the right to the office may be determined. " And it was necessary for the issue of the writ that the office should be one created by the public authority, by charter or by statute, and that the duty should be public." It is well-settled that when the writ is moved by a private person seeks the writ, the burden of proving that the respondent does not have the right to hold such office is placed upon the petitioner."

9. Under Article 199(2)(b)(ii) of the Constitution of the Islamic Republic of Pakistan the High Court in the exercise of its Constitutional jurisdiction is competent to enquire from any person, holder of a public office to call upon him to show that under what authority he is holding the said office. In such-like cases where a writ like quo warranto is instituted the duty of the petitioner is to lay information before the Court that such and such officer has no legal authority to retain such office.

10. For a petitioner who acts as an informer is not required to establish his locus standi to invoke the jurisdiction of the Court for the reason that writ of quo warranto in its nature is an information laying against persons who claimed or usurped an office, franchise or liberty and was intended to inquire by what authority he supported his claim so that right to the office may be determined. And it is not necessary for the issuance of the writ that the office should be a public office. Additionally, writ of quo warranto could be moved by "any person who- even may not be an aggrieved party but a person who is holding a public office created through statute and /or by the State". Yet another example is that any person can move the High Court to challenge the unauthorized occupation of a public office on any such application Court is not only to see that the incumbent is

holding the office under the order of a competent Authority but it is to go beyond that and see as to whether he is legally qualified to hold the office or to remain in the office, the Court has: also to see if statutory provisions have been violated in making the appointment. The invalidity of the appointment may arise not only from one of the qualifications but also from violation of legal provisions for the appointment.

11. In the light of the above, it can safely be concluded that the writ of quo warranto 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, franchise or liberty, so that his title to it may be duly determined, and in case the finding it that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, it can safely be said that the procedure of quo warranto gives the judiciary a right 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 by reasons of its apathy. Thus, we are persuaded to hold that the petitioner has locus standi to file writ in the nature of quo warranto challenging the competency of respondent No.4 whether to hold the office as Assistant/Associate and professor (BS-21) Karachi University Business School or otherwise.

12. The instant petition has been filed to challenge the illegal benefits accorded to respondent No.4 by respondents No.1 to 3 to the uttered determination of the petitioner's rights. Petitioner has also called in question the appointment of respondent No.4 as Assistant/Associate Professor as well as his candidature for the appointment as Professor (BS-21) in the Faculty of Business and Management Science on the plea that he is not eligible for such appointments, since he belongs to faculty of Arts, holding a degree of Doctor of Philosophy in Economics, besides other disqualification as Lecturer in the Faculty of Business and Management Science being an Executive Engineer degree holder.

13. Prima facie, science of Economics falls within the discipline of Social Sciences, Arts and Humanities, and Business Administration in terms of the Notification dated 03.02.2015 issued by the Higher Education Commission of Pakistan. As per petitioner, respondent No.4 acquired a Ph.D. degree from the Department of Economics, University of Karachi in 2010 which falls within the discipline of the Faculty of Arts.

14. For the foregoing reasons, we deem it appropriate that the academic qualification, certificates or publications of respondent No.4 as Assistant/Associate and proposed candidature for the post of Professor (BS-21) Karachi University Business School, needs to be looked into by the competent authority of HEC and to see whether his appointment on the aforesaid post based on Ph.D. in Economics was made in violation of the law and policy, in excess of authority or otherwise, submit the report to Syndicate of respondent University in a sealed envelope within one month and this Court. As a result, these constitutional petitions are adjourned to be fixed after the receipt of the report of Chairman, HEC and the appointment of respondent No.4, as Assistant/Associate Professor Karachi University Business School, shall be subject to the final say of the competent authority of HEC and Syndicate of respondent University. The Chairman, HEC, is directed to look into the matter of respondent No.4 on the aforesaid issue and determine the eligibility of respondent No.4 on the aforesaid posts. The exercise shall be undertaken within two weeks. The Vice Chancellor of the respondent University is directed to coordinate with the Chairman, HEC, for the aforesaid purpose forthwith by sending all the credentials of respondent No.4 to HEC for compliance.

**JUDGE**

**JUDGE**

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