

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-1849 of 2023

Date	Order with signature of Judge
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1. For orders on CMA No.9614/2023.
2. For orders on CMA No.9088/2023.
3. For orders on CMA No.9089/2023.
4. For hearing of main case.

19.04.2023

Mian Asghar Ahmed, advocate for the petitioner.

1. Granted. 2. Granted, subject to all just exceptions. 3 & 4. The petitioner seeks an order from this Court appointing her as a lecturer, ostensibly on account of her not succeeded in the competitive public process; which in itself is also sought to be stayed pending adjudication of the grievance. In addition thereto, the petitioner also seeks *cancellation* of the successful recruitment of the respondent no. 6.

At the very onset the learned counsel was confronted with respect to maintainability, however, he remained unable to satisfy the Court on such count.

Admittedly, the petitioner was not declared as successful in the competitive recruitment process and no case is made out to inquire into such proceedings, as sought in the petition, *inter alia* as the writ jurisdiction is not amenable for determination of disputed factual controversies requiring inquiry and / or evidence¹.

In so far as the prayer seeking cancellation of the respondent no. 6's appointment is concerned, perhaps the petitioner seeks a writ of *quo warranto*; being a judicial remedy by virtue whereof a holder of public office may be called upon to demonstrate the right where under he holds office, failing which he may be ousted from such office². Learned counsel remained singularly unable to demonstrate any subsisting impediment in respect of the eligibility of the relevant respondent to hold office, hence, no case was made out to merit any interference in such regard. Even otherwise *quo warranto* proceedings are inquisitorial in nature, as opposed to adversarial, hence, it is imperative to consider the *bona fides* of the petitioner. In the present case the entire case of the petitioner is that she ought to have been appointed in place of the respondent; notwithstanding the fact that such a plea is untenable from the record demonstrated, the same could also not be sustained on the anvil of the *bona fide* requirement³.

¹ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

² Per Mansoor Ali Shah J. in *Barrister Sardar Muhammad vs. Federation of Pakistan & Others* reported as PLD 2013 Lahore 343.

³ Per Mian Saqib Nisar CJ in *Muhammad Hanif Abbassi vs. Jahangir Khan Tareen* reported as PLD 2018 Supreme Court 118 - Relief in the nature of quo warranto should not be allowed as a matter of course, rather the conduct and the bona fides of the petitioner, the cause and the object of filing such petition was of considerable importance and should be examined. It should be ascertained if the petition had been filed with some mala fide intent or ulterior motive and to serve the purpose of someone else as the remedy should not be allowed to be a tool in the hands of the petitioners, who approached the Court with mala fide intentions and either had their own personal grudges and scores to settle with the holder of a public office or were a proxy for someone else who had a similar object or motive.

Article 199 of the Constitution contemplates the discretionary⁴ writ jurisdiction of this Court and the said discretion *may* be exercised in appropriate circumstances. In the present matter no case has been set forth before us for invocation of writ jurisdiction. In view hereof, this petition and listed application are hereby dismissed in *limine*.

JUDGE

JUDGE

⁴ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.