

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Yousuf Ali Sayeed

Constitutional Petition No. D-634 of 2014

Hareef Ahmed Keerio.....Petitioner

Versus

Quaid-e-Awam University and others.....Respondents

Constitutional Petition No. D-2121 of 2014

Manzoor Ahmed Panhwar.....Petitioner

Versus

Quaid-e-Awam University and others.....Respondents

Constitutional Petition No. D-1785 of 2015

Manzoor Ahmed Panhwar.....Petitioner

Versus

Quaid-e-Awam University and others.....Respondents

Irfan Ali Khaskheli, Advocate for the Petitioner in C.P. No. D-634 of 2014, and Petitioner Manzoor Ahmed Panhwar, present in person in C.P. Nos. D-2121 of 2014 & 1785 of 2015.

Kamaluddin, Advocate for the Respondents/University.

Jaleel Ahmed Memon, Advocate for Respondent No.7 in C.P.No.D-634 of 2014 alongwith Syed Jan Muhammad Bukhari.

Allah Bachayo Soomro, Additional Advocate General Sindh, Rafiq Ahmed Dahri and Urooj Fatima Bhutto, Assistant Advocate General, Sindh.

Dates of hearing : 08.05.2024, 15.05.2024 & 22.05.2024.

Date of Announcement : 11.07.2024

JUDGMENT

YOUSUF ALI SAYEED, J - The Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution, eliciting a writ in the nature of quo-warranto in respect of certain academic posts in the Quaid-e-Awam University of Engineering, Science and Technology, Nawabshah (“**QUEST**”).

2. More specifically, the Petitioner in C.P.No.D-634 of 2014 has impugned the appointment of Dr. Asif Ali Memon as an Associate Professor (BPS-20) from the post of Assistant Professor, as well as his appointment as Chairman of the Energy & Environment Engineering Department (“**Chairman EEED**”), whilst also impugning the appointment of three other persons as Lecturers in BPS-18. As for C.P.No.D-2121/2014 and C.P.No.D-1785/2015, there the Petitioner has similarly impugned the appointment of Dr. Memon as an Associate Professor and Chairman EEED through the first of those petitions, while impugning the appointment of one Shah Nawaz Channar as an Office Assistant in BPS-14 vide the latter.

3. Succinctly stated, the case of the Petitioners in relation to Dr. Memon proceeds on the basis that he was not eligible and did not qualify for the post of an Associate Professor, hence could also not have been appointed Chairman EEED. Furthermore, as regards the appointments of other respondents as lecturers, the same are said to have been unjustly orchestrated by Dr. Memon, especially that of his brother, Yasir Ali Memon. As for the case against Mr. Channar, it is alleged that he had been dismissed from service under the Removal from Officer Office (Special Powers) Sindh Ordinance, 2000, as amended 2001, but has since engaged in various abuses of process by filing petitions before this Court so as to

preserve, perpetuate and advance his position within QUEST.

4. The nature of a writ of quo warranto was dilated upon by the Supreme Court in the case of *Jawad Ahmad Mir v. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, District Swabi, Khyber Pakhtunkhwa and others* 2023 PLC (C.S.) 813, where it was observed that:

“8. The writ of quo warranto is in the nature of setting forth an information before the High Court against a person who claimed and usurped an office, franchise or liberty. The rationality of the writ of quo warranto is to settle the legality of the holder of a statutory or Constitutional office and decide whether he was holding such public office in accordance with law or against the law. The writ of quo warranto can be instituted by a person though he may not come within the meaning of words "aggrieved person". For the purpose of maintaining a writ of quo warranto there is no requirement of an aggrieved person, and a whistle blower need not to be personally aggrieved in the strict sense and may relay the information to the court to enquire from the person holding public office. The purpose of the writ of quo warranto 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 which of his specific legal rights is infringed. It is enough for this 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, or for the good of the society, or as a matter of principle. The conditions necessary for the issuance of a writ of quo warranto are that the office must be public and created by a statute or Constitution itself; the office must be a substantive one and 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 by appointing such person to that office. The essential grounds for issuing a writ of quo warranto are that the holder of the post does not possess the prescribed qualification; the appointing authority is not the competent authority to make the appointment and that the procedure prescribed by law has not been followed. The burden of proof is then upon the appointee to demonstrate that his appointment is in accordance with the law and rules. It is clear that before a person 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 a 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. From the aforementioned precedent, it is apparent that the pre-requisites for issuance of such a writ are that the (a) the office in question must be public and created by a statute or Constitution itself, (b) such office must be a substantive one and not merely the function of an employment of a servant at the will during the pleasure of others, and (c) there must have been a contravention of the Constitution or a statute or statutory instrument by appointing a person to that office in as much as the holder of the post does not possess the prescribed qualification and/or the appointing authority is not the competent authority to make the appointment and/or the procedure prescribed by law has not been followed.

6. In that regard, it merits consideration that in the case of Dr. Bushra Ashiq Siddiqui v. Muhammad Aslam 1989 MLD 1351, a learned Division Bench of this Court considering whether the post of Associate Professor at the Jinnah Post Graduate Medical Centre (JPMC) in Karachi constituted a “public office” in terms of sub-clause (ii) of clause (b) of sub-Article (1), Article 199 of the Constitution and held that the same did not meet the criteria to be considered as such, with the relevant excerpt from that judgment reading as follows:

“The consistent view of the Courts have been that in order to make an office as a public office, it should have been created by some law, that it should involve exercise of some portion of sovereign function and that the public should have some interest to ensure that the person holding such office has the right to hold. In the instant case Mr. Sabihuddin Ahmed has not been able to point out any provision of any enactment, whereby the office of an Associate Professor of A Micro Biology in JPMC has been created nor he has been able to point out which sovereign power the respondent exercises. However, he submitted that since to provide the medical education is the duty of the State, the respondent by teaching the same was discharging the duty of the State. We are unable to subscribe to the above submission that because the respondent is

teaching Micro Biology, he is exercising any sovereign power.”

[sic]

7. A similar view was then taken by various learned Division Benches of this Court in subsequent cases reported as Tariq Mehmood A. Khan and 3 others v. Sindh Bar Council through Secretary and others 2011 YLR 2899, and Sajid Hussain v. Shah Abdul Latif University, Khairpur through Registrar and 4 others PLD 2012 Sindh 232.
8. Even otherwise, it transpires that Dr. Memon is no longer either an Assistant Professor nor Associate Professor nor Chairman EEED, but is presently serving in QUEST as a Professor in BPS-21 with effect from 13.03.2020 under a fresh appointment through an advertisement followed by recommendation made by the Selection Board and approval conferred by the Syndicate. Furthermore, a perusal of the consolidated Statements of the marks secured by the candidates for the post of Lecturers, as relevant for the purpose of C.P.No.D-634 of 2014, reflects that the concerned Respondent obtained the first, second and third positions respectively in the recruitment process and that as far as Mr. Yasir Ali Memon is concerned, Dr. Memon had abstained from awarding any marks to him in the matter, having recused himself from any part in the selection to that extent. As such, it cannot be said the case is of one of nepotism.
9. As far as C.P.No. D-1785 of 2015 is concerned, the case set up against Mr. Channar does not properly fall with the contours of *quo warranto* at all, as the relief as may have been extended to him by this Court in earlier Petitions cannot be questioned or unsettled through this proceeding.

10. In view of the foregoing, all of the Petitions are found to be devoid of force and are dismissed accordingly.

JUDGE

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