

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-5937 of 2023

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI
CHIEF JUSTICE
MR. JUSTICE ABDUL MOBEEN LAKHO**

Aziz Khalid and others

Versus

Province of Sindh and others

Date of hearing 26.12.2023

Mr. Ahmed Masood, Advocates for the Petitioners.

Mr. Pervaiz Ahmed Memon, Advocate for Respondent Nos.7.

M/s. Saulat Hussain Rizvi and Saifullah, AAG.

Mr. Ihsanullah Leghari, Focal Person, College Education Dept: on behalf of Secretary Colleges.

ORDER

Abdul Mobeen Lakho, J. The Petitioner has invoked the constitutional jurisdiction of this Court by filing captioned petition with the following common prayers:-

...
“I. **Issue** writ of quo warranto as against the Respondent No. 8 with respect to the offices of the Respondent No. 6;

11. **Set aside**, and during pendency suspend, the operation of Impugned Notification dated: 05.12.2023;

III. **Declare** that Rule 4, Rules, 1975 is *ultra vires* to Section 13(2), STBO;

IV. **Declare** that Entry 1 & 2 of the Schedule of the Rules, 1975, is illegal and void to the extent it allows appointment of Chairman and Secretary of the Board on basis of deputation;

...

2. Succinctly, the facts are that the petitioners, who are the publishers have challenged the Notification No.SO(G-III)SE&LD/2-117/2000 dated 05.12.2023 through which the respondent No.8 has been transferred and posted as Secretary (BPS-19), Sindh Textbook Board Jamshoro with immediate effect and according to the petitioners, the impugned Notification has been issued in violation of the Sindh Textbook Board Employees Service Rules, 1975 and has referred to Rule 3(2) of the said Rules, which provides that the post of Chairman and Secretary, shall be a tenure posts for a period of three (03) years, whereas, respondent No.7 was appointed as Secretary vide Notification No.SO(G-III) SE&L/PS/3-1064/2019 dated 27th July, 2023 has been removed in less than six months into her tenure to accommodate the Respondent No. 8. It has been further contended that the respondent No.8 is an officer of BS-19, Education & Literacy Department, Government of Sindh, is presently posted as Additional Director, Directorate of Sindh Education Policy Commission, which otherwise cannot be posted as Secretary on deputation. Without prejudice to hereinabove, learned counsel for the petitioner submits that the Secretary can otherwise be appointed by the Government i.e. Provincial Cabinet by virtue of Section 13(2) of the Sindh Textbook Board Ordinance, 1970, whereas, it appears that the impugned Notification has been issued by the Secretary, School Education & Literacy Department, Government of Sindh, without approval of the Government/Provincial Cabinet.

3. Learned counsel for the Petitioner argued that Impugned Notification has been issued in violation of law and the directives the Apex Court as well as this Court, therefore, the Impugned Notification is liable to be set aside. Learned counsel for the Petitioners further contended that the appointing authority with respect to the post of Respondent No.8 by virtue of STBO, 1970 is the Government i.e., the Provincial Cabinet, however, it is pointed out that Rule 4, of the Sindh Textbook Board Employees Service Rules, 1975 dictates that the Controlling Authority i.e., the office of the Respondent No.4 shall make appointments to the office of the Respondent No.6. Thus, via the Impugned Notification, the Respondent No.4 has exercised authority under a Rule which is otherwise, ultra vires, to the parent statute, therefore, the Impugned Notification is liable to be set aside.

He has further contended that Rule 3(2), Rules, 1975, provides that the office of the Respondent No.6 is a tenured post, containing a term of three (03) years, whereas, the present occupant of the said post i.e. Respondent No.7 was posted there vide Notification dated 27.07.2023 i.e., less than six months ago and it is settled law that security of tenure is an integral part of service and must be protected. He further argued that it is also established dictum that if a rule specifies a term of office then that applies as stated and must be adhered to, unless exceptional and compelling circumstances exist, but in the present case, neither any exceptional circumstances exist nor have the same been alleged. He further contended at the stance of the Petitioners that the same is being done to allow the Respondent No.8 to cover up and influence the investigation of illegalities committed earlier, and to continue the same trend. According to learned counsel for the petitioners, it is the stance of the Petitioners that the sole reason why the Respondent No.8 is being brought back to the Board by the concerned quarters is to allow for rampant corruption and mismanagement to take effect much like last year, which resulted in the shortfall mentioned above. He further argued that the Petitioners being publishers and participants of the said process, will be gravely prejudiced if the Respondent No.8 is allowed to take control of the offices of the Respondent No.6, therefore, prayed that the impugned Notification may be set aside.

4. The Respondent No.8 through his counter affidavit has stated that the Petitioners are habitual in filing such like petitions. It is further contended that the Petitioner No.2, who is son of the Petitioner No.1 and brother of the Petitioner No.3, earlier filed a petition, bearing C.P.No.D-3837 of 2023 against the transfer and posting of the then Chairman of Respondent No.5. Since no interim orders were granted in such petition, therefore, the Petitioner No.2 thought it appropriate to withdraw the same unconditionally and perhaps owing to the fact that all the issues with the then Chairman of Respondent No.5 were settled. It has been further stated that instant petition was filed after refusal of interim orders in the Suit No.1289/2023, which is self-explanatory and speak volume about the conduct of the petitioners. He has further stated that the petition, on the face of it, has been filed to protect the Respondent No.7 who has been actively conniving with the Petitioners in respect of the

tender which was set in a manner to benefit the Petitioners. It has been further contended by the Respondent No.8 that the Respondent No.7 who could be aggrieved of transfer and posting has opted not to challenge the transfer, but it is only the Petitioners, who have come forward to challenge the same in order to circumvent the bar of Article 212 of the Constitution which the Respondent No.7 would have faced, has opted to file this petition in the nature of quo warranto to protect tender proceedings which would have been ultimately opened in favour of the Petitioners. According to him, the Petitioners have placed a very heavy reliance on the show-cause notice dated 14.03 2023 to impress upon this Court that the Respondent No.8 is facing disciplinary proceedings, however, the fact is that not only the show cause notice has been vacated but also the purported Board of Governance, who allegedly made a complaint have issued a certificate that their names are being falsely used. The Respondent No.8 further stated that there had been serious discrepancies in the tender floated by the Respondent No.7 in a manner to favour the Petitioners, consequently, the Respondent No.7 and the then Chairman were ordered to be transferred. It is reiterated that the Petitioners apprehending an apparent loss has approached this Court to protect their ill-gotten claims. He has further stated that the petition has not been filed for public interest, rather it is a tool to protect the personal interest, therefore, instant petition is liable to be dismissed with exemplary costs.

5. Heard learned counsel for the parties and perused the record of instant case. To dilate upon the issuance of writ of quo warranto, the law on the subject is well settled that the High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset, as to whether a case been made out for issuance of a writ of quo waranto. Basically, the jurisdiction of the High Court to issue writ of quo warranto is limited and can only be issued when the appointment is contrary to the statutory rules of service. It is settled law by a number of judgments that the Court cannot sit in judgment over the wisdom of the competent authority of Government, the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. In such a situation, issuing a writ of quo warranto would not be feasible, when nothing has been brought on record that there

is a violation of law in the transfer and posting of the respondent No.8, which is germane to terms and conditions of service of respondent No.8 On the aforesaid proposition, we are fortified with the decisions of Hon'ble Supreme Court in the cases of *Muhammad Liaquat Munir Rao....v/s.....Shams-Ud-Din and others (2004 PLC (C.S) 1328 Dr.Khalil-ur-Rehman....v/s.....Government of Punjab through Chief Secretary, Punjab and others (2015 PLC (C.S) 1793*. Whereas, prima-facie the transfer and posting of Respondent No.8 has not caused any prejudice or damage to the petitioners, who could not show their bonafide and merely, putting allegations and counter-allegations to entertain such disputed questions of facts in constitution petition, however, the competent authority has to take care of the genuine grievances of the petitioners in accordance with law. Even it is well-settled law that if a civil/public servant is appointed/posted in violation of any provision of law, the competent authority can look into the matter and this Court at this juncture, cannot dilate upon the allegations of the petitioners on the aforesaid analogy. The record reflects that the petitioners are interested person and could not and cannot rely on issuance of writ of quo warranto to dislodge or remove respondent No.8 from the post to which he has been transferred and posted after going through the due process provided under Rule 4, of the Sindh Textbook Board Employees Service Rules, 1975 according to which, the Controlling Authority i.e., the office of the Respondent No.4 shall make appointments to the office of the Respondent No.6.

6. In the light of facts and law discussed above, the transfer and posting of respondent No.8 do not seem to suffer from any inherent defect under the law, besides the petitioners have also failed to point out any legal flaw in the process of relating to the transfer and posting of Respondent No.8 warranting interference of this Court in constitutional jurisdiction.

7. In view of the above discussions, instant petition is dismissed along with pending application. The above are the reasons of short order dated 26.12.2023.

Judge