JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.699 of 2013

Inayat Ullah Memon
Versus
Rejesh Kumar and others

Petitioner by	:	Dr. G. M. Chaudhry, Advocate.
Respondents by	:	M/s Hafiz Arfat Ahmad Ch. Tariq Zaman Ch., Azrar Ali and Auf Abdur Rehman, Advocates for respondents No.1 to 3. M/s Amir Latif Gill and Rizwan Ahmed, Advocates for the CDA.
Dates of Hearing	:	11.03.2022, 16.03.2022, 09.05.2022 and 13.05.222

ARBAB MUHAMMAD TAHIR,J.:- Through the present writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as **"the Constitution")**, the petitioner, Inayat Ullah Memon, *inter alia* seeks the issuance of a writ of *quo warranto* against respondents No.1 (Rejesh Kumar), No.2 (Jamil Ahmed Bajkani) and No.3 (Nisar Ali Shah), challenging their appointments as Assistant Director (Civil) (BPS-17) in the Capital Development Authority (hereinafter referred to as **"the Authority"**) made pursuant to the advertisement dated 04.10.2006, issued by the Authority.

FACTUAL BACKGROUND:-

2. Tersely, the facts essential for the disposal of the present writ petition are that on 04.10.2006, the Authority issued an advertisement inviting applications for appointments against various posts including the posts of Assistant Director (Civil) (BPS-17). The said advertisement also sets out a condition in terms that *"the CDA has reserved the right to reduce, increase or abolish*

any or all the posts without assigning any reason". The petitioner was one of the candidates, who had applied for the post of Assistant Director (Civil) (BPS-17) against the quota reserved for Sindh (Rural) and Merit. The requisite qualification for appointment against the post of Assistant director (Civil) (BPS-17) was a Bachelor degree in the related discipline of Engineering with three years' experience in the relevant field in Government or any Organization or Firm of repute in Public or Private Sector. It was also provided in the said advertisement that the applicant must be registered with Pakistan Engineering Council (hereinafter referred to as the **"P.E.C.").** After scrutinizing process, the petitioner was apparently issued a call letter requiring him to appear in the written test on 26.03.2007. In the written test, the petitioner obtained 59 marks out of total 70 marks having 84.29%. Whereas, respondents No.1, 2 and 3 obtained 50 marks (71.43%), 44 marks (60%) and 39 marks (55.71%), respectively.

3. Subsequently, the petitioner was called upon to appear for an interview before the Departmental Recruitment Committee (hereinafter referred to as the **"D.R.C.")**, which consisted of Six Members. Each Member was accorded with a maximum of 100 marks for each candidate to be awarded based on the applicant's performance in the interview. Thus, the interview carried 600 discretionary marks for each candidate. The petitioner appeared before the D.R.C./Interview Committee and had been able to obtain 349 marks out of 600 marks. According to the petitioner's version, the marks awarded to him in the interview were disproportionate to the ones obtained by him in the written test *viz* 84.29%. It is the petitioner's presumption that all this happened by the Authority just to accommodate pre-selected/blue-eyed candidates. It is the petitioner's case that respondents No.1 to 3 with lesser aggregate than the petitioner have been appointed against the post in

question, whereas he has been discriminated against for the reasons best known to the Authority.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

4. Dr. G. M. Chaudhry, Advocate, learned counsel appearing on behalf of the petitioner after narrating the facts, contended that the petitioner had fulfilled the requisite criteria for the post of Assistant Director (Civil) (BPS-17); that although the petitioner secured highest marks in the written test, but his position was lowered by awarding him lesser marks in the interview; that the other candidates appointed against the quota of Sindh (Rural) secured lesser marks than that of the petitioner; that the petitioner deserved to be appointed against the quota of Sindh (Rural) since he obtained highest marks in the written test; that respondents No.1 to 3 were appointed in derogation of the Capital Development Authority Employees (Service) Regulations, 1992 (hereinafter referred to as **"the 1992 Regulations")**; that respondents No.1 to 3 were appointed on basis of favourtism and nepotism; that the entire process of appointment against the post of Assistant Director (Civil) (BPS-17) was marred with illegalities, irregularities and based on *mala fide* intent; that the recruitment process carried out by the Authority was against the principle of equity, fair play and in violation of the fundamental rights guaranteed by the Constitution; that the appointments of respondents No.1 to 3 were made in utter disregard of the Constitutional provisions and without a transparent manner; that this Court has ample discretionary powers to declare the appointments of respondents No.1 to 3 to be illegal and against the spirit of the law.

5. Furthermore, it was contended that the Authority was under a legal obligation to strictly adhere to the mandatory

provisions of the law and observe a policy of transparency as embodied in Sr. No.13 of Chapter-II of the ESTACODE (2007 Edition); that respondents No.1 to 3 got themselves appointed against the post of Assistant Director (Civil) (BPS-17) in the Authority on the basis of political influence; that respondent No.1 to 3 could not have been appointed since they obtained lesser marks in the written test than the petitioner; that other eligible candidates, including the petitioner, who had developed legitimate expectation to be appointed against the said post, were deprived of their legal rights inasmuch as respondents No.1 to 3 being blue eyed persons of the influential persons, were appointed against the said posts; that superior Courts of the Country have set aside the appointments made in violation of the quota or merit and in disregard of the Rules and Regulations; that the powers vested in the Authority ought to have been exercised in accordance with the mandate of the law and not arbitrarily; and that on the basis of the excellent performance showed by the petitioner in the written examination, he should have been appointed against the vacancy reserved for Sindh (Rural). Learned counsel for the petitioner prayed for the writ petition to be allowed and for the appointments of respondents No.1 to 3 to be declared as illegal and unlawful. Learned counsel for the petitioner while contending relied upon the judgments reported as ***2010 SCMR 1301, PLD 2012 SC 132, 2002 PLC (CS) 606, 2000 SCMR 343, 2002 SCMR 122 and 2006 PSC 2000.***

SUBMISSIONS OF THE LEARNED COUNSEL FOR RESPONDENTs NO.1 to 3:-

6. On the other hand, Hafiz Arfat Ahmad Ch., Advocate, learned counsel appearing on behalf of respondents No.1 to 3 contended that respondents No.1 to 3 were appointed pursuant to the advertisement dated 04.10.2006 after undergoing a lengthy selection process; that the interviews of the shortlisted

candidates/respondents No.1 to 3 were conducted by an Interview Committee which comprised of senior Members of the Authority; that the appointments of respondents No.1 to 3 were made strictly in accordance with the provisions of the 1992 Regulations after finding them as the most suitable candidates; that the present writ petition has been filed by the petitioner only to malign respondents No.1 to 3; that the present writ petition has been filed at a belated stage i.e. after a period of six years and that too when respondents No.1 to 3 not just have been confirmed in service but have also been promoted to next higher grades i.e. to the post of Deputy Director (BPS-18); that the present writ petition is badly hit by the doctrine of *laches* and thus not maintainable; that a writ of *quo warranto* cannot be issued on the basis of mere technicalities; that it is settled law that a writ of *quo warranto* cannot be issued as a matter of course on sheer technicalities; that conduct of the petitioner is not unjust, but also unfair inasmuch as he filed classified, confidential, unsigned and unattested copies of the internal communication of the Authority, which he was not supposed to annex with the present petition; that it is the duty of the Court that before issuing a writ of *quo warranto*, it has to satisfy itself as to the conduct and motive of the person seeking the issuance of such a writ; that the conduct of the petitioner is such that does not entitle him to the relief sought by him in the present writ petition; that the Hon'ble Supreme Court in the judgment reported as 2004 SCMR 1299 declined the grant of the relief to the petitioner on the ground that the petitioner in the said case used classified material/documents in his petition of *quo-warranto*; that the petitioner has indeed a right to procure the documents provided he resorted to the procedure enunciated under the provisions of Right of Access to Information Act, 2017; that the petitioner through an unfair means obtained confidential documents pertaining to respondents No.1 to 3's selection/appointment.

7. He next contended that the present writ petition has maliciously been filed at the behest of someone behind the screen; that in fact the petitioner has filed a petition in the nature of mandamus under the garb of a writ of *quo warranto* in order to thwart the law of limitation; that in fact the petitioner seeks his induction in the Authority only on the basis of his result in the written test, which according to him (the petitioner) he stood at the top; that the assertions made by the petitioner in the present writ petition are with respect to a writ of *quo warranto*, but strangely he has inserted a prayer clause for his own induction in the employment of the Authority meaning thereby, he seeks the issuance of a writ of *mandamus* under the garb of the writ of *quo warranto*; that the petitioner could have approached an appropriate forum for the redressal of his grievances by initialing appropriate proceedings against the Authority, but could not have approached this Court seeking the removal of respondents No.1 to 3 from the official positions and that too after a lapse of more than six years; that the Authority after having found respondents No.1 to 3 to be worthy of selection issued letters of appointments to the said respondents; that in the recruitment process, strict compliance to the law in general and the 1992 Regulations in particular was shown; that the petitioner did not annex even a single document having been issued to him by the Authority during the process of recruitment and he has used sample letters of other candidate for his adventure and fun; that the petitioner is not an aggrieved person to invoke the extraordinary jurisdiction of this Court; and that it is the duty of the person seeking a writ of *quo warranto* to lay complete information before the Court in relation to the alleged usurpers of the public office. Learned counsel for respondents No.1 to 3 prayed for the writ petition to be dismissed with costs. While making his contentions, he placed reliance on the law laid down in the judgments reported as **2005**

SCMR 1829, PLD 1986 Lahore 310, 2005 PLC (CS) 894, 2005 PLC (CS) 997 and 2004 SCMR 1299.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE AUTHORITY:-

8. Similarly, Mr. Amir Latif Gill, Advocate, learned counsel appearing on behalf of the Authority contended that the petitioner is not an aggrieved person to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution; that the petitioner is attempting to unnecessarily pressurize the Authority and to obstruct the smooth functioning of the Authority; that the petitioner has no *locus-standi* to file the present writ petition since he does not fall within the term of *"an aggrieved person"*; that since the petitioner prays for an equitable relief hence, he ought to come to this Court with clean hands; that the selection of the candidates was carried out strictly in accordance with the procedure laid down in the 1992 Regulations; that 12 posts of Assistant Director (Civil) (BPS-17) were filled by the Authority after observing all codal formalities; that after obtaining formal approval of the competent authority i.e. the Chairman, C.D.A. in terms of Regulation No.4.01 of the 1992 Regulations, offer letters were issued to the successful candidates; that the appointments of the successful candidates including respondents No.1 to 3 were made strictly in accordance with the Authority's Rules and Regulations; the petitioner's claim is not clear as he on the one hand, prays for his induction in the Authority on the basis of the marks/scores obtained by him in the written test, but on the other hand, he claims the violation of the regional quota and thus, his stance is inconsistent; that it is not mandatory that a candidate, who scores top in the written test can be expected to perform an outstanding response in the viva voce/interview; that much water has already been flown under the bridge since respondents No.1 to 3 have been working since 2006; that there is

a *plethora* of judgments of the Hon'ble Superior Courts on the point that such an appointment cannot be subjected to a challenge; that the Authority never violated any of its Rules and Regulations and no question regarding violation of the Regulation by the Authority has ever been raised by any one before any forum; that if there was any violation of the 1992 Regulations, the same could have been identified by any candidate and brought to the knowledge of the D.R.C. Learned counsel for the Authority prayed for the instant writ petition to be dismissed with costs.

9. I have heard the submissions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the present writ petition have been discussed in detail (supra) and need not be reiterated.

10. Perusal of the record reveals that on 04.10.2006, an advertisement was published by the Authority inviting applications from suitable/eligible candidates for appointment against various posts including the post of Assistant Director (Civil) (BPS-17). The qualification and experience set forth in the advertisement for appointment against the said post were a Bachelor degree in the related discipline of Engineering and three years' experience in the relevant field in Government or any Organization or Firm of repute in Public or Private Sector. It was also provided in the said advertisement that the candidates must be registered with P.E.C**.** After scrutinizing process, all the shortlisted candidates were issued call letters requiring them to appear in the written test on 26.03.2007. In the written test, the petitioner obtained 59 marks out of total 70 marks having 84.29%. However, respondents No.1, 2 and 3, whose appointments have been challenged in the present petition, obtained 50 marks (71.43%), 44 marks (60%) and 39 marks (55.71%), respectively. Subsequently,

the petitioner was called for interview before the D.R.C./Interview Committee consisting of Six Members. Each Member of the D.R.C. was empowered to accord a maximum of 100 marks to each candidate to be awarded on the basis of the candidate's performance in the interview. Thus, the interview carried a total of 600 discretionary marks for each candidate. The petitioner appeared before the D.R.C./Interview Committee and had been able to obtain 349 marks (i.e. total marks awarded by each Member) out of 600 marks. However, as per the Evaluation Chart of candidates who appeared in the interview, produced by the Authority reflects that respondents No.1, 2 and 3 outmatched the petitioner by securing 469, 445 and 439 out of total 600 marks in the interview, respectively. It is the petitioner's case that respondents No.1 to 3 with lesser aggregate than the petitioner have been appointed against the post in question in violation of the Authority's applicable Regulations, whereas he has been discriminated against for the reasons best known to the Authority.

11. Before dilating upon the issue involved in the present writ petition and going into the merits of the case, it is imperative to first highlight the scheme of the 1992 Regulations, which were made by the Authority in exercise of the powers conferred by Section 51 of the Capital Development Authority Ordinance, 1960 (hereinafter referred to as **"the Ordinance"**) read with Sections 37 and 38 thereof. These Regulations were to come into force at once.

12. Sections 37 and 38 of the Ordinance are reproduced herein below for ready reference:-

> ***"37. Appointment of officers and servants etc.***
> *1) The Authority may from time to time, appoint such officers, servants, experts or consultants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit: Provided that salaried officers and servants whose remuneration exceeds two thousand and five hundred*

rupees per mensem shall not be appointed except with the previous approval in writing of the (Federal Government).
(2) Subject to the proviso to sub-section (1), the Chairman may, in cases of urgency, appoint such officers, servants, experts or consultants and on such terms and conditions as he deems fit: Provided that every appointment made under this sub section shall be reported to the Authority without unreasonable delay.
38. Recruitment conditions of service and disciplinary powers:- *The Authority shall lay down the procedure for the appointment of its officers, servants, experts and consultants, and the terms and conditions of their services including the constitution and management of provident fund for them, and shall be competent to take disciplinary action against them."*

13. Regulation 1.02 of the said Regulations provides as follows:-

"Extent of application. *These Regulations shall apply to all officers, servants, experts and consultants appointed on regular basis in a cadre or to a post by the Authority or a person authorized by it in this behalf but, except as specifically provided otherwise in these regulations, shall not apply to:-*
a) a person who is employed for a specific period on specific terms;
b) a person who is employed on contract;
c) a person who is serving in the Capital Development Authority on Deputation;
d) a person who is paid out of contingencies/ daily wages."

14. Regulation 2.01 of the said Regulations defines the authority which has been vested with the power to appoint any person to a sanctioned post. For ease of reference, the said Regulation is reproduced herein below:-

"2.01. Definitions. In these Regulations, unless there is anything repugnant in the subject or context:-
i. ***"Appointing Authority"*** *means the Authority or a person authorized in these regulations to make appointment to a post;*
ii. ***"Authority"*** *means the Capital Development Authority as defined in the Capital Development Authority Ordinance, 1960 (XXIII of 1960)*
iii. ***"Basic pay scale"*** *means basic pay scale of pay prescribed by the Authority or the basic pay scale prescribed by the Federal Government and adopted by the Authority;*
iv. ***"Board"*** *means the Board constituted under section 6 of the Capital Development Authority Ordinance 1960 (XXIII of 1960);*

v. ***"Cadre"*** *means the strength of the service or part of the service sanctioned as a separate unit;*

vi. ***"Chairman"*** *means the Chairman of the Capital Development Authority:*

vii. ***"Day"*** *means a calendar day beginning and ending at midnight;*

viii. ***"Departmental Promotion Committee"*** *means a committee constituted for the purpose of making selection for promotion or transfer to posts in the Authority;*

ix. ***"Departmental Selection Committee"*** *means a committee constituted for the purpose of making selection for initial appointment to posts in the Authority".*

15. The terms and conditions of the Authority's employee's services shall be governed in terms of Regulation 3.03 of the said Regulations, which defines them as under:-

> ***"3.03. Terms and conditions of service.*** *1. Terms and conditions of an employee shall be as laid down in these regulations or in such subsidiary orders and instructions which may be issued form time to time with the approval of the Board or which, not being inconsistent with these regulations, were issued with the approval of the Board and were in force immediately before commencement of these regulations.*
>
> *2. In all matters not expressly provided for in these regulations, employees shall be governed by appropriate rules, orders and instructions of the Federal Government made applicable to the 7 employee by orders of the Authority with such changes as are considered necessary."*

16. The Authorities competent to make appointments in the Authority are mentioned in Regulation No.4.01 of Chapter-4, Part-I of the 1992 Regulations. The said Regulation is reproduced herein below:-

> ***4.01. Authorities competent to make appointment:-***
>
> *The authorities competent to make appointment to various posts shall be as follow:-*
>
> | | | |
> |---|---|---|
> | *a.* | *Posts in basic pay scale 20* | *Secretary of the Administrative Division concerned* |
> | *b.* | *Posts in basic pay scales 18 and 19* | *Chairman* |
> | ***c.*** | ***Posts in basic pay scales 11 to 17*** | ***Member concerned*** |
> | *d.* | *Posts in basic pay scales 1 to 10* | *Director concerned* |
>
> ** Note:- In the case of posts in BPS-11 to 15 in the cadres with which Member (Administration) is concerned, his powers may be exercised by Deputy Director General (Administration)*

17. There shall be three Departmental Selection Committees, **("D.S.C.")** which are prescribed in Regulation No.4.04 of the 1992 Regulations. Regulation No.4.04 reads thus:-

> ***4.04. Departmental Selection Committee and Departmental Promotion Committee:-*** *1. There shall be constituted Departmental Selection* ***Committee-I*** *for initial appointment to posts in basic pay scales 18 and 19,* ***Departmental Selection Committee 2*** *for initial appointment to posts in basic pay scales 11 to 17 and* ***Departmental Selection Committee-3*** *for initial appointment to posts in basic pay scale 10 and below. For appointment by promotion and transfer, the Departmental Selection Committee 1, 2 or 3, as the case may be, shall function as Departmental Promotion Committee respectively.*

18. Regulation No.4.04(2) proposes the D.S.C. in conformity to appointing authorities in the following manner:-

Departmental Selection/ Promotion Committee No. 01
From BPS-17 and above

Member (Concerned)	***Chairman of the Committee***
Financial Advisor/ Member	*Member*
Member (Administration)	*Member*
Member/ DG (Concerned)/ E.D for Capital Hospital	*Member*
Dy. DG (Admin)	*Member*
Director HRD	*Member-cum-Secretary*

19. According to Regulation 4.06(3), it is the D.S.C. which has been empowered to recommend from a panel of at least three names for each vacancy. The said Regulation reads as follows:-

> ***"4.06. Initial appointment to posts in basic pay scale 17 and above:-***
> *Initial appointment to posts in basic pay scale 20 shall be made by the appointing authority on the recommendations of the Selection Board. The Selection board shall consider and recommend from a panel of 3 names for each vacancy.*
> *(2.) Initial appointment to posts in basic pay scales 18 and 19 shall be made by the appointing authority on the recommendations of the Departments Selection Committee 1. The Departmental Selection panel of 3 names for each vacancy*

3. Initial appointment to posts in basic pay scale 11 to 17 shall be made by the appointing authority on the recommendations of the Departmental Selection Committee 2. ***The Departmental Selection Committee shall, as far as possible, recommend from a panel of the least 3 names for each vacancy.***
4. Initial appointment to posts in basic pay scale 10 and below shall be made by the appointing authority on the recommendations of the Departmental Selection Committee 3. The Departmental Selection Committee shall, as far as possible, recommend from a panel of 3 names for each vacancy."

MAINTAINABILITY OF THE PRESENT PETITION ON THE GROUND OF LACHES:

20. Another objection taken by the learned counsel for respondents No.1 to 3 as well as of the Authority was that the present petition suffers from *laches* particularly when respondents No.1 to 3 have not only been confirmed rather they have been promoted in the next grades i.e. to the post of Deputy Director (BPS-18). They contended that the present petition, having been filed after almost six years of the appointments in question, badly suffers from *laches*. The learned counsel for respondents No.1 to 3 while arguing this aspect of the matter placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Muhammad Rafique Vs. Muhammad Pervaiz (2005 SCMR 1829),*** wherein, it was *inter alia* held that constitution petition was filed after a period of five years when the petitioners have already been confirmed in their appointments after successful completion of probation period constitution petition suffered from gross *laches* without there being any justifiable reason ----- some minor irregularities in the appointment of petitioners were not sufficient for issuance of a writ of *quo warranto* against them. He has also placed reliance upon the judgment of the Hon'ble Lahore High Court, Lahore in the case of ***Ammad Ahmad Vs. National Highway Authority (2018 PLC (CS) Note 187)***, wherein, it was *inter alia* held that undeniably services of respondents have already been confirmed/regularized and instant petition is suffering from gross *laches,* without their being any justifiable explanation. It is well settled that delay defeats equity, as equity aid the vigilant and not the

indolent. Learned counsel for respondents No.1 to 3 further relied upon the judgment of the Hon'ble Apex Court in the case of ***(2004 PLC (CS) 1328***), wherein, it was held that --- the learned counsel for the respondent No.1 could not give any explanation whatsoever as to what had prompted him to file the writ petition after a deep slumber of more than a decade. It was further held that in an appropriate case, the Court is entitled to look into the conduct, motive or lack of *bonafide* of a writ petitioner and also the delay in filling the writ petition in the nature of *quo warranto* for the purpose of grant or refusal of relief in the exercise of discretionary jurisdiction.

21. Now turning to the said objection regarding the maintainability of the present writ petition on the ground of *laches*. It is by now well settled that *laches* in writs of *quo warranto* do not apply since the cause of action is a recurring loss so long as a public office is held by the person. The unlawful holding of a public office is a continuing wrong and causing a continuous loss to the state exchequer, thus it may be called into question by anyone, at any time. In holding so, I am fortified by the law laid down in the case of ***Dr. Jalil Qadir Vs. Province of Sindh through Chief Secretary, Government of Sindh and 2 others (2010 PLC (C.S.) 731),*** wherein it was held as follows:-

> *"In the fact of such finding, the further argument of the counsel of respondent No.3 that petition is hit by laches will not be available as* ***holding of office by respondent No.3 on the basis of impugned notification which is illegal, is a continuing cause of action against which no laches will operate****."*

22. Similarly, in the case of ***Ch. Muneer Ahmad and others VS. Malik Nawab Sher and others (PLD 2010 Lahore 625),*** wherein, it was held as follows:-

> *"Regarding the objection of respondent No.1 about the delay in filing the instant petition and the applicability of the principle of laches,* ***suffice to observe that the question of limitation or laches does***

not apply in cases of quo warranto, as Courts cannot allow to perpetuate the usurper to continue in a public office. Unlawful holding of a public office is a continuing wrong, which can be called in question by any c party at any time. Furthermore, a Constitutional petition cannot be dismissed on the ground of laches, without examining dictates of justice in claim of each party*, in addition to examination of law and jurisdictional point involved in the petition."*

Emphasis laid:

23. In the case of ***Raja Muhammad Asghar Khan, General Manager, Aklasc, Mirpur Vs. Mijhammad Hafizullah, Manager, Technical Aklasc, Upper Crater Housing Scheme, Muzaffarabad and 5 others (2002 PLC (C.S.) 274,*** the Hon'ble Supreme Court had the occasion to hold as follows:-

"While deciding the question as to whether a writ petition is hit by the doctrine of laches facts of each case have to be kept in view. The principles laid down in the judgment cited before' us are well-known but in the recent years there has been change of views on this subject but we need not go into that question because, in our view, the cases in which the appointment of a civil servant or employee of a corporation which is amenable to writ jurisdiction, the question of laches has to be liberally construed in favour of the objector. The reason on which our thinking based is that the doctrine of laches is not applicable to writs of quo warranto and any person can at any stage move the High Court that a person holding or purporting to hold a public office may be called upon to show under what authority of law he was holding a public office. ***The principle of law that the doctrine of laches is not applicable to writs in the nature of quo warranto is well-settled subject to just exceptions that there should be no mala fide in filing the application for quo warranto****. That being the position even if a person has not filed a writ of quo warranto but has filed a writ of mandamus or certiorari it is always open to him to file a writ of quo warranto if his writ of mandamus or certiorari is dismissed on the ground of laches. This would lead to multiplicity of litigation. Therefore while all other restrictions which are attached to exercise of writ jurisdiction would apply, the question of laches should be liberally construed.* ***On the basis of the principle that doctrine of laches is not applicable to writs of quo warranto it can be said, subject to just exceptions, that illegal appointment or promotion of a person is always open to challenge"****.*

Emphasis laid:

24. Similarly in the case of ***Mr. Fazlul Qauder Chowdhry and others Vs. Mr. Muhammad Abdul Haque*** **(PLD 1963 Supreme Court 486)**, it was held as follows:-

> *"If the Ministers were holding office without any lawful authority,* ***their continuance in office was in the nature of a continuing wrong giving rise to a cause of action de die in diem, and, therefore, there could be no question of any laches****. In any event, on questions relating to the constitutionality of actions the ground of laches cannot prevail, for there can be no estoppel against the Constitution and an act which is unconstitutional cannot become constitutional by lapse of time nor can it vest anyone with any kind of legal right to benefit from such' an unconstitutional act".*
> **Emphasis laid:**

25. Law to the said effect has also been laid down in the cases of ***Syed Ali Raza Asad Abidi v. Ghulam Ishaq Khan, President of Pakistan and another (PLD 1991 Lahore 420) and Muhammad Siddique, Advocate v. Farhat Ali Khan and another*** **(PLD 1994 Lahore 183)**. Consequently, it is held that the present writ petition is not barred by the principle of *laches*.

MAINTAINABILTY OF THE PETITION ON THE GROUND THAT THE PETITIONER IS NOT AN AGGRIEVED PERSON:-

26. With regard to the objection raised by the learned counsel for the contesting respondents that the petitioner is not an aggrieved person to qualify for the purposes of Article 199 (1) (b) (ii) of the Constitution. It is well settled that for the issuance of a writ of *quo warranto* the person invoking the jurisdiction of the High Court under Article 199 of the Constitution is not required to comply with the stringent conditions required for brining himself within the term of "an aggrieved person". Any person can move the High Court to throw a challenge onto the usurpation or unauthorized occupation of a public office by the incumbent of that office and he/she is not required to establish his/her *locus standi* to invoke the Constitutional jurisdiction of the High Court under Article 199 of the Constitution in a manner

as generally required by the said Article. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court in the case of ***Attaullah Khan Vs. Ali Azam Afridi* (2021 SCMR 1979)**, wherein it was *inter alia* held as follows:-

> ***"no prohibition existed in law as to who could file a writ of quo warranto*** *however, the power to issue such writ was discretionary and nobody could claim that the court was bound to issue this writ."*
> **Emphasis laid**

27. Similarly, in an earlier judgment passed in Human Rights Case No.11827-S of 2018 (2019 SCMR 1952), the Hon'ble Supreme Court has *inter alia* held that ***"for issuance of writ of quo warranto, person/petitioner laying information before Court need not be an aggrieved person."***

28. Additionally, in the case of ***Muhammad NaseemHijaziVs. Province of Punjab (2000 SCMR 1720),*** it was held as under:-

> *"---For a petitioner who acts, in fact,* ***asan informer is not required to establish his locus standi to invoke the jurisdiction of the Court****"*
> ***Emphasis added***

29. A similar view was taken in the case of ***Hafiz Hamdullah Vs. Saifullah Khan (PLD 2007 SC 52),*** wherein it was held as follows:-

> *"A writ of the quo warranto is in the nature of laying an information before a Court, against a person who claimed and usurped an office, franchise or liberty, requesting for holding an enquiry to enable him to show the authority under which he supported his claim of right to the office, franchise or liberty. Its object is to determine the legality of the holder of a statutory or constitutional office and decide whether he was holding such office in accordance with law or was unauthorizedly occupying a public office. Where a person prays for a writ of quo warranto the Court would be under an obligation to enquire whether the incumbent is holding the office under the orders of a competent authority and also to examine whether he would be legally qualified to hold the office or to remain in the office.* ***For issuance of a writ of quo warranto the person invoking the***

jurisdiction of the High Court under Article 199 of the Constitution is not required to fulfill the stringent conditions required for brining himself within the meaning of an aggrieved person. Any person can move the High Court to challenge the usurpation or unauthorized occupation of a public office by the incumbent of that office and he is not required to establish his locus standi to invoke the constitutional jurisdiction under Article 199 of the Constitution in a manner as generally required by the said Article."
Emphasis laid.

30. Additionally, in the case of ***Nazar Aslam Vs. Federal Government and six others (2013 PLC (C.S.) 974)***, this Court has held that if there were any violations of rules or statutes in making the appointment of the Chairperson of a statutory body, anybody can point out those illegalities and can approach the Court for the issuance of writ of *quo warranto*.

31. The said pronouncement to the said effect has been reiterated and followed in the cases of ***Al Jahad Trust through Raees-ul-Mujahidin Habib ul Wahab ul Khairi Vs. Federation of Pakistan and others (PLD 1996 SC 324), Malik Asad Ali and others vs. Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs Islamabad and others (PLD 1998 SC 161) and Captain retired Muhammad Naseem Ejazi Vs. Province of Punjab (2000 SCMR 1720).***

32. It thus could be observed that the Hon'ble Supreme Court has consistently held that a writ of *quo warranto* can be instituted by any person though he may not come within the meaning of the word of *"an aggrieved person"*. In this view of the matter, the objection as regards the petitioner being not an "aggrieved person" is spurned.

WRIT OF QUO WARRANTO:-

33. As discussed earlier, through the petition in hand, the petitioner has sought the issuance of a writ of *quo warranto* challenging the appointments of respondents No.1 to 3. It ought to

be borne in mind that it is not mandatory for the issuance of a writ of *quo warranto* that any of the fundamental and/or legal rights of a person seeking such a writ are infringed. A person is at liberty to challenge the validity of an appointment of an individual to a public office, but nonetheless, the Court must satisfy itself as to the filing of a petition of *quo warranto* that the same has been filed with *bona-fide* intention. It is well settled preposition of law that the High Court is vested with discretionary powers under Article 199 of the Constitution to grant discretionary relief to a person by issuing directions, writs and orders.

34. This Court in the case of ***Ayaz Ahmed Khan Vs. Federation of Pakistan and others (2021 PLC (C.S.) 1394 Islamabad)*** while deliberating upon the issue of *quo warrant* has held as follows:-

> *"**A writ of quo warranto is not to be issued as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The foremost obligation of the Court while hearing a petition seeking the issuance of a writ of quo warranto is to enquire into the conduct and motive of the relator and may, in its discretion, decline to issue a writ where it would be vexatious to do so.** Reference in this regard may be made to the judgments in the cases of Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899), Muhammad ShahidAkram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Mirza Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526)"*
>
> *6. For instituting a writ of quo warranto, it is not necessary that any fundamental or other legal right of the petitioner is infringed. Any person is free to challenge the validity of an appointment to a public office. However, the Court must be satisfied that the petition is bona fide and not motivated by any malice against the person whose appointment is under challenge. A 4 W.P. No.2490/2021 writ of quo warranto should be refused where it is an outcome of malice or ill-will. The Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object."*

35. Similarly, in the case of ***Dr. Y. S. Rajasehara Reddy and others Vs. Sri Nara Chandrababu Naidu and others (AIR 2000 A.P. 142),*** the Court has summarized the scope for the issuance of writ of *quo warranto.*

CONDUCT OF THE PETITIONER.

36. The conduct of a person seeking a relief in the constitutional jurisdiction of the High Court is of paramount importance for the exercise of such powers. The exercise of writ jurisdiction by a High Court has to be founded on sound discretion and on consideration of the recognized judicial principles governing exercise of such discretion. The High Court cannot refuse to take into consideration a petitioner's conduct which disentitles him / her from such relief. The High Court in exercise of the powers conferred by Article 199 of the Constitution can grant relief only to a person whose conduct is such that does not disentitle him / her to obtain such a relief. It is well settled that a writ of *quo warranto* is not to be issued as a matter of course rather it is the Court's discretion whether to refuse or grant it keeping in view the facts and circumstances of the case. The exercise of writ jurisdiction of a High Court has to be based on sound discretion and on consideration of the recognized judicial jurisprudence governing the exercise of such discretion. The High Court cannot refuse to take a petitioner's conduct into account in the writ of *quo warranto* which disentitles him / her from such relief.

37. The Court must, while hearing a petition seeking the issuance of a writ of *quo warranto*, enquire into the conduct and motive of the relator and when the Court is not satisfied as to the conduct of the petitioner/relator, it may, in its discretion, refuse to issue a writ where it would be vexatious to do so. Reliance may be placed on the law laid down in the case of ***Tariq Mehmood A. Khan Vs. Sindh***

Bar Council (2011 YLR 2899), wherein it was inter alia held as follows:-

> *"---**the relief of quo warranto, which is purely a discretionary relief as quo warranto is not issued as a matter of course and the Court can and will enquire into the conduct and motive of the relator**. So also there is no specific rule for the exercise of discretion by the Court in granting or refusing an information in the nature of quo warranto."*
> **Emphasis laid.**

38. In the case of ***Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335)***, it was inter alia held as follows:-

> *"---But at the same time **grant of relief in quo-warranto is based on principles of equity and thus the conduct and motive of the petitioner can be looked into by the High Court while entertaining the writ of quo-warranto**.",*

39. It is an admitted position that the recruitment process pursuant to the advertisement dated 04.10.2006 culminated in the issuance of office orders dated 21.07.2007 and 14.07.2007 appointing respondents No.1, 2 and 3, respectively. Had the petitioner been aggrieved by the appointments of the said respondents, he could have challenged the same at the relevant time. Apparently, the petitioner appears to be a surrogate of anonymous sources since it is not only until 20.02.2013 (i.e. the date of the institution of the writ petition) that the petitioner came to know about the illegal appointments of respondents No.1 to 3 on 14th and 21th of July 2007 in the Authority. The petitioner has not come up with an explanation as to why he did not challenge respondents No.1 to 3's appointment in the year 2007, to say the least. He challenged the appointments of the said respondents at a belated stage and thus, his conduct so to speak appears to be doubtful. This conduct of the petitioner clearly manifests the

motivation and *mala fide* to file the petition challenging the appointments of respondent No.1 to 3.

40. In the case of ***Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary M/o Law, Islamabad and others (PLD 2013 SC 413),*** the Hon'ble Supreme Court has *inter alia* held as follows:-

> *"Citizen who invoked the jurisdiction of the Supreme Court was bound to satisfy the Court that he had come before the Court with bona fide intentions and therefore, he had locus standi to seek enforcement of the Fundamental Rights in question---For a person to invoke the jurisdiction of Supreme Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he was acting bona fide---**Court had to decide, on the given facts, whether petitioner was acting bona fide or not."***
>
> *"16. It is abundantly clear that for a person to activise the jurisdiction of this Court as a public interest litigant, **for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he is acting bona fide**. However, it would be for this Court to decide, on the given facts whether he is acting bona fide or not and whether the petition is suffering from laches or not."*
> **Emphasis added.**

41. Law to the said effect has also been laid down in the cases of ***"Dr. Shazia Khawaja vs. Chairman and Dean of Sheikh Zayed Post Graduate Medical Institute and Hospital, Lahore and 7 others (2012 PLC (C.S.) 1057), Tariq Mehmood A. Khan and 3 others Vs. Sindh Bar Council through Secretary and others (2011 YLR 2899), "Allauddin Abbasey Vs. Province of Sindh through Chief Secretary, New Sindh Secretariat, Karachi and 3 others" (2010 PLC (CS) 1415) , Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526).***

42. Similarly, in the case of ***Muhammad Arif Vs. Uzma Afzal(2011 SCMR 374),*** it has been held as under:-

> *"5. There is no cavil to the proposition that the* ***"conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction****. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on maxim "he who seeks equity must do equity". Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands."*

43. The Hon'ble Supreme Court in the case of ***Dr. Azim-ur-Rehman Khan MeoVs. Government of Sindh (2004 SCMR 1299),*** *has held as follows:-*

> *"It is well-settled by now that under Article 199 all the reliefs obtainable under it are purely discretionary and on the principles governing writs of quo warranto the relief under Art. 199 (2)(ii) is particularly so.* ***Quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the relator.*** *No precise rule can be laid down for the exercise of discretion by the Court in granting or refusing an information in the nature of quo warranto. All the circumstances of the case taken together must govern the discretion of the Court. The discretion has to be exercised in accordance with judicial principles. The writ is not to issue as a matter of course on sheer 5 W.P. No.2490/2021 technicalities on a doctrinaire approach." '*

44. In the case of ***Ashok Kumar Pandy Vs. The State of West Bengal (AIR 2004 SC 280),*** it was inter alia held as under:-

> *"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated*

above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

45. In the case of ***Aziz-ur-Rehman Ch. Vs. M. Nasiruddin and others (PLD 1965 SC 236),*** it was held as follows:-

*"**The Court from which the writ was sought was entitled to enquire into the conduct and motives of the appellant for such a writ and if the information was considered to be merely of a vexatious nature the Court was entitled to refuse to exercise its discretion in favour of the appellants."***

46. Now coming towards the petitioner's case. In paragraph 13 of the present petition, the petitioner asserts as under:-

*"13. That the Petitioner, however, was awarded only **349 marks out of 600 marks** as 100 marks were allocated to each member of the Interview Committee which was consisting of Director (HRD), Director (PMO), DDG (Admin), DFA (Rep of FA/Member), Member (Engineering) and Member (Admin) which were apparently disproportionate to marks obtained by the Petitioner in Written Test i.e. 84.29% due to the reasons best known to the Interview Committee, however, **it is the presumption of the Petitioner** that all this happened only to accommodate blue-eyed and favourite candidates of the Interview Committee or the top management of the CDA due to different political and administrative reasons otherwise it was impossible to even think that why a candidate who had secured the highest marks in Written Test could not secure even **reasonable marks**. All this was due to mala fide of the Interview Committee to accommodate blue-eyed and favourite candidates who otherwise secured less marks than the Petitioner in Written Test."*

47. In the said paragraph, the petitioner has leveled bald allegation against the D.R.C/Interview Committee as well as against the top management of the Authority by asserting that **it is his**

presumption that the Interview Committee did not give due weightage to the marks obtained by him in the written examination, and that the said Committee in order to accommodate the pre-selected/blue-eyed candidates, awarded lesser marks to him in the interview. It is a well settled principle of law that a person seeking the issuance of a writ of *quo warranto* is bound to lay complete information as regards the disqualification of the alleged usurper/appointee, but in the aforementioned paragraph, the petitioner simply asserts his presumption meaning thereby he had no authentic information as to the influence being exhorted by the management of the Authority and/or the Interview Committee. It is the mandate of the law that a writ of *quo warranto* cannot be issued on mere presumptions and conjectures as regards the alleged illegal appointments. In order to remove an individual from holding a public office, strong and confidence inspiring reasons are to be shown. Mere presumptions, surmises and conjectures cannot be allowed to prevail in the matter of writ of *quo warranto*.

48. Furthermore, in paragraph-10 of his petition, the petitioner asserts as follows:-

> *"that the Respondent No.4 (which is the Authority in this case) issued a call Letter to the Petitioner for appearing in Written Test on 26.03.2007 at 2.00.* ***A Similar Call Letter issued to a candidate for Written Test is placed at Annex-B"***

49. In the same way, the petitioner in paragraph 10 of his petition asserts as follows:-

> *"That the Petitioner was called for appearing in the Interview in the office of Member (Administration), Executive Block, CDA Secretariat, G-7/4, Islamabad.* ***A specimen of a Call Letter for Interview is placed at Annex-D."***

50. Annexures **B** and **D** are the letters which had been addressed/issued to one Syed Noor ud Din Shah and not to the

petitioner. There is nothing on the record which would show that call letters regarding written test as well as interview were issued to the petitioner. However, the list of candidates, who appeared in the written test as well as in the interview, makes mention the petitioner's name.

51. Furthermore, under prayer clause (e), the petitioner prays as under:-

> *"(e). That the Respondent No.4 be directed* ***to prepare or reformulate the result for the post of Assistant Director (civil) only in the light of Written Test and appoint all such persons who had secured highest marks on merit basis for their respective Merit/Provincial/Regional quotas on the basis of positions secured or assigned to them in the said result of the Written Test*** *to exclude element of discretion as it is the requirement of law, rules, fair-play, transparency and good governance as the Respondent No.4 had already done all that as he was not permitted by law to do so."*

52. Additionally, the petition in hand appears to be in the nature of mandamus under the garb of a writ of *quo warranto* in order to hoodwink the law of limitation. Perusal of the said prayer clause makes it abundantly clear that in fact the petitioner clandestinely seeks his induction in the service of the Authority since he seeks for a direction to be issued to the Authority to re-prepare the result for the post of Assistant Director (Civil) (BPS-17) only in light of the written test and appoint **such persons** who had obtained highest marks in the written test. Here an expression has been projected by the petitioner that it is **HE/the petitioner**, who had secured the highest marks in the written test as such it is his right to be appointed against the post in question regardless of the lesser marks obtained by him in the interview.

53. It is within the domain of the executive/appointing authority to accord marks to a candidate in the interview based on the satisfaction of the Interviewer. It is not mandatory that the marks

obtained in the interview must be proportionate to the ones obtained in the written test. The Court cannot direct the Interview Committee and/or the Interview Board to accord marks to a candidate according to his whims and wishes. As discussed above, it is the prerogative of the Interviewers/Interview Committee to give marks to a candidate according to their wisdom. It would not be out of contest to mention that the Constitution was based on the principles of trichotomy of powers where the Legislature was given the powers of law making, the executive to enforce the same, and the judiciary to construe the law properly. It is my view that the Court of Constitutional causes cannot assume to itself the role of the policy maker or the law maker. All that the Court is expected` and required to do is that it ought to interpret the law and ensure its strict implementation/compliance.

COURT CANNOT FUNCTION AS A SELECTION/APPOINTING AUTHORITY:-

54. As discussed above, this Court in exercise of its Constitutional jurisdiction cannot ascribe to itself the role of the Selection/Appointing Authority in service matters and the responsibility of deciding the suitability of an appointment, posting or transfer is the exclusive domain of the Executive Branches of the State. It is also well settled that the Court of Constitutional Causes should ordinarily refrain itself from interfering in the policy making domain of the Executive. Reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in case law of ***Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others (2008 SCMR 960),*** wherein it was held as under:-

> *"Needless to observe that in exercise of constitutional jurisdiction, the* ***High Court was not expected to perform the functions of a Selection Authority in service matters so as to substitute its opinion for that of a competent authority****."*
> ***Emphasis added.***

55. A similar view was taken in the case of ***Ghulam Rasool Vs. Government of Pakistan through Secretary, Establishment Division, Islamabad (PLD 2015 SC 6),*** whereby it was held that ***"it is also well settled that the Court should ordinarily refrain from interfering in policy making domain of the executive".***

Emphasis added.

56. ***Muhammad Ashraf Sangri vs. Federation of Pakistan and others (2014 SCMR 157),*** it was held as follows:

> *"---Candidate passed written test of CSS examination but failed in viva voce/interview---Plea raised by candidate was that Interview Board did not assess him in accordance with procedure at interview---Validity---**Interview was subjective test and it was not possible for a court of law to substitute its own opinion for that of Interview Board, in order to give relief to the candidate**---**What had transpired at interview and what persuaded one member of the Board to award him 50 marks was something which a court of law was not equipped to probe**---**High Court could not substitute its own opinion with that of Interview Board**---If any mala fide or bias or for that matter error of judgment were floating on the surface of record, High Court would have intervened, as courts of law were more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post, which was subjective matter and could at the best be assessed by functionaries who were entrusted with such responsibility---Supreme Court declined to interfere with the result of candidate declared by Public Service Commission---Petition was dismissed"*

57. In the case of ***Zafar Javaid and 6 others Vs. Executive District Officer (Revenue), Okara and 2 others (2015 PLC (CS) 442),*** it was held as follows:-

> "---**High Court could not substitute its own opinion with that of Interview Board**---If any mala fide or bias or for that matter error of judgment were floating on the surface of record, High Court would have intervened, as courts of law were more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post, **which was subjective matter and could at the best be assessed by functionaries who were entrusted with such responsibility**"

58. In the case of ***Altaf Hussain Vs. FBSC through Chairman and another (2022 PLC (CS) 92),*** it was held as follows:-

> *"The matter relates to the year 2015 and the posts have already been filled, wherein appellant could not qualify, thus, the matter has become a past and closed transaction.* ***Even otherwise, interview was a subjective test and it is not possible for a Court of law to substitute its own opinion for that of Viva Voce Board/Interview Committee, rather it was within the domain of its Members that what persuaded them to award certain marks to a particular candidate and the Court of law is not expected to substitute their findings with its own findings****.*

59. Law to the said effect has also been discussed in the cases of ***Arshad Ali Tabassum Vs. The Registrar, Lahore High Court, Lahore (2015 SCMR 112), Miss Gulnaz Baloch Vs. Registrar, Balochistan High Court, Quetta and others [2015 PLC (C.S.) 393], Muhammad Ashraf Sangri Vs. Federation of Pakistan and others (2014 SCMR 157) and Dr. Mir Alam Jan Muhammad Shahzad and others (2008 SCMR 960).***

60. As discussed earlier, it is an admitted position that although the petitioner had cleared the written examination/text, but he had failed in the interview/viva voce which was a pre-condition before he could be appointed as an Assistant Director (Civil) (BPS-17) in the Authority. It is matter of fact that the written examination is ordinarily designed in order to gauge a candidate's familiarity and specialty with the field of his subjects which he has chosen to offer for the purpose plus his power of expression etc. Hence it is held that a written test does not gauge the personality of a candidate or his communication skills or his leadership or decision making abilities which are left to be examined only by the Interviewers/Interview Committee at the time of the interview. Since the matter in hand relates to the year 2007 and the posts of Assistant Director (Civil) (BPS-17) in the Authority have already been filled, wherein the petitioner could not qualify in the interview process, thus, the

matter has become a past and closed transaction. Even otherwise, this Court is of the considered opinion that the interview was a subjective test and it is not possible for a Court of law to substitute its own opinion/findings for that of the Interview Committee/ Viva Voce Board rather it was within the domain of the Interview Committee's Members that what persuaded them to award certain marks to a particular candidate and the Court of law is not expected to substitute their findings with its own findings.

61. For what has been discussed above, I do not find any merits in this case, which is accordingly **dismissed** with no order as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 05.08.2022.

JUDGE

ISLAMABAD │05.08.2022
APPROVED FOR REPORTING.

//Kamran//