JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A. No. 227 of 2022

Rabeeya Pervez

Versus

Usman Zafar *and others*

I.C.A. No. 228 of 2022

Usman Zafar

Versus

Federation of Pakistan *and others*

I.C.A. No. 236 of 2022

Pakistan Telecommunication Authority

Versus

Usman Zafar *and others*

Appellant by : **Mr. Afnan Karim Kundi, Advocate.**
(in I.C.A. No. 227 of 2022 and for the Respondent No.5 in I.C.A. No. 228/2022 and for the Respondent No. 4 in I.C.A. No.236/2022)

Syed Khawar Ameer Bukhari and Mr. Muhammad Asif Javed, Advocates.
(in I.C.A. No. 228 of 2022 and for the Respondent No.1 in I.C.A. No. 227 and 236 of 2022)

M/s Hafiz S.A. Rehman, Hafiz Hifz Ur Rehman, Muhammad Anwar Mughal, and Seikh Rizwan Nawaz, Advocates.
(in I.C.A. No. 236 of 2022 and for the Respondent No.3 in I.C.A. No. 227 and 228 of 2022)

Respondents by : **Ms. Kanz-us-Saadat, Deputy Attorney General.**

Date of Hearing : **13-5-2025.**

SAMAN RAFAT IMTIAZ, J.-

1. This judgment shall decide the captioned ICA No. 227/2022 filed by the Appellant [Rabeeya Pervez]; ICA No. 228/2022 filed by the Respondent No.1 [Usman Zafar]; and ICA No. 236/2022 filed by the Respondent No.3 [Pakistan Telecommunication Authority] under Section 3 of the Law Reforms Ordinance, 1972 against the Judgment dated 16-05-2022 ("**Impugned Judgment**") passed by the learned Judge-in-Chambers in Writ Petition No.3426/2018, which was filed in the nature of *quo warranto,* by the Respondent No.1 to challenge the appointment of the Appellant as Assistant Director, Human Resources (HR) with the Respondent No. 3 on contract basis vide Memorandum dated 9-8-2005 and her subsequent promotion as Deputy Director on 10-02-2009.

2. Briefly stated, the facts of the matter on the record, are that the Appellant applied for the post of Assistant Director (HR) pursuant to the advertisement published in the *"Daily Dawn"* on 1-5-2005 according to which the requisite qualification in order to be eligible for the said post was MBA in Human Resources Management (HRM) from a recognized University. The Respondent No.1 alleged that the Appellant did not have the requisite qualification at the time of submission of her application for recruitment as Assistant Director (HR) and that her appointment was not only made in contravention of the conditions in the advertisement but by misrepresentation and based on false credentials. The Writ Petition No.3426/2018 was dismissed by the learned Judge-in-Chambers vide the Impugned Judgment which holds that although all the requirements with regard to the issuance of writ of *quo warranto* stand fully satisfied however the Court was not persuaded to grant the Respondent No.1 the relief sought by him due to his conduct which does not reflect that he was challenging the appointment of the Appellant as a bona fide litigant.

3. ICA No. 227/2022 has been filed by the Appellant for setting aside observations made in paragraphs 12, 16, 17, 18, 21, 22, 23, 26, 27, 37, 45, 46, 61, 65, and 80 in the Impugned Judgment whereas the ICA No. 228/2022 has been filed by the Respondent No.1 for setting aside the Impugned Judgment while ICA No. 236/2022 has been filed by the Respondent No.3 assailing the Impugned Judgment to the extent of paragraph 16, whereby the learned Judge-in-Chambers holds that the Appellant being an employee of PTA working on a regular post of Director, Coordination, PTA is holding a public office. Since ICA No. 227/2022 is the leading case, the Respondents shall, for the sake of convenience, be referred to as such throughout the instant judgment notwithstanding that they are appellants in the connected ICAs instituted by them which too are being decided by this judgment.

4. The learned counsel for the Respondent No.1 drew the Court's attention to the advertisement for the post of Assistant Director (HR) to highlight that MBA in Human Resources Management (HRM) was required for the said post. He then referred to the Application of the Appellant whereby she has stated that she obtained her MBA in the year 2005. He submitted that this was a misstatement in view of her degree which was issued in the year 2007. He also drew the Court's attention to the final transcript of the Appellant whereby her internship and thesis was completed in the fall of 2006. Thus he argued that the Appellant did not have the requisite qualification at the time of her application which was based on misrepresentation. He submitted that the learned Judge-in-Chambers erred in concluding that the Respondent No. 1 did not establish his bona fide by not appreciating that he is a whistleblower. The learned counsel relied upon *Dr. Shamim Tariq Vs. International Islamic University, Islamabad*, 2020 PLC (CS) 499; and *Muhammad Muneer Malik Vs. Allama Iqbal Open University*, 2016 PLC (CS) 896.

5. The learned counsel for the Appellant submitted that the Appellant completed her course work in the Fall Semester of 2004 whereas the only requirement remaining towards the completion of her degree was the

internship and submission of thesis, which was completed in the Fall Semester of 2006. Therefore, for all practical purposes, the Appellant was under the impression that her degree was complete in the year 2005. He highlighted that the Appellant's MBA degree dated 3-08-2007 confirms that the Appellant met all the requirements during the session of 2002-2004. He submitted that in any event an inquiry was held and the irregularity, if any, was condoned. He emphasized that the Respondent No.1 could not establish his bona fide as he belongs to *Mandi Bahauddin* yet he had access to the internal documents of the Respondent No. 3 in Islamabad without plausible explanation. He relies upon *Salahuddin Vs. Frontier Sugar Mills & Distillery Ltd.*, PLD 1975 SC 244 and an unreported judgment of this Court titled *Sajjad Ahmad Vs. Federation of Pakistan*, Writ Petition No. 1476 of 2022.

6. The learned counsel for the PTA submitted that the learned Judge-in-Chambers has erred in concluding that the post in question is a 'public post'. He relied on various provisions of the Constitution particularly Article 199(1)(b)(ii) to submit that except certain positions the post of an independent entity such as PTA does not qualify as a 'public post'. Therefore he submitted that the writ filed by the Respondent No. 1 was not maintainable.

7. We have heard the arguments and perused the available record.

8. The writ petition was filed by the Respondent No. 1 against the Appellant; Respondent No.2 [Cabinet Division, through its Secretary]; Respondent No. 3 [Pakistan Telecommunication Authority]; Respondent No. 4 [Director General (HR), PTA]; Respondent No. 5 [Bahria University, Islamabad]; and Respondent No. 6 [Federation of Pakistan through Secretary Establishment Division] under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Pursuant to Article 199(1)(b)(ii) of the Constitution, the High Court may, if satisfied that no other adequate remedy is provided by law, on application of any aggrieved party, make an order requiring a person

within its territorial jurisdiction holding or purporting to hold a public office to show under what authority of law he/she claims to hold that office. The learned Judge-in-Chamber's vide the Impugned Judgment concluded that the requirements regarding issuance of writ of *quo warranto* stood satisfied (but dismissed the writ petition on the ground that the Respondent No. 1 failed to persuade that he is entitled to the relief sought by him by way of his conduct which does not reflect that he was challenging the appointment of the Appellant as Assistant Director with the Respondent No. 3 as a bona fide litigant). For the purpose of reaching the conclusion that the requirements regarding issuance of writ of *quo warranto* stood satisfied the learned Judge-in-Chambers identified two main pre-requisites of a writ of *quo warranto*: (i) the appointment under challenge must be to a public office; and (ii) the said appointment should have been made without authority of law or in other words contrary to the relevant statutory provisions[1].

10. With regard to the first pre-requisite the Impugned Judgment holds that it is undisputed that the Respondent No. 3 is a public office since it is a creation of statute i.e. Pakistan Telecommunication (Re-Organization) Act, 1996 ("**PTA Act**") and that as it has been established by the Federal Government therefore all functions performed by the Respondent No.3 in connection with the affairs of the Federation are in the nature of public functions/services. It is on this basis that it has been concluded that the Appellant being an employee of Respondent No.3 working on a regular post is in fact holding an office falling within the ambit of the term 'public office'.

11. However, it is important to appreciate that the mere fact that an entity is established under a statute is not by itself sufficient to treat it as a 'person' performing functions in connection with the affairs of the Federation for the purpose of judicial review under Article 199 of the Constitution[2]. At this juncture, we consider it is necessary to recall the test

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[1] *Dr. Farzana Bari Vs. Ministry of Law, Justice and Human Rights*, PLD 2018 Islamabad 127
[2] *Salman Shahid Vs. University of Management and Technology*, 2022 CLC 1328 and *Anoosha Shaigan Vs. Lahore University of Management Sciences*, PLD 2007 Lahore 568

that has been settled by the Supreme Court in order to determine whether a person including a body politic or a body corporate is performing functions in connection with the affairs of the Federation.

Test to determine whether a person including a body politic or body corporate is performing functions in connection with the affairs of the Federation?

12. *Salahuddin Vs. Frontier Sugar Mills & Distillery Ltd.*, PLD 1975 SC 244 is the leading case in which the Supreme Court reflected on what is meant by the phrase *'performing functions in connection with the affairs of the Federation'* as follows:

> *"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province." **It is clear that the reference is to governmental or state functions, involving, in one form or another, an element of exercise of public power. The functions may be the** traditional police functions of the State, involving the maintenance of law and order and other **regulatory activities**; or they may comprise functions pertaining to economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. **Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State,** i.e., by the Federal Government or a Provincial Government. However, **in recent years, there has been manifest a growing tendency on the part of Government to create statutory corporations for undertaking many such functions**, particularly in the industrial and commercial spheres, in the belief that free from the inhibiting effect of red-tapism, these semi-autonomous bodies may prove more effective, flexible and also profitable. **Inevitably, Government retains effective control over their functioning by appointing the heads and other senior officers of these corporations, by regulating their composition and procedures by appropriate statutes, and by finding funds for financing their activities.**"* [Emphasis added].

13. The Supreme Court in *Salahuddin (Supra)* laid down the following primary test to determine whether a person including a body politic or body corporate may be regarded as a person performing functions in connection with the affairs of the Federation:

(i) whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power;

(ii) whether the control of the organization vests in a substantial manner in the hands of the Government; and

(iii) whether the bulk of the funds is provided by the State.

14. The Supreme Court in *Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman*, PLD 2010 SC 676 examined whether PIA is performing functions in connection with the affairs of the Federation in light of the test laid down in *Salahuddin (Supra)* as follows:

> *"17. Adverting to the case in hand, keeping in view the dictum laid down in the above referred cases, now it would be examined whether the appellant-corporation is performing functions in connection with the affairs of the Federation. In the preceding paragraphs, the purpose and functions for the establishment of the appellant-Corporation has been quoted with reference to sections 3 and 4 of the Act, 1956, which provides that* ***appellant-Corporation shall provide and further develop safe, efficient, adequate, economical and properly coordinated air-transport service within and outside the country.*** *At this juncture, reference to Federal Legislative List Part-I of Fourth Schedule (item No.24), would not be out of context, whereby the carriage of persons and goods by sea or air has been made the legislative subject of the Parliament. Similarly, under Schedule - II, item 5(20), Rules of Business, 1973, the appellant-Corporation has been included within the domain of Defence Division, Government of Pakistan. It is also apparent from the Act, 1956 that* ***nine Directors of the appellant-Corporation, out of eleven, including the Chairman are to be appointed by the Federal Government.*** *Although, the Government has no direct control in the appellant-Corporation as its affairs are to be managed by the Board of Directors under section 5 of the Act, 1956, but the fact remains that* ***the Federal Government has power to issue directives to the Corporation on matters of policy if it considers necessary and such directives are binding on the Corporation. More so, the power to appoint Chairman and Directors remains with the Government and in addition to it the Government also holds the controlling shares of more than 50%. Further, the appellant-Corporation is providing carriage of persons and goods, which is one of the functions of the State, as mentioned in the Federal Legislative List and its affairs are indirectly controlled by the Defence Division of the Federal Government, therefore, the above test stands fully satisfied and we are persuaded to hold that the appellant-Corporation is performing its functions in connection with the affairs of the Federation.*** *"* [Emphasis added].

15. With regard to the three-pronged test, the Sindh High Court in *Muhammad Shahnawaz Vs. Karachi Electric Supply Company,* 2011 PLC (C.S.) 1579 held that the three conditions comprising the primary test as per *Tanweer-ur-Rehman (Supra)* appear to be cumulative or conjunctive i.e. it would seem that all three must exist before the entity concerned can be regarded as performing functions in connection with the affairs of the State. The Sindh High Court held that despite the fact that the provision of electricity was once the exclusive domain of the State, Karachi Electric Supply Company ("**KESC**") does not come up to the test laid down by the Supreme Court in the post-privatization scenario given that the control of

the organization does not vest in the Government but lies with private management and particularly that though KESC enjoys a huge State subsidy nothing material in this regard was placed on the record to show that the bulk of the funds for KESC are still being provided by the State.

16. Similarly the Lahore High Court in *Independent Media Corporation (Pvt.) Ltd. Vs. Federation of Pakistan*, PLD 2022 Lahore 288 while deciding whether Pakistan Television Corporation Limited, a public limited company, can be regarded as a person performing functions in connection with the affairs of Federation or a Province applied both the functionality test as well as the financial test as follows:

> *"4. Before I proceed further, two points need to be mentioned as some reference was made to them at the Bar. First, since both of these petitions seek orders in the nature of writ of mandamus and certiorari against the PTVC, a public limited company,* ***it must be settled at the outset whether it should be regarded as a person performing functions in connection with the affairs of the Federation or a Province.*** *The diagnostic tool for such like issue is functional realism and not facial cosmetics. It is a matter of common experience that the Government ordinarily acts through the instrumentality or agency of natural persons or it employs the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service. But as the tasks of the Government multiplied with the advent of the Welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialized and highly technical in character and thus, it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances the corporation came into being as the third arm of the Government and over the years it has been increasingly utilized by the Government for setting up and running public enterprises and carry out other public functions.* ***It is apposite to state that it is immaterial for the issue, under discussion, whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence.*** *There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not. Notwithstanding the above, few things are now clear, that is,* ***firstly, if the functions of the corporation are of public importance*** *and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government,* ***secondly, if the entire share capital of the corporation is held by Government,*** *it would go a long way towards indicating that the corporation is an instrumentality or agency of Government,* ***thirdly, where the financial assistance of the Government is so much as to meet almost entire expenditure `of the corporation,*** *it would afford some indication of the corporation being impregnated with*

> *governmental character,* ***and fourthly, existence of deep and pervasive Government control may afford an indication that the corporation is a Government agency or instrumentality[1].*** *It is in the light of this discussion that we must now proceed to examine whether the PTVC is an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum and Articles of Association of the PTVC. The Board of Directors of the PTVC is appointed by the Government of Pakistan. The PTVC is a public limited company with an authorized capital of Rs.3.000 billion and the Government holds entire paid up share capital of Rs.1529.300 million. The objective of the PTVC is to establish a network of television stations in Pakistan by erecting, constructing, maintaining and improving television stations at places approved by the Government of Pakistan, and to carry out instructions of Government of Pakistan with regard to general pattern of policies of programmes, announcements and news etc. It will thus, be seen that the Government of Pakistan has full control of the working of the PTVC and it would not be incorrect to say that in the affairs of the PTVC, the voice is of the Government of Pakistan and the hands are also of the Government of Pakistan. I must, therefore, hold that the PTVC is an instrumentality or agency of the Government and does fulfill the above-stated diagnostic test to qualify as a person performing functions of the Federation."* [Emphasis added].

17. This Court in *Miss. Summara Nayaz Vs. FOP through Secretary Establishment Division,* 2015 PLC (CS) 671 also held that the test relevant for determination of status of a person performing functions in connection with the affairs of Federation, etc. is the administrative and the financial control of the Federation over the entity in question. The Supreme Court in *Abdul Wahab Vs. HBL,* 2013 SCMR 1383 and then again in *Pakistan Olympic Association Vs. Nadeem Aftab Sindhu,* 2019 SCMR 221 held that for purposes of resorting to the function test two important factors are most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in controlling the affairs thereof.

18. Having said that the Supreme Court in *Aitchison College, Lahore Vs. Muhammad Zubair,* PLD 2002 SC 326 held that the Board of Directors of Aitchison College, Lahore squarely falls within the definition of a 'person' under Article 199 (5) of the Constitution even though the College does not get any financial assistance from the Government. The Supreme Court took into view the direct role of the Board in the affairs of the educational institution of which the Chairman is the Governor, Punjab and also includes Ex-Officio Members. It was specifically observed that Aitcheson College has been brought under the administrative control of the

education department of Punjab and as such concluded that such body would be working for the affairs of the Province. Moreover, the Board of Governors framed statutes to acquire the service of any employee of the Provincial Government on deputation to look after the affairs of the College. In such background the Supreme Court held that merely on account of not getting financial assistance the Aitchison College cannot be considered to be an educational institution not functioning under the control of the Provincial Education Department. The three member Bench of the Supreme Court in *Aitcheson College (Supra)* expressly referred to *Salahuddin (Supra)* pronounced by a Bench comprising an equal number of judges and explained that the test provided in the earlier judgment stands fully satisfied and the Aitcheson College falls within the definition of a 'person' as used in Article 199(5) of the Constitution even if it is presumed for the sake of argument that no financial aid is being provided to the College from the Provincial public exchequer as even then the College remains in the dominating control of the Provincial Government through its Board of Governors headed by the Governor of the Province.

19. With regard to conflicting opinions on a question of law between two Benches of the Supreme Court, the Sindh High Court in *Muhammad Shahnawaz (Supra)* explained that there is no dispute with the proposition of law that the one declared by the Larger Bench would prevail over the one pronounced by the smaller Bench. If a smaller Bench interprets a decision of a Larger Bench of the Supreme Court in a different way which may be opposed to the one taken by the Larger Bench a subsequent co-ordinate Bench of the Supreme Court may refuse to follow the interpretation of the latter on the ground that it proposes to follow the earlier view expressed by a Larger Bench. But if the subsequent decision of the smaller Bench explaining the Larger Bench is placed before a High Court the latter is bound to follow the subsequent one by the smaller Bench which interprets the decision of the Larger Bench because that is the interpretation of the Larger Bench by a Bench of a Supreme Court and the High Court cannot make a different interpretation than the one made by the

subsequent decision of the Supreme Court which is binding upon the High Court.

20. In any event, a Larger Bench of the Supreme Court in *Pakistan Defence Officers' Housing Authority Vs. Lt. Col. Syed Jawaid Ahmed*, 2013 SCMR 1707 while grappling with the question of whether a company or authority is an instrumentality of the State explained that the relevant factors and tests cannot be particularized exhaustively nor can a single factor yield a satisfactory answer to the question rather it has to be seen whether the aggregate of all factors compels a finding of State responsibility. The relevant passage is reproduced herein below:

> *"26. Whether a company or authority is an instrumentality of the State has also been subject of debate in constitutional jurisprudence of India. The Indian Supreme Court in Ramana v. I.A. Authority of India (AIR 1979 SC 1628) adverting to the factors which make a corporation or authority an instrumentality of the State held:--*
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> > ***"It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government.*** *We have referred to some of these factors and they may be summarized as under: Whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to Governmental functions.* ***This particularization relevant factors is, however, not exhaustive*** *and by its very nature it cannot be because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is Government instrumentality or agency.* ***Moreover, even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularized inquiry into the facts and circumstances of each case.*** *'The dispositive question in any State action case', as pointed out by Dougles, J., in Jackson v. Metropolitan Edison Co. (1974) 419 US 345 (supra) is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility. It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or*

> *agency of Government and to dismiss each individually as being insufficient to support a finding to that effect.* ***It is the aggregate or cumulative effect of all the relevant factors that is controlling.****"* [Emphasis added].

21. Applying the said principles to the case at hand we find that the Respondent No. 3 is a 'body corporate' by virtue of Section 3(1) of the PTA Act. The purpose and functions for the establishment of the Respondent No. 3 given in Sections 4, 5, and 6 of the PTA Act, are, in particular, to regulate the establishment, operation and maintenance of telecommunication systems and the provisions of telecommunication services in Pakistan. We may refer to Item No.7 of the Federal Legislative List, Part-I of the 4th Schedule, whereby posts and telegraph including telephones, wireless, broadcasting and other like form of communications has been made the legislative subject of the Parliament. Thus, the function of the Respondent No. 3 is indeed a State function. It is also pertinent to note that all three Members of the Respondent No.3, one of whom is the Chairman, are appointed by the Federal Government. Under Section 3 the Federal Government has the power to issue policy directives to the Respondent No.3 on matters relating to telecommunication policy and the Respondent No.3 must comply with the policy directives. Section 13 of the PTA Act provides that the Respondent No.3 meets its expenses and charges in connections with its functions under the PTA Act including payment of salaries and other remuneration to its employees from the PTA Fund which is financed from *inter alia* fees and other amounts received by Respondent No. 3; grants from the Federal Government and the Provincial Governments including an initial grant of fifty million rupees by the Federal Government; and loans obtained from the Federal Government, etc. Though, there is nothing before us to conclude whether the bulk of funds is provided by the State it is pertinent to note that as per the scheme of law any surplus of receipts over the actual expenditure is to be remitted to the Federal Consolidated Fund and any deficit from the actual expenditure shall be made up by the Federal Government under Section 12(3) of the PTA Act. Thus the aggregate of all relevant factors supports a finding of State responsibility.

22. Indeed the Supreme Court has already held in *Pakistan Telecommunication Company Limited Vs. Muhammad Zahid,* 2010 SCMR 253 that Respondent No.3 essentially falls within the ambit of 'person' as defined in clause (5) of Article 199 of the Constitution as it exercises a rule over the functions of the Pakistan Telecommunication Company Limited relating to telecommunication pursuant to Sections 4 and 5 of the PTA Act which is undisputedly a subject that pertains to one of the important affairs of the Federation while headed by the Chairman who along with its constituting Directors is appointed by the Federal Government under Section 3 *ibid*. The detailed analysis of the Supreme Court is reproduced herein below:

> *"The Authority under this Act has to discharge functions and exercise powers as described in sections 4 and 5 of the Pakistan Telecommunication (Re-Organization) Act, 1996. Moreover,* ***the Authority has also to perform such other functions as the Federal Government may from time to time assign to it by virtue of clause (h) of section 4 of the Act. The Federal Government is also competent to issue policy directives to the Authority*** *if it considers necessary not inconsistent with the provisions of the Act* ***and the Authority shall be under legal duty to comply such directive under section 8 of the Act on the matters relating to Telecommunication policy referred to in subsection (2). The Federal Government is competent to call for reports from time to time on the activities of the Authority and Board, constituted under the Act for the purpose of performing its functions and the Authority has to comply with such directives. The budget statement as well is required to specifically state the estimated receipts and expenditures and the sums which are likely to be required by the Authority from the Federal Government for the relevant financial year, whereas; any surplus of receipts over the actual expenditure in the year is required to be remitted to the Federal Consolidated Fund and any deficit from actual expenditure shall be made up by the Federal Government within the meaning of section 12(2) and (3) of the Act.*** *The bank accounts of Pakistan Telecommunication Authority Fund as provided by subsection (2) of section 13 to be maintained with the National Bank of Pakistan which to be maintained in such form and in such manner as the Federal Government may determine in consultation with the Auditor-General of Pakistan and shall be audited at the close on each financial year by the Auditor-General of Pakistan under sections 14 and 15 of the Act.*
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> *...*
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> *...****Similarly the Pakistan Telecommunication Authority invested with an effective rule over the functions of the PTCL and exercisable by such Authority as envisaged by sections 4 and 5 of the Pakistan Telecommunication (Re-Organization) Act, 1996 headed by its Chairman with its constituting directors and all to be appointed by the Federal Government under section 3 of the Act relating to the Telecommunication undisputedly is the subject which pertain to one of the important affairs of the Federation dischargeable now through the PTCL hence; such entity***

involved in the same exercise of the sovereign powers, essentially falls within the context of `person' as defined in clause (5) of the Article 199 of the Constitution, *therefore, for the above reasons the grievance of the private respondents was amenable to the writ jurisdiction of the High Court."* [Emphasis added].

Conditions for the issuance of a writ of quo warranto

23. We shall now see what the necessary conditions for the issuance of a writ of *quo warranto* are. To this end we rely upon the following exposition from *Jawad Ahmad Mir Vs. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi,* 2023 SCMR 162:

"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. The concept and aftermath of the writ of quo warranto has been articulated in different jurisdictions with the following approach and frame of mind:-*

Halsbury's Laws of England (Third Edition), Volume 11, page

145:

Quo warranto. An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.

An information in the nature of quo warranto lay only if the ***office was substantive in character, that is, an office independent in title, and if the holder of the office was an independent official, not one discharging the functions of a deputy or servant at the will and pleasure of others.*** *An information in the nature of a quo warranto lay in respect of an office held at pleasure, provided the office was one of a public and substantive character.*

Halsbury's Laws of India, Volume 35, Page 145:

Quo warranto proceeding 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 is that the holder of the office has no title, he would be ousted from that office by judicial order in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and 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 reason of its apathy.

American Jurisprudence (Second Edition), Volume 16, page 578:

Quo warranto is intended to prevent the exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising those powers. It cannot be used to test the legality of official actions of public corporations or officers, though it has been held that it may be used to determine whether a constitutional officer is attempting to usurp power not granted him by the constitution or laws.

Corpus Juris Secundum, Volume LXXIV, page 174-175

The writ of quo warranto is an ancient common law, prerogative writ and remedy. Indeed, it is one of the most ancient and important writs known to the common law. The ancient writ was in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right, or, in the case of nonuser, long neglect, misuser, or abuse of a franchise, a writ commanding defendant to show by what warrant he exercised such franchise, never having had any grant of it, or having forfeited it by neglect or abuse.

Black's Law Dictionary (Tenth Edition), page 1447:

Quo warranto 1. A common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed.

"Quo warranto means 'by what warrant?' - or authority? -

> *and was a proceeding to inquire whether authority existed to justify or authorize certain acts of a public character or interest. Originally the proceeding of quo warranto was a criminal one instituted by the crown, the purpose of which was to find out, in the course of a formal inquiry, whether or not persons or corporations were exercising a privilege or franchise, illegally, or if persons who had no right to do so were occupying some public office. If it were found that the person or corporation was in fact illegally interfering with the prerogative power of the crown, or was in fact doing some other illegal act, it was ousted from the illegal practice or office. Accordingly, it can be seen at once that the proceeding on quo warranto was not one to be used by private parties in the conduct of ordinary litigation." Charles Herman Kinnane, A First Book on Anglo-American Law 662 (2d ed. 1952)."* [Emphasis added].

Whether the Appellant is holding or purporting to hold a public office?

24. Let us examine whether the first condition is met in the instant case i.e. whether the Appellant was occupying a public office. To this end, we seek to understand what a 'public office' is. The term was for the first time defined by Article 242 of the Constitution of 1962 to include any office in the service of Pakistan and membership of an assembly which definition was reproduced in Article 290 of the Interim Constitution of the Islamic Republic of Pakistan, 1972 but was dropped in the Constitution of 1973[3].

25. The consistent view of the Courts has been that in order to make an office a 'public office' it should have been created by a statute or the Constitution itself, 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 it[4].

26. In *Karachi Development Authority Vs. Wali Ahmed Khan,* 1991 SCMR 2434 the Supreme Court relied upon the description of 'public office' as per Ferris in his book "Extraordinary Legal Remedies" to hold that:

> *"**A public office is the right, authority and duty** created and conferred by law **by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him** for the benefit of the public, for the*

[3] *Abdul Haq Kauser Vs. Alim Akhtar Shah*, 1989 CLC 1907
[4] *Jawad Ahmad Mir Vs. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi*, 2023 SCMR 162; *Dr. Bushra Ashiq Siddiqui Vs. Muhammad Aslam*, 1989 MLD 1351, *Masudul Hassan Vs. Khadim Hussain*, PLD 1963 SC 203

> *term and by the tenure prescribed law.* ***It implies a delegation of a portion of the sovereign power.*** *It is a trust conferred by public authority for a public purpose, embracing the ideas of tenure duration, emolument and duties."* [Emphasis added].

27. The expression *'sovereign power'* and *'public power'* were discussed in *Tanweer-ur-Rehman (Supra)* as follows:

> *"13. Now we have to see whether the functions entrusted to the appellant-corporation are indeed functions of the State involving some exercise of sovereign or public power.* ***The expression `sovereign power' has been defined in Black's Law Dictionary 6th Ed. (1990) as "that power in a State, to which none other is superior or equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government".*** *The expression `public power' has not been defined in any legal instrument, however, the word `public' means "the whole body politic, or the aggregate of the citizens of a State, district or municipality" whereas the word `power' means "the right, ability, or faculty of doing something" [Black's Law Dictionary 6th Edn. (1990)]. The above definitions of words `public' and `power' collectively suggest that* ***`public power' means "the right or authority vested in the whole body politic or the aggregate of the citizens of a State, District or Municipality to do something****".."* [Emphasis added].

Whether the office of Assistant Director (HR) and Director (HR) have been created by law?

28. To answer this question, we take guidance from past case law. In *Dr. Farzana Bari Vs. Ministry of Law, Justice and Human Rights,* PLD 2018 Islamabad 127 the office of the Chairperson of the National Commission on the Status of Women was undisputedly held to be a public office since it has been created under the National Commission on the Status of Women Act, 2012.

29. On the other hand, the Sindh High Court in *Dr. Bushra Ashiq Siddiqui Vs. Muhammad Aslam,* 1989 MLD 1351 refused to accord the status of public office to the office of an Associate Professor at the Jinnah Post Graduate-Medical Centre, Karachi ("**JPMC**") by finding that it has not been created by any provision of any enactment nor is the incumbent exercising a sovereign power notwithstanding the contention that it is the duty of the State to provide medical education.

30. The case of *Abdul Haq Kausar (Supra)* is most insightful. The alleged public office in question was that of General Manager (Administration), Karachi Port Trust. The Sindh High Court observed that

the Karachi Port Trust is constituted under the Karachi Port Trust Act, 1886 **("KPT Act")**. The Board constituted in accordance with Section 4 *ibid* is required by Section 21 to prepare and sanction a Schedule of staff and officers and servants required for the purposes of the KPT Act which includes the office of General Manager (Administration). It may be noted that under Section 22 *ibid* the Board with prior sanction of the Federal Government can frame regulations regarding the stipulated service matters including recruitment and terms and conditions of service. By virtue of Section 23 the power of appointment, promotion, suspension, and punishment of officers holding posts in BPS 20 and 21 is to be exercised by the Board subject to the approval of the Federal Government. Similarly, under Section 24 all orders or regulations in respect of officers holding posts in BPS 20 and 21 are to be made by the Board subject to the approval of the Federal Government. The judgment specifically observes that for the appointment of the General Manager (Administration) previous sanction of the Federal government is necessary under Section 24. The post of General Manager (Administration) was found to perform public functions of managing the affairs of the Port of Karachi. It was thus concluded that the post of General Manager (Administration) Karachi Port Trust is a post created by Statute as it is a post included in the Schedule of staff prepared under Section 21 of the Karachi Port Trust Act, 1886 and therefore was held to be a 'public office' within the meaning of Article 199 of the Constitution. It also bears emphasis that the post of General Manager (Administration) Karachi Port Trust is a substantive one which is evidenced from the distinction created vide clause (1) of the proviso to Section 21 where under artisans, porters and labourers and mukaddams of porters and labourers, persons temporarily employed in the Engineering department and any member of the staff engaged for a period not exceeding six months whose pay is not more than the stipulated rate shall not be deemed to be officers or servants within the meaning of Section 21 or 22 clause (1) to (4) both inclusive, or 23.

31. This Court clarified in *Shahid Mehmood Vs. Benazir Income Support Programme (BISP)*, 2024 PLC (CS) 1103 that a writ of *quo*

warranto does not lie in respect of sub-ordinate posts or offices, permanent or regular, which are not created directly by the statute and where such sub-ordinate posts come into existence subsequent to the promulgation of the statute by way of support functions for the public offices created originally by that statute. The Court belabored that a writ of *quo warranto* would lie if the office be a public and substantive one and not merely the function of employment of a deputy or servant held at the will and pleasure of others. The Court came to the conclusion that the designation 'Director' was not created by statute but subsequently by service regulations and were found to be 3rd tier post that exists at the will of others and as such writ of *quo warranto* was held not to be maintainable. Similarly, the post of Technical Assistant with the Controller of Broadcasting was not found to be a public post in *Serajul Islam Vs. Federation of Pakistan*, PLD 1956 Sindh 354.

32. Perusal of the PTA Act shows that the offices created there under are those of Chairman and Members of the Respondent No. 3, which as such are undoubtedly public offices. The post to which the Appellant was appointed and subsequently promoted is not created by the PTA Act.

33. Section 10(1) provides that the Respondent No. 3 may from time to time employ such persons for the performance of its functions as it may consider necessary. Section 10(2) empowers the Respondent No. 3 to make regulations for appointment, promotion, termination and other terms and conditions of employment for its employees without reserving any controlling power with the Government in the matter of framing of rules or regulations touching the terms and conditions of the employees. The PTA Employees Service Regulations, 2004 **("PTA Service Regulations")** were made by the Respondent No. 3 in exercise of the powers conferred thereupon under Section 10 of the PTA Act free from any statutory fetters and as such are no more than rules for guidance of the Respondent No. 3[5]. The post of Assistant Director (Administration) and the post of Deputy Director (Administration) were created under such non-statutory PTA

[5] *Zeaul Huq Vs. The East Pakistan Co-operative Insurance Society Ltd.*, PLD 1969 Dacca 105

Service Regulations and appear to be 3rd and 4th tier posts thereunder and as such cannot be regarded as having been created by law.

Sovereign function and public duty

34. Nor has it been shown that the Appellant as Assistant Director (HR) or Deputy Director (HR) was or is vested with some portion of the sovereign function of the government to be exercised by her for the benefit of the public. The work undertaken by Human Resource Management officers does not have any nexus with the sovereign functions of the State nor can it be considered a public duty. Under Section 9 of the PTA Act, the Respondent No. 3 may by general or special order delegate any of its powers, functions or duties as it may think fit from time to time to *inter alia* any of its officers with the exception of the specific powers, functions or duties as stipulated in the proviso but there is no material before this Court to conclude that any sovereign function, power or duty was delegated in exercise of the power conferred upon the Respondent No. 3 under Section 9 to the Appellant in the capacity of Assistant Director (HR) or Deputy Director (HR).

Substantive post

35. Moreover, one of the features enumerated by the Supreme Court in *Jawad Ahmed Mir (Supra)* that the office in question must have for the issuance of a writ of *quo warranto* is that it must be a substantive one and not merely the function of an employment of a servant at the will during the pleasure of others. The posts of Assistant Director (HR) or Deputy Director (HR) being ancillary in nature to the functions of the Respondent No. 3 can by no stretch of imagination be regarded as substantive posts [6].

36. The Memorandum of Contract provides that the period of contract is till superannuation *subject* to Respondent No. 3's needs and shall be liable for termination upon 90 days' notice or on payment of basic pay in lieu thereof without assigning reason. PTA Service Regulation 119(2) also

[6] *Muzammal Ahmed Khan Vs. Imran Meer*, 2010 PLC (C.S.) 1023; *Shahzado Langah Vs. Federation of Pakistan*, 2014 PLC (C.S.) 853; *Barrister Sardar Muhammad Vs. Federation of Pakistan*, PLD 2013 Lahore 343

provides that the services of an employee appointed on contract basis may be terminated on three months' prior notice or pay in lieu thereof and PTA Service Regulations have been expressly made applicable vide the contract. Thus the Appellant's employment is till superannuation unless terminated earlier upon notice or pay in lieu thereof. These terms/provisions make it abundantly clear that the Appellant's employment by contract was 'at will' at the pleasure of the Respondent No. 3[7].

Public Servant

37. We are also mindful of Section 11 of the PTA Act which provides that the members and employees of Respondent No.3 shall be public servants within the meaning of Section 21, PPC. However, as explained by the Supreme Court in *Muhammad Naeem Vs. Federation of Pakistan*, 2023 SCMR 301 the status of an employee of a Corporation as public servant for purposes of Section 21, PPC has no bearing on the civil status of such employee. Reliance is placed upon paragraph 5 of the said judgment reproduced herein below:

> *5.* ***The definition of "public servant" as provided in section 21 of the P.P.C. is only for the purpose of application of the provisions of that substantive criminal law, as well as of the related procedural criminal law, the Code of Criminal Procedure, 1898, and the extended definition of that term as given in Explanation of section 161 (which brings the employees of any corporation or other body or organization set up, controlled or administered by, or under the authority of, the Federal Government, within the ambit of the term "public servant") is only for the purpose of application of that section and sections 162, 163, 164, 165, 166, 167, 168, 169 and 409 of the P.P.C.[2] These definitions do not confer any civil status, capacity or position on the persons falling in the scope thereof.*** *In the present case, the matter relates to the civil status of the employees of the NBP to be mentioned in their passports, not to the application of certain provisions of the criminal laws to them or to the functions performed by them. The reference by the petitioner to the definition of "public servant" as provided in a criminal law, the P.P.C., for claiming the civil status of being a government servant/officer is therefore misconceived.[3] The NBP, as per section 3(2) of the National Bank of Pakistan Ordinance, 1949, is a body corporate, and its employees are employees of a statutory corporation, not of the Federal Government. They are therefore not "government servants" or "civil servants" as defined in the Civil Servants Act, 1973."* [Emphasis added].

38. In *Project Director, Karkhana Allat-e-Zari Vs. The Presiding*

[7] *Hareef Ahmed Keerio Vs. Quaid-e-Awam University*, 2025 PLC (C.S) 343

Officer, Punjab Labour Court, PLD 1989 SC 152 an argument was raised before the Supreme Court that the Industrial Relations Ordinance, 1969 shall not be applicable upon the employees based on Section 9 of the West Pakistan Cooperative Board (Dissolution) Act, 1966 whereby the employees of the Karkhan & Allat-e-Zari shall be deemed to be 'public servants' within the meaning of Section 21, PPC. However, the Supreme Court did not accept such argument and nevertheless held that the employees involved in such case were 'workman' within the meaning of the labour laws. Similarly, the Court in *Alaud Din Akhtar, Chairman, Punjab Textbook Board Vs. Government of the Punjab*, PLD 1979 Lahore 324 could not be convinced that the Chairman of the Textbook Board was a Government Servant simply because he was a public servant by virtue of Section 18 of the Textbook Board Ordinance, 1962 which provides that the officers and servants of the Board shall be deemed to be public servants within the meaning of Section 21 of the PPC and held that every public servant within the meaning of Section 21 of the PPC was not *ipso facto* a government servant.

39. By the same token the post of Assistant Director (HR) cannot be considered a 'public post' only on account of Section 11 of the PTA Act pursuant to which the employees of Respondent No.3 shall be public servants within the meaning of Section 21, PPC as such provision of law is relevant only for purposes of application of certain provisions of the PPC.

Whether the Appellant's appointment to the office of Assistant Director (HR) was made in contravention of a statute or statutory instrument?

40. In an application moved to challenge the unauthorized occupation of a public office the Court has to see if statutory provisions have been violated in making the appointment[8]. The invalidity of an appointment may arise not only from the one of the qualifications but also from the violation of legal provision for appointment[9]. The Respondent No. 1 argued that the appointment of the Appellant as Assistant Director (HR)

[8] *Capt. (Retd.) Muhammad Naseem Hijazi Vs. Province of Punjab*, 2000 PLC (C.S) 1310
[9] *Ibid.*

was in violation of the eligibility criterion as per the advertisement. The eligibility criterion stipulated in the PTA Service Regulations for the appointment of Assistant Director (HR) cannot be regarded as law or statutory as PTA Service Regulations have been framed by the Respondent No. 3 without government sanction[10].

Bona fide of the Respondent No. 1

41. The learned Judge-in-Chambers specifically took into account the objection raised by the learned counsel for the Respondent No.3 that the Respondent No.1 has filed the writ on the basis of internal documents which constitutes confidential communication and which according to the Respondent No. 1 he obtained from an anonymous source. The learned Judge-in-Chambers found that such act on the part of the Respondent No.1 constitutes misconduct disentitling him to the relief sought. It has also been taken into consideration that the Respondent No.1 did not challenge the Appellant's appointment for 13 years but curiously enough filed a writ after dismissal of three employees and therefore it could not be ruled out that the Respondent No.1 is a surrogate of anonymous sources. The Respondent No.1 could not controvert such findings in the instant appeal except to assert that he was a whistleblower. However, it is settled law that the Court while deciding a writ of *quo warranto* can question the bona fide of a whistleblower.

Conclusion

42. To sum up, we do not find the post of Assistant Director (HR) to which the Appellant was initially appointed to be a 'public office' created by statute nor can it be described as a substantive one which is vested with some portion of the sovereign function of the government to be exercised for the benefit of the public and no contravention of a statute or a statutory instrument has been pointed out. As such, the writ petition No. 3426 of 2018 filed by the Respondent No. 1 was also liable to be dismissed on the ground that the essential conditions for issuing a writ of *quo warranto* were

[10] *Board of Intermediate & Secondary Education, Faisalabad Vs. Riaz Hussain*, 1999 PLC (C.S.) 680

not satisfied. On the other hand, we are in complete agreement with the learned Judge-in-Chambers that the Respondent No. 1 failed to establish his bona fide. The Respondent No. 1 was unable to satisfy this Court that the reasons recorded in the Impugned Judgment on account of which his conduct was not found bona fide warrant any interference.

43. In view of the foregoing, the I.C.As Nos. 227 and 236 of 2022 are **allowed** as prayed for whereas I.C.A. No. 228 of 2022 is **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on the 9th of July, 2025.

JUDGE **JUDGE**

JUNAID

Approved for Reporting
Blue Slip added.