*Form No: HCJD/C-121.*
*JUDGEMENT SHEET*
IN THE ISLAMABA DHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 2240 OF 2024**

Dr. Nasir Mehmood Cheema and another.

*Vs*

Federation of Pakistan through Ministry of National Food Security and Research and others.

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| PETITIONER BY: | M/s Hafiz Arfat Ahmed Ch., Tariq Zaman and Ali Shaharyar, Advocates. |
| RESPONDENTS BY: | Barrister Munawar Iqbal Duggal, Additional Attorney General, Mr. Aqeel Akhtar Raja, Assistant Attorney General and Raja Muhammad Arsalan Jawad, Assistant Attorney General.<br>Sardar Muhammad Latif Khan Khosa, Sardar Shahbaz Ali Khan Khosa, Ms. Suzain Jehan and Dr. Malik Muhammad Hafeez, Advocates for respondent No.6.<br>Mr. Nauman Munir Paracha, Advocate for PARC.<br>Mr. Muhammad Ali Idrees, S.O (E-6), Establishment Division.<br>Mr. Muhammad Imran Haider Sial, Legal Officer M/o National Food Security and Research.<br>Ms. Samina M. H. Cheema, Director, (Legal) PARC. |
| DATE OF HEARING: | 18.12.2024. |

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***BABAR SATTAR, J.***- The petitioners have impugned the appointment of respondent No.6 as Chairman Pakistan Agriculture Research Council **("PARC")** for having been appointed in breach of provisions of the Management Position Scales Policy, 2020 **("MP Scales Policy")** dated 22.06.2020, while seeking a declaration in the alternative that the appointment of respondent No.6 by notification dated 28.06.2022 was valid for a period of two years, as prescribed in

Advertisement dated 18.01.2022, inviting applications for the post of Chairman PARC.

2. Learned counsel for the petitioners submitted that Chairman PARC is appointed under Section 9 of the Pakistan Agricultural Research Council Ordinance, 1981 **("PARC Ordinance")**. Section 9(2) of the PARC Ordinance vests in the President the authority to determine the terms and conditions of service for the Chairman of PARC. Section 9(3) of the PARC Ordinance provides that the Chairman will serve during the pleasure of the President. He submitted that an advertisement was issued on 18.01.2022 ("**Advertisement**"), which stated that Chairman PARC is to be appointed on contract in MP-I scale. The Advertisement, however, also independently provided that the tenure of such appointment would be two years. He submitted that for purposes of selection a Scrutiny Committee was constituted that recommended shortlisted candidates to the Selection Committee. The Selection Committee then selected a panel of three individuals for purposes of such appointment and referred their names to the Establishment Division. The minutes of meeting of the Selection Committee mentioned that the tenure of appointment was two years, which was in consonance with the Advertisement. He submitted that neither the composition of the Scrutiny Committee nor that of the Selection Committee was that as prescribed in the MP Scales Policy, issued through Office Memorandum **("2020 O.M")** dated 22.06.2020. He submitted that the Selection Committee as prescribed under Schedule-I of the MP Scales Policy comprises five individuals as opposed to three in the instant case. Consequently, both the

number and the composition for the Selection Committee that recommended the name of respondent No.6 was different from that which is prescribed in the MP Scales Policy. He submitted that the summary, as approved by the Prime Minister, only referred one name for the consideration of the President, which is not in accordance with the requirements of Section 9 of the PARC Ordinance. The entire panel ought to have been referred to the President, as the President acts as persona designata and has discretion as to who is to be appointed for purposes of Section 9 of the PARC Ordinance. The President, however, approved the summary and appointed respondent No.6. The notification of appointment, however, stated that respondent No.6 would serve as Chairman PARC till further orders. He submitted that subsequent to the appointment of respondent No.6 the Establishment Division required the initiation of another summary to settle the terms and conditions of service of respondent No.6 as well as his tenure, even though the terms and conditions as provided for in the Advertisement referred to MP-I Scale for purposes of salary etc. and the tenure was clearly specified as two years. A summary was then generated, stating that the tenure of office of respondent No.6 would be three years. This summary was approved by the Prime Minister and also by the President, which had the effect of transforming the two-year appointment as advertised to a three-year appointment. He submitted that the MP Scales Policy dated 22.06.2020 has been prescribed by the Prime Minister as a policy measure and has not been approved by the Federal Cabinet and cannot be treated as a policy of the Federal Government in view of the law laid down by the Supreme Court

in ***M/s Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others*** ***(2016 PTD 2269)***. He further submitted that in view of the law laid down by this Court in ***Muhammad Shafeeq vs. Federation of Pakistan, through Secretary, Ministry of Petroleum and Natural Resources and 5 others*** ***(2023 PLC(C.S.) 205)*** and the Lahore High Court in ***Usmat Batool vs. Bahauddin Zakariya University, Multan, through Registrar and 5 others*** ***(2013 PLC(C.S.) 484)***, the tenure as provided in an Advertisement inviting applications of interested candidates takes priority over any other policy documents and the advertised tenure of office cannot be subsequently enhanced as that constitutes lack of transparency and a fraud on the other candidates who are interested in the said position.

3. The learned Additional Attorney General relied on the comments filed by respondents No.1 to 4, wherein it was acknowledged that the Advertisement soliciting applications for the post of Chairman PARC stipulated a contract period of two years. He submitted that the selection procedure prescribed in the MP Scales Policy was not followed in the instant case. He submitted that the selection procedure prescribed for Chief Executives in Key Public Sector Enterprises through O.M. dated 28.03.2019 ("**2019 O.M.**") was followed. He submitted that in Annex-I to the 2019 O.M., the appointment for the Chief Executive of PARC was also included within the realm of the said O.M. Consequently, the Selection Committee constituted for appointment of respondent No.6 was in accordance with the

2019 O.M. and not the MP Scales Policy. The learned Additional Attorney General took the Court through the selection process, in which a Scrutiny Committee scrutinized the applications, then a Selection Committee was constituted, the composition of which was not the same as that of a Selection Committee required to be constituted under the MP Scales Policy. The Selection Committee selected a panel of three individuals and recommended that one of them be appointed for a period of two years. The Ministry of National Food Security also recommended the appointment of Chairman PARC for a period of two years. The Establishment Division endorsed the summary and recommended that the appointment of Chairman PARC shall be for a period of two years. The summary, as approved by the Prime Minister, did not include any statement regarding the tenure for the Chairman. Consequently, the Establishment Division by O.M dated 02.08.2022 advised the Ministry of National Food Security to initiate a separate summary to settle the terms and conditions of Chairman PARC as well as the tenure of his appointment. Consequent to this advice, a summary dated 25.11.2022 was initiated stating that the post of Chairman PARC was advertised as an MP-1 scale post and that a summary be approved stating that the terms and conditions as provided in the MP Scales Policy be made applicable to the appointment of respondent No.6. In its comments dated 13.12.2022, the Finance Division noted that as respondent No.6 had already been appointed and thus the Finance Division had no objection to him being granted the terms and conditions applicable to MP-1 scale. Consequently, the Prime Minister recommended and the President approved the summary that respondent No.6 be

granted the terms and conditions as prescribed in the MP Scales Policy. He submitted that a second notification was issued on 15.03.2024 clarifying that as the terms and conditions afforded to respondent No. 6 were those of MP Scale Policy, the tenure of his appointment would be deemed to be three years in terms of Para 5(3) of the MP Scales Policy.

4. The learned counsel for respondent No.6 objected to the maintainability of the petition stating that respondent No.1 was himself an interested party in the appointment as Chairman PARC. Consequently, the petition was mala fide and the petitioners as relators did not satisfy the requirements of filing a petition of quo warranto. He submitted that the writ of quo warranto was a discretionary remedy that was not to be issued as a matter of course. He further submitted that determination of the qualification of a public sector employee fell within the domain of the executive and where the person was found to be duly qualified through a competent selection process, the appointment ought not be declared illegal by the Court. He submitted that the question of tenure of respondent No. 6 was a policy issue, which had been determined by the President on the advice of the Prime Minister in terms of Section 9 of the PARC Ordinance and such policy determination was not amenable to judicial review. He also contended that in making an appointment under Section 9 of the PARC Ordinance, the President acted as persona designata and could determine the tenure of appointment in his own discretion. He submitted that the pleasure doctrine had been endorsed by this Court in ***Senator Taj Haider vs. Government of Pakistan*** ***(2018 CLC***

***1910)***. He submitted that while the qualifications prescribed in an advertisement were sacrosanct, the tenure prescribed could be changed even after the appointment at the discretion of executive authorities.

5. In rebuttal, the learned counsel for the petitioners submitted that the initial summary had clearly mentioned that the appointment was to be for a period of two years. The second summary seeking clarification of tenure in itself reflects that the appointing authority breached the terms of the Advertisement and the basis on which applications to fill the post of Chairman PARC were solicited. He also reiterated that the Federal Government had admitted that the MP Scales Policy had not been followed in the manner in which the selection process was carried out, as the Selection Committee put together for selection of respondent No.6 was not comprised in accordance with requirements of the MP Scales Policy. The Federal Government could therefore not change the tenure of appointment once the appointment of respondent No.6 had taken effect, as that would amount to changing the terms of the Advertisement after respondent No.6 had been selected and appointed.

6. The learned Additional Attorney General in response to the submissions of respondent No.6 stated that the President, for purposes of making appointment under Section 9 of the PARC Ordinance, was not persona designate, and was obliged to make an appointment on the advice of the Prime Minister as required under Article 48 of the Constitution.

7. Let us consider the relevant facts in the instant matter before we focus on the questions of law involved. The Ministry of National Food Security issued an Advertisement dated 18.01.2022 stating that the tenure of the appointment of Chairman PARC will be for a period of two years on contract basis. The name of the post was stated as "Chairman PARC (MP-1)". The Federation through C.M. No.3603 of 2024 has placed on record the back-and-forth correspondence between the Ministry of National Food Security and the Establishment Division with regard to the content of the draft advertisement. In O.M. dated 02.06.2021 the Establishment Division highlighted that it was unclear whether the post of Chairman PARC was a sanctioned post of MP-1 or whether the post was benchmarked against MP scales, while referring to the draft advertisement, which at the time stated that the tenure of the post was three years. The Ministry of National Food Security by O.M. dated 18.06.2021 clarified that the appointments of previous Chairman had been made in MP-1 scale during the years 2008, 2012, 2016 and 2019. The correspondence reflects that after back-and-forth between the Ministry of National Food Security and the Establishment Division, the draft advertisement was amended and in view of such correspondence the tenure of the post was mentioned as two years in the Advertisement (instead of three, as included in a previous version of the draft advertisement). The petitioner has also placed on record various notifications where the tenure of an appointment is two years while the other terms and conditions of service including the pay package etc. have been benchmarked against MP scales. The petitioner has relied on notification dated 20.10.2021, in which Establishment

Division notified the appointment of a Technical Advisor in MP-1 scale in the Ministry of National Food Security for a period of two years while affording such person the other terms and conditions laid down in the MP Scales Policy.

8. It emerges from the above that there are advertisements that merely reflect that the post is a sanctioned MP scale post and all terms and conditions mentioned in the MP Scales Policy are made applicable to such post. There are other posts, which are not sanctioned MP scale posts, and where the relevant division of the Federal Government advertises the tenure of the post, which may or may not be that prescribed in the MP Scales Policy. But instead of specifying the remaining terms and conditions of service, such as pay and perks etc., it incorporates the terms and conditions, including pay and perks, as prescribed under the MP Scales Policy. This is understood as benchmarking pay and parks to be afforded to the person appointed against the remuneration provided in the MP Scales Policy. In the instant matter, the Ministry of National Food Security issued an Advertisement that stated unambiguously that the tenure of appointment would be two years. The name of the post was identified as Chairman PARC, and with reference to pay scale it was mentioned that the pay scale would be MP-1. The Advertisement therefore clearly provided that the tenure for the appointment as Chairman PARC would be two years, while the pay scale to be afforded to such appointee would be as prescribed for the position of MP-1 under the MP Scales Policy.

9. It was pursuant to the above understanding (as also reflected in the aforementioned communication between the

Ministry of National Food Security and the Establishment Division) that the Scrutiny Committee and the Selection Committee for purposes of selection of Chairman PARC was constituted in accordance with the 2019 O.M. as opposed to the requirements of the MP Scales Policy. It is not contested that the Selection Committee that shortlisted three candidates for the post of Chairman PARC was not a Selection Committee comprised in accordance with requirements of the MP Scales Policy. The Selection Committee put together a shortlist including respondent No.6 and recommended that one of them be appointed "on contract basis for a period of two years". The Ministry of National Food Security prepared a summary dated 01.07.2022. It stated in Para 2 that applications had been invited for the appointment of Chairman PARC on MP-1 scale on contract basis for two years and recommended that one of the three individuals shortlisted by the Selection Committee be appointed. The Establishment Division in its comments included in the summary also recommended that Chairman PARC be appointed for a period of two years. The Prime Minister then recommended the appointment of respondent No.6 in terms of Section 9 of the PARC Ordinance to the President without specifying a certain tenure in the paragraph of the summary the approval of which was solicited. The said summary was approved by the President and consequently notification dated 28.07.2022 was issued appointing respondent No.6 as Chairman PARC "with immediate effect and until further orders".

10. On 02.08.2022, the Establishment Division advised Ministry of National Food Security to initiate a separate summary

for the Prime Minister to settle the terms and conditions and the tenure of appointment of respondent No.6 as Chairman PARC. In summary dated 25.11.2022, the Ministry of National Food Security stated that as the post of Chairman PARC was advertised as MP-1 scale post, the terms and conditions provided in the MP Scales Policy shall apply to the appointment of respondent No.6. In response to this summary, in relation to pay package and emoluments, the comments from the Finance Division were solicited, which stated that as respondent No.6 had already been appointed it had no objection to respondent No.6 being afforded the terms and conditions provided for MP-1 scale in the MP Scales Policy. The summary was then routed through the Prime Minister's office to the President who approved the same on 26.12.2022.

11. On 13.02.2024, the Secretary PARC initiated correspondence with the Ministry of National Food Security stating that the tenure of appointment of respondent No.6, as Chairman PARC, had not been defined in the notification of his appointment. But the terms and conditions afforded to him were subsequently approved by the President as those equivalent to MP-1 scale. As the MP Scales Policy laid down that the initial appointment of MP-1 scale position was three years, which was extendable by another two years, the tenure of appointment of respondent No.6 be clarified as that provided in MP Scales Policy. The Establishment Division by O.M. dated 15.03.2024 stated that as terms and conditions of MP Scales Policy have been adopted for the post of Chairman PARC, the tenure of his appointment would be three years. The Ministry of National Food

Security by letter dated 27.03.2024 then clarified that the tenure of the appointment of respondent No.6 would be deemed as three years in terms of Para 5(3) of the MP Scales Policy.

12. The questions that arise for adjudication of the instant petition are two-fold. One, whether respondent No.6 was appointed pursuant to requirements of MP Scales Policy against a sanctioned MP-I scale post. And two, can a person be appointed for a tenure of two years, as prescribed in the Advertisement, for a post while affording such appointee other terms and conditions such as pay and perks benchmarked against an MP scale post.

13. Let us first address the objections to the maintainability of the petition. It was submitted by the learned counsel for respondent No.6 that respondent No.6 was appointed by the President in terms of Section 9 of the PARC Ordinance in his discretion and while doing so the President approved the terms and conditions of service of respondent No.6, including his tenure, as that being three years. Section 9 provides that the Chairman PARC was to be appointed by the President in his discretion, in which capacity the President was not bound by the advice of the Prime Minister with regard to the tenure as he acted persona designata. He further submitted that where a statute provided that the President was to make an executive appointment, the President, while making such appointment in terms of the powers conferred upon him by statute, was not bound by requirements of Article 48 of the Constitution.

14. While making such submissions he relied on the judgment of this Court in ***Senator Taj Haider***. This Court is not impressed

with the argument that while making an appointment in terms of Section 9 of the PARC Ordinance, the President acts in his discretion as persona designata while not being bound by any advice of the Prime Minister or the Federal Government. This Court in ***Senator Taj Haider*** was interpreting provisions of the State Bank of Pakistan Act, 1956 **("SBP Act")**. While not second-guessing the observations made therein, this Court will only observe that in the said judgment the Court took into account that the SBP Act was amended through an Ordinance to transfer the power of appointment from the Federal Government to the President, which was one of the key reasons leading the Court to the conclusion that the legislature intended for the President to make the appointment and not the Federal Government. The law on when it can be deemed that the President acts as persona designata was clarified by this Court in ***Mushtaq Ahmed Sukhera vs. The President (PLD 2020 Islamabad 1).*** It was held that the exercise of powers under Section 3(1) of the Office of Federal Tax Ombudsman Ordinance, 2000, was an administrative function and did not involve exercising adjudicatory or quasi-judicial powers and in doing so the President had a constitutional duty to act on the advice of the Prime Minister. While doing so the Court relied on and enumerated the law laid down by the Supreme Court in ***University of the Punjab vs. Ch. Sardar Ali (1992 SCMR 1093), Federation of Pakistan vs. Muhammad Tariq Pirzada (1999 SCMR 2189) and Dr. Zahid Javed vs. Dr. Tahir Riaz Chaudhry (PLD 2016 SC 637)***. The same question came before this Court once again in ***Professor Dr. Muhammad Naeem Khan vs. Federation of Pakistan (2023***

***MLD 1273)*** where the applicable test for when the President exercises powers as persona designata was treated as follows:

> *"11. As explained above, the concept of persona designata has been adopted and reiterated by the august Supreme Court. The question of whether the legislature is competent to vest duties, functions and powers in a Constitutional functionary such as President or Governor in his capacity as persona designata, such that in exercise of such powers, duties and functions, the President or the Governor is not bound by the requirement of the section 48(1) and section 105(1) of the Act, respectively, stands settled. The test laid down by the august Supreme Court in Dr. Zahid Javed provides that there are two instances in which the President or Governor would not be bound by the advice of the Prime Minister or the Chief Minister, as the case may be. One, where powers, duties and functions are vested by the legislature in an office by promulgation of a statute, which statute further provides that such powers, duties and functions are to be discharged by the President or the Governor as an incidental matter. In other words, if the statutory intent is that the powers, duties and functions are of an office independent of the office of the President or the Governor, and the President or the Governor has been designated as a person who will exercise such powers, functions and duties, the President or Governor exercises such powers as persona designata and is not bound by the provisions of the Constitution. Two, even where a statute vests power in the President or the Governor as persona designata, and further provides that as a general matter such power is to be exercised on the advice of the Prime Minister or the Chief Minister, the President or the Governor would not be bound by such advice in discharge of any particular power or function that is quasi-judicial in nature."*

15. In view of the provisions of the PARC Ordinance, no legislative intent can be deciphered that the President was vested with the power to make an executive appointment independent of the advice of the Prime Minister and/or the Federal Government. The President is discharging a purely executive function as opposed to a quasi-judicial function, and in

doing so the President is bound by the advice of the Prime Minister, as it is only by virtue of the President being the President that he/she has been conferred with the power to make an appointment in terms of Section 9 of the PARC Ordinance. Consequently, in making such appointment the President must act in accordance with requirements of Article 48 of the Constitution.

16. Even otherwise, nothing turns on the question of whether or not the President acts as persona designate while exercising powers under Section 9 of the PARC Ordinance. It is not that the President did not abide by the advice rendered by the Prime Minister. Thus, whether or not the President acts as persona designate does not impinge upon the controversy before this Court. In terms of the summary approved by the President dated on 27.07.2022 as well as the summary approved by the President on 22.12.2022, the President approved the advice rendered by the Prime Minister. Even if this court were to come to a contrary conclusion that the President was acting as persona designate, the manner in which he exercised discretion could be judicially reviewed if the action was illegal, irrational or procedurally improper.

17. The next objection to maintainability raised by the learned counsel for respondent No. 6 was that the petition was not bona fide and had been filed for some collateral purpose. It was also submitted that it suffered from laches. And even otherwise, this Court ought not exercise judicial review powers to second-guess policy choices made by the Federal Government and/or by the President.

18. Let us revisit the principles laid down by superior courts in relation to writs of quo warranto. It is now settled that constitutional jurisdiction is equitable jurisdiction and he who seeks equity must do equity. It is on the basis of this principle that it has been laid down that the High Court can deny grant of relief where a person cannot satisfy the conscience of the Court that he has come to the Court with clean hands. (See for example ***Azizur Rahman Chowdhury vs. M. Nasiruddin (PLD 1965 SC 236)***, ***Dr. Aziz-Ur-Rehman Khan Meo vs. Government of Sindh (2004 SCMR 1299)*** *and* ***Muhammad Arif vs. Uzma Afzal (2011 SCMR 374)***). It is on this basis that it has been held in relation to writs of quo warranto that where a relator does not come to the Court with clean hands and satisfy the Court that the petition has not been filed in pursuit of some oblique purpose, the Court need not proceed with hearing such petition.

19. Thus, the High Court can look into the conduct and motive of the relator where a writ of quo warranto has been sought. And it can decline to grant relief where the motive of the petitioner is oblique or it may otherwise be vexatious to issue the writ (See for example ***Federation of Pakistan vs. Muhammad Saifullah Khan (PLD 1989 SC 166), Lahore Development Authority vs. Siraj Din (1989 SCMR 1996), Tariq Mehmood A. Khan vs. Sindh Bar Council (2011 YLR 2899), Mirza Luqman Masud vs. Government of Pakistan (2015 PLC (C.S) 526), Muhammad Shahid Akram vs. Government of the Punjab (2016 PLC (C.S) 1335), Ayaz Ahmed Khan vs. Federation of Pakistan (2021 PLC (C.S) 1394 Islamabad)***

*and* ***Dr. Muhammad Naseem Khan vs. Dr. Shahzad Ali Khan (2023 PLC (C.S) Note 8)****).*

20. It is also settled that the writ of quo warranto is an exceptional remedy and relief is not to be afforded to a petitioner as a matter of course. This is because while seeking the issuance of such writ, the relator is not seeking the enforcement of a personal right but is instead seeking the rule of law be upheld (see for example ***Mirza Abdul Rehman vs. Federation of Pakistan (2017 PLC (C.S) 1327), Nisar Khan Khattak vs. Haji Adam (2021 PLC (C.S) 140), Jawad Ahmed Mir vs. Prof. Dr. Imtaiz Ali Khan (2023 SCMR 162), Attaullah Khan vs. Ali Azam Afridi (2023 PLC (C.S) 182)*** *and* ***Rizwan Ali Sayal vs. Federation of Pakistan (2024 PTD 32)****).* It was emphasized by the Supreme Court in ***Qazi Hussain Ahmed vs. General Parvez Musharraf (PLD 2002 SC 853)*** that *"writ of quo warranto cannot be brought through collateral attack"* while relying on the law laid down previously in ***Pir Sabir Shah vs. Federation of Pakistan (PLD 1994 SC 738)***.

21. The principle of laches is not strictly applicable to a writ of quo warranto, which is in the nature of public interest litigation initiated to uphold the law. And it can therefore not be argued that a petitioner who seeks to pursue no personal interest must not be heard because he has been sleeping on his rights. It was held in ***Qazi Hussain Ahmed*** that, *"strictly speaking the principle of laches does not apply to the writ of quo warranto but the Court cannot close its eyes as regards the conduct of the petitioners appearing before it, which militates against the bona fides of the petitions"*. Consequently, where a delay in bringing a

petition impugns the bona fides of the petitioner, the question of laches may become relevant in a writ of quo warranto but not otherwise.

22. It is settled that the High Court, while hearing a writ of quo warranto, does not take upon itself the function of the appointing authority to judge the suitability of a candidate (see for example ***Asif Hussain vs. Sabir Hussain (2019 SCMR 1720)***). It is in the context of the suitability of a candidate as well as the question of an appointment having become insignificant that it was held in ***Asif Hussain*** that a Court is not bound to issue a writ in every case, especially *"where on account of laches the matter has lost its significance or in cases of minor discrepancies."* Similarly, it was held in ***Khushal Khan Khattak University vs. Jibran Ali Khan (2021 SCMR 977)*** that where the matter related to the internal working of the syndicate, *"in the absence of bias, partiality or lack of transparency"* exercise of discretion by the executive authorities ought not be interfered with. It is now settled that in case of a writ of quo warranto, the Constitution places no restriction that the petitioner must be aggrieved, even though in such cases the court as a first step inquires into the conduct and motive of the relator (see ***Dr. Azimur Rahman Khan vs. Government of Sindh (2004 SCMR 1299)***).

23. It was held in ***Muhammad Hanif Abbasi vs. Jahangir Khan Tareen (PLD 2018 SC 114)*** that, *"where on the consideration of the contents of the petition and the relevant record, the court forms an opinion that there is some substance to the matter, then, simply on account of the fact that some*

*doubt could possibly be cast upon the conduct of the petitioner, the court shall not dismiss the petition summarily, rather it shall hear and decide the matter on merits, obviously not losing sight of the bona fides of the relator …"* It was held in ***Malik Munsif Awan vs. Federation of Pakistan (PLD 2021 SC 379)*** that, *"we have repeatedly held that the Constitution does not envisage unstructured, uncontrolled and arbitrary discretion being conferred on any State functionary or holder of a public office. Even if discretion has been conferred, the same has to be exercised honestly, fairly and transparently. Further, it has to meet the benchmark of being structured in the interest of uniformity, evenhandedness, probity and fairness. It is only if the exercise of discretion meets the above criteria that this Court refrains from interfering and scrutinizing executive actions on the principle of trichotomy of powers."*

24. Most recently it was held in ***Jawad Ahmad Mir*** that, *"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"… 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… 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 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."*

25. It emerges from the law cited above that where there has been lack of transparency due to failure of the executive authorities to abide by the procedure prescribed by law, and the Court is otherwise satisfied that a relator is a member of the public and has not brought the petition for *mala fide* reasons to pursue a collateral or oblique purpose, the burden to proof that the appointment of the public office holder is in accordance with law shifts to the appointee.

26. It was laid down by the Supreme Court in ***Dossani Travels vs. Travel Shop (Pvt.) Ltd. (PLD 2014 SC 1)*** that, *"in absence of any illegality, arbitrariness or established mala fides, it was not open for the learned High Court to annul the policy framed by the competent authority."* The principle of exercise of restraint by the Judiciary in relation to policy matters has no application where the question before the Court is whether or not an appointment to a public office has been made in accordance with law. In such case, the question is that of legality of the appointment and not the rationality of a policy choice.

27. There are two other principles that are now well entrenched within the domain of public sector employment law. One, that in terms of Article 4 of the Constitution, public authorities only have such authority as is vested in them by law

and they do not wield unfettered discretion in relation to appointments of public officeholders. And two, the Constitution guarantees all citizens a level playing-field for purposes of competing for public offices and the state is not free as an individual employer in selecting the recipient of its largesse, and thus an arbitrary decision to appoint an individual to a public office in breach of due process or the principles of fairness and transparency falls foul of constitutional guarantees.

28. The aforementioned principles were reiterated by the Supreme Court in ***Muhammad Yasin vs. Federation (PLD 2012 SC 132)***. The petitioner in such case was himself a contender for the office of Chairman OGRA and had subsequently challenged the appointment of another individual to such office. The Supreme Court held on the question of maintainability that, *"simply because the petitioner may have been a contender for the office of Chairman OGRA, does not per se translate into mala fides. The petitioner can genuinely consider himself to be a suitable candidate for the position while simultaneously holding the view that the respondent does not meet the eligibility criteria set out in Section 3(4) of the Ordinance."* The Court recognized that the Constitution was based on the principle of separation of powers and making appointments within the executive fell within the province of the executive in which matters the courts ordinarily deferred to the exercise of power by the executive. It however noted that, *"the Court's deference, to the executive authority will last for only as long as the executive makes a manifest and demonstrable effort to comply with and remain within the legal limits which circumscribe its power."* On the

question of appointments being made at the pleasure of the executive heads of the state, the Supreme Court observed in a historical context that there was, *"a time when almost all important state functionaries including not just the Prime Minister and the Cabinet but also judges and civil servants, were appointed and removed by the British monarch in his absolute unfettered discretion. It is for this reason they were set to "hold office during the King's pleasure". While this vestige of an absolute monarch receded in Britain on account of emerging democratic conventions, in the colonies it survived… It is to be noted that even where appointments are to be made in the exercise of discretionary powers, it has become well settled that such powers are to be employed in a reasonable manner and the exercise of such powers can be judicially reviewed…There is an obligation thus imposed on the executive to make appointments based on a process which is manifestly and demonstrably fair even if the law may not expressly impose such duty."* The Supreme Court clarified that there was no room for appointing cronies to public office in the exercise of discretionary authority by other public officials and such public appointments always had to be made in accordance with due process while complying with the requirements of fairness and transparency.

29. The Supreme Court once again held in ***Muhammad Ashraf Tiwana vs. Pakistan and others (2013 SCMR 1159)*** that, *"at least since Abdul Jabbar Memon and others, (Human Rights Case) (1996 SCMR 1349), this Court, and in fact all courts in the country, have been emphasizing the need to do away with arbitrariness and capriciousness in the matter of appointments*

*to public offices…It must be stated that in a civilized dispensation which is rule based and is aimed at good governance, such whimsicality cannot be countenanced. Such autocratic practices may be in consonance with the legacy of our colonial past wherein the prevalent monarchical disposition subjected senior state functionaries, even judges, to holding office at the monarch's pleasure. But, as we noted in Muhammad Yasin's case, our law has come a long way from those days."*

30. While setting aside the appointment of Chairman PTA for having been appointed in breach of due process and without adhering to principles of transparency, the Lahore High Court held in ***Barrister Sardar Muhammad vs. Federation*** ***(PLD 2013 Lahore 343)*** that, *"public institutions are trustees of the people of Pakistan and work for the advancement of public interest. Persons who man these public institutions must invariably be selected from the public through a broad-based, publicly accessible selection system."* It reiterated observations of US Supreme Court Justice Stephen Breyer in his book ***Making Our Democracy Work: A Judge's view*** that the *"Court has the duty to ensure that governmental institutions abide by the constitutional constraints on their power. And it must continue to do so."*

31. In view of the aforementioned principles, it appears that the twains of constitutional law, administrative law and employment law are now meeting when it comes to the legality of appointments made to public offices. The dicta laid by superior courts emphasize that in a constitutional democracy, where all public office holders exercise delegated authority as a

trust, the concept of the state, working through such public office holders, making executive appointments arbitrarily or settling their tenures or terms and conditions of service at the whims of incumbent appointing authorities cannot be countenanced. Public officials exercising delegated authority to make executive appointments in accordance with the provisions of the Constitution and the laws are not 'sovereign' or 'masters' as understood in colonial times or during the reign of Monarchs. Within a dispensation bound by rule of law, the appointing authorities are also public office holders exercising limited delegated powers, to be exercised in accordance with law and within the four corners of principles regulating the exercise of discretion. It is in this context that appointments to public offices are to be scrutinized once a petitioner is able to build a case that a public office holder has not been appointed in accordance with law or that the recruitment process was marred by illegalities, procedural improprieties or unfairness.

32. In the instant matter, the learned counsels for the respondents have failed to satisfy the Court that the petition ought to be dismissed on grounds that the petitioners are seeking to realize a collateral purpose or are inspired by *mala fide*. This Court in ***Dr. Farzana Bari vs. Ministry of Law, Justice and Human Rights (PLD 2018 Islamabad 127)*** had clarified that, *"a writ of quo warranto can be filed by "any person"* and that an *"aggrieved person" cannot be excluded from the ambit or meaning of "any person". If a writ petition filed by a contestant for a public office against the public office holder is held not to be maintainable, would such a contestant have to*

*look for a person who is not personally aggrieved by the appointment under challenge and file a writ petition through such a surrogate or will he/she have to simply swallow the fact that there were violations in the appointment process?"*

33. As has already been discussed above, it has been held by the Supreme Court that laches, as a principle, is not fully attracted in relation to a writ of quo warranto, except where the delay highlights an oblique purpose or otherwise impugns the motive of the relator. In the instant case, the petition was filed in July 2024 after the Establishment Division clarified by O.M. dated 15.03.2024 that the initial tenure of respondent No.6 will be deemed to be a period of three years in terms of Para 5(3) of MP Scales Policy. Thus, the principle of laches, not fully attracted to a writ of quo warranto, is not attracted at all in the instant matter, as the basic challenge in the appointment is with regard to the tenure of respondent No.6, which was clarified by the aforementioned O.M. dated 15.03.2024. Respondent No.6 holds a public office having been appointed as Chairman PARC in terms of Section 9 of the PARC Ordinance. The petitioners have successfully established that the appointment was not made in accordance with the mechanism prescribed under the MP Scales Policy and the Advertisement itself provided that the tenure of the appointment was two years. It was thus for the respondents to establish that the tenure for the appointment of respondent No.6 could be fixed as an initial period of three years as opposed to two years as prescribed in the Advertisement, without undermining the principles of fairness and transparency.

34. The question of whether there existed a requirement of transparency in making appointments to the public sector came before the Supreme Court in ***Dr. Naveeda Tufail vs. Government of Punjab*** ***(2003 SCMR 291)*** wherein it was observed that, *"the appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete transparency as per requirements of law so that no person who is eligible to hold such posts, is excluded from the process of selection and is deprived of his right of appointment in service."*

35. In the matter of ***Usmat Batool*** the petitioner had challenged appointments made by the university in breach of the requirements prescribed in the advertisement. The Lahore High Court found that the criteria for shortlisting candidates was contrary to the terms and conditions of the advertisement and determined that the appointments made pursuant to such altered criteria were not just, fair and transparent, which were then declared illegal and without lawful authority.

36. The question before this court as to whether the tenure of a public office holder could be determined after his appointment in breach of the period prescribed in the Advertisement, previously came before this Court in ***Muhammad Shafeeq.*** In the said matter, the appointment of Director General Hydrocarbon Development Institute of Pakistan **("HDIP")** had been challenged. The said appointment had been made for a period of three years contrary to the advertisement, which stated that the appointment would be made for a period of two years. This Court observed that the Director General for the

HDIP could not have been appointed for a period of three years when the advertisement clearly mentioned that the appointment was going to be made on contract basis for a period of two years. It noted that, *"although neither the HDIP Act nor the HDIP Rules provide for the period for which the appointment of the Director General, HDIP could be made, an appointment for a period more than the one explicitly mentioned in the said advertisement is ipso facto unlawful. If the HDIP wanted to make the appointment of the Director General, HDIP for a period of three years and not two, it should have issued a corrigendum to the said advertisement. It cannot be presumed that the number of candidates for appointment for a period of two years would have been the same had it been known beforehand that the appointment would be for a period of three years. It is well settled that the conditions of employment set out in the advertisement inviting applications cannot be altered after the last date fixed for the submission of applications.*

37. The principle of fairness and transparency underscored by this Court in ***Muhammad Shafeeq*** is squarely applicable to the question before the Court in the instant matter. It is not contested that the Advertisement inviting applications for the post of Chairman PARC stated that the tenure would be two years. When the Advertisement is read and understood in proper context it clearly provides that applications were invited for the post of Chairman PARC, the pay scale for which would be the same as that provided for MP-1 scale posts. There was no ambiguity in the Advertisement that the tenure for appointment was two years and the terms and conditions such as pay and

benefits had been benchmarked with those afforded to MP-1 scale posts.

38. The O.M. issued by the Establishment Division dated 29.03.2022 clarified that the Selection Committee constituted to interview candidates for appointment of Chairman PARC was to be constituted in accordance with the 2019 O.M., which regulated the selection procedure of Chief Executives in Key Public Sector Enterprises and not by the Selection Committee to be constituted under the MP Scales Policy. In this regard there was no confusion that the post of Chairman PARC was not being filled through the process prescribed in the MP Scales Policy. As respondent No.6 was appointed pursuant to the procedure prescribed by the 2019 O.M., to the extent that the respondents were to take a position that respondent No.6 had been appointed in consonance with the MP Scales Policy, such appointment would be liable to be set aside being void ab initio. This is because neither the Selection Committee nor the Scrutiny Committee had been constituted in accordance with the requirement of the MP Scales Policy. Further, the Ministry of National Food Security and the Establishment Division had also exchanged correspondence, already referred to above, sharing their understanding that the terms prescribed in the Advertisement were not completely in accordance with the requirements prescribed in the MP Scales Policy. There was therefore no room for confusion that respondent No.6 had not been selected or appointed in accordance with the MP Scales Policy. The Advertisement had merely, for purposes of the advertised post, benchmarked the terms of employment/pay

against the terms of employment/pay afforded to MP-1 scale posts by reference. It is thus that the recommendations of the Selection Committee, and the summary moved by the Ministry of National Food Security and the Establishment Division leading to the notification of appointment of respondent No.6 as Chairman PARC, clearly mentioned that the appointment was for a period of two years.

39. The mischief in the process was introduced by O.M. dated 02.08.2022 initiated by the Establishment Division advising the Ministry of National Food Security to initiate a separate summary to settle the terms and conditions and tenure of appointment of respondent No.6. This happened after respondent No.6 had already been appointed pursuant to notification dated 28.07.2022. There was no need for this summary as the Advertisement on the basis of which the selection was made as well as the summary for appointment of respondent No.6 clarified that the tenure of appointment was two years and the pay scale to be afforded to the newly appointed Chairman PARC would be that which is afforded to those appointed against MP-1 scale posts. This ought to have been clarified by the Establishment Division and the Ministry of National Food Security. Instead, the Ministry of National Food Security initiated another summary stating that the terms and conditions provided for MP-1 scale post in the MP Scales Policy shall apply to the appointment of respondent No.6. This summary was initiated on 25.11.2022, months after the appointment of respondent No.6. The summary as approved by the Prime Minister and the President merely stated that as the post of Chairman PARC was

advertised as MP-1 scale post, therefore the terms and conditions provided for MP-1 scale posts in MP Scales Policy shall also apply to respondent No.6 as Chairman PARC. There was no separate approval of tenure by the President in terms of Para 5(3) of the MP Scales Policy. This summary was approved on 26.12.2022. But it was not up until 15.03.2024 that the Establishment Division clarified through an O.M. that the tenure for the appointment of respondent No.6 would be deemed to be three years in terms of Para 5(3) of the MP Scales Policy. And this O.M. too was issued after the Secretary PARC, functioning under the office of respondent No.6, had initiated correspondence seeking clarification for such purpose.

40. In the above facts and circumstances, there was never any occasion to initiate a fresh summary to determine the tenure of respondent No.6 after his appointment, especially when the Advertisement very clearly provided that the applications for the post of Chairman PARC were being invited for a post with a tenure of two years. In view of such Advertisement, a person interested in the term may or may not have applied given the tenure specified. To state the same in another way, the pool from which candidates were to be shortlisted may have been different had it been stated in the Advertisement that the tenure of the contract for the post would be an initial period of three years extendable for a further period of two years in accordance with Para 5(3) of the MP Scales Policy. This raises a fundamental question of fairness and transparency and undermines the right of prospective candidates to a level playing-field in expressing their interest in competing for the post of Chairman PARC. Once

respondent No.6 was appointed Chairman PARC pursuant to an Advertisement that stated that the tenure of his contract would be two years, such foundational term of his appointment could not have been altered after his appointment by initiating fresh summaries and concluding that Para 5(3) of the MP Scales Policy would be applicable in defining the tenure of such appointment. The effect of such interpretation would be that a public office that was filled for two years would now be filled for a period of three years and would be extendable for a further period of two years without any competitive process or inviting fresh applications for the post.

41. Such ex-post facto change to the tenure of a public office falls foul of the principles of transparency, fairness and due process, as well as the obligation of the state to afford a level playing-field to all those interested in competing for a public office. This Court further finds that the Ministry of National Food Security and the Establishment Division failed in their obligation to put together a concise summary in accordance with law for the consideration of the Prime Minister and the President with regard to the tenure for the appointment of respondent No.6, to the extent that they initiated a second summary seeking to re-fix the tenure in contradiction to the condition prescribed in the Advertisement. It is evident that the Prime Minister or the President were never invited to apply their minds to the fact that the Advertisement itself prescribed a tenure of two years and a second summary was subsequently put up which included equivocal language, which was subsequently misconstrued by O.M. dated 15.03.2024 issued by the Establishment Division to

state that the tenure of appointment of respondent No.6 as Chairman PARC was three years in terms of Para 5(3) of the MP Scales Policy. Needless to mention that even if a concise summary had been put up to the Prime Minister and subsequently the President to fix a tenure for the appointment of respondent No.6 in contradiction with the tenure prescribed in the Advertisement, such a re-fixation and enhancement of tenure would fall foul of the principle that discretion has to be exercised in a just, fair and reasonable manner.

42. For the aforementioned reasons, this Court finds that the O.M. dated 15.03.2024 is liable to be ***set aside*** for stating that the tenure of appointment of Chairman PARC was a period of three years as opposed to two years as prescribed in the Advertisement. Respondent No.6 was appointed by notification dated 28.07.2022 and the tenure of his appointment would be deemed to always have been a period of two years that stood expired after a period of two years from the date on which he assumed the charge of his office pursuant to notification dated 28.07.2022. Respondent No.6 shall therefore vacate the office of Chairman PARC forthwith. The post of Chairman PARC is declared to be vacant and respondents No.1 to 5 will make immediate arrangements to fill such post in accordance with provisions of the PARC Ordinance and the principles of fairness, transparency and due process reiterated in this judgment.

43. While it has been declared that Respondent No.6 has held the post of Chairman PARC, after the expiry of a period of two years pursuant to notification dated 28.07.2022, not in accordance with law, to the extent that respondent No.6 has

continued to serve against the post of Chairman PARC, no question will arise with regard to the benefits that he has already received in lieu of his services up until the date of announcement of this judgment.

44. The petition is **allowed** in the above terms.

**(BABAR SATTAR)**
**JUDGE**

Announced in open Court on **15.01.2025.**

**JUDGE**

Approved for reporting.

Shakeel Afzal/-