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

Writ Petition No.3549 of 2014

Nazer Aslam

Versus

The Federation of Pakistan through its Secretary, Establishment Division and others

Petitioner by	:	Mr. Abdul Hafeez Amjad, Advocate.
Respondents by	:	Mr. Abdul Rahim Bhatti, Advocate for respondent No. Syed Nazar Hussain Shah, learned Assistant Attorney-General along with Mr. Mahmood ul Hassan, Superintendent Legal, FBISE. Syed Kashif Ali Kazmi, respondent No.1 in person.
Dates of Hearing	:	28.02.2022, 11.03.2022, 07.04.2022 and 16.05.2022

ARBAB MUHAMMAD TAHIR,J.:- Through the present writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as **"the Constitution"**), the petitioner, Nazer Aslam, seeks *inter alia* the issuance of a writ of ***"quo warranto"*** against respondents No.4 to 7 challenging their appointments in the Federal Board of Intermediate and Secondary Education (hereinafter referred to as **"Federal Board"**). The said respondents were initially appointed in the Federal Board on daily wages basis and subsequently their services were regularized pursuant to the recommendations of the Committee on Regularization of Contract/Daily Wages Employees in the Ministries / Divisions/ Attached Departments / Autonomous Bodies / Organizations, etc. (hereinafter referred to as **"the Committee"**).

FACTUAL BACKGROUND:-

2. The facts in brief, essential for the disposal of the present writ petition, are that vide office orders dated 16.12.2011, 01.11.2011, 04.11.2011 and 18.04.2012, respondents No.4, 5, 6 and 7 (Syed Kashif Ali Kazmi, Audit Officer (BPS-17), Atif Imran, Network Engineer (BPS-17), Muhammad Riaz Khan, Developer (BPS-17) and Fozia Maroof, Director Physical Education (Female) (BPS-17), respectively) were appointed by the Federal Board on daily wages basis against different posts in anticipation of the approval of the Board of Governors (hereinafter referred to as the **"BOG"**) with effect from the date of joining of their respective duties for a period of 89 days or till the joining of the regular incumbents of the respective posts, whichever was earlier. They were to be paid on the basis of their daily duty days actually performed by them. This engagement of theirs was purely temporary, terminable at any time without assigning any reason and the same had to confer on them no title, claim or right to permanent appointments/absorption in the Federal Board. The BOG of the Federal Board in its 94th meeting held on 26.06.2012 had given its approval regarding the appointments of the said appointees. Subsequently, pursuant to the recommendations of the Committee, the services of respondents No.4 to 7 were regularized. It is the petitioner's assertion that the services of the said respondents have unlawfully been regularized. Hence, this petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

3. Mr. Abdul Hafeez Amjad, Advocate, learned counsel appearing on behalf of the petitioner after narrating the facts leading to the filing of the present writ petition contended that under the Federal Board of Intermediate and Secondary Education Employees (Service) Regulations, 2005 ("hereinafter referred to as "**the 2005 Regulations**"), the appointing authority

for the post of BPS-17 in the Federal Board is the BOG and not the controlling Ministry; that according to the 2005 Regulations, no appointment can be made unless the same is advertised in the leading newspapers inviting applications; that respondents No.4 to 7 were appointed without there being any advertisement; that the said respondents were appointed initially on daily wages basis without observing codal formalities set out in the 2005 Regulations; that no regional quota was observed while hiring the services of respondents No.4 to 7; that the said respondents were illegally regularized in service defeating the very purpose of the 2005 Regulations; that the Chairperson of the Federal Board is not competent to make appointments in BPS-17 on daily wages basis or on contract basis; that Section 9 of the 2005 Regulations provides that initial appointment in BPS-17 and above shall be made by the BOG and all such vacancies shall be advertised in the newspapers having wide circulation.

4. It was next contended that the said provision of the law was violated by the respondent Federal Board while regularizing the services of respondents No.4 to 7; that the appointments of respondents No.4 to 7 having not been made by the authority competent under the law are a nullity in the eyes of law; that in order to meet the ends of justice, respondents No.4 to 7 ought to be dismissed from service since their appointment is not in accordance with the law; that the Hon'ble Supreme Court vide detailed judgment dated 17.03.2014 passed in Constitution Petition No.06 of 2011 and other connected matters had declared similar illegal appointments made in the Employees Old-age Benefit Institution (EOBI) to be illegal and without lawful authority; that Article 27(1) of the Constitution provides that no person otherwise qualified for appointment in service of Pakistan shall be discriminated against in respect of such appointment on the ground of race, religion and caste, etc.; that it is well settled

that the powers vested in the competent authority can only be used judiciously and the evil of nepotism and favoritism cannot be allowed to prevail; that it is also well settled law that any action taken in utter disregard of the law would remain void; that this Court under the Constitutional jurisdiction has ample power to protect the process of the law from being abused; and that the appointments of respondents No.4 to 7 be declared as unlawful and of no legal effect. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the prayer sought therein.

SUBMISSIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.3/FEDERAL BOARD :-

5. On the other hand, Mr. Abdul Rahim Bhatti, Advocate, learned counsel appearing on behalf of respondent No.3/ Federal Board while opposing the present petition with vehemence contended that the petition in hand suffers from the doctrine of *laches* and thus not maintainable on this score alone; that the writ jurisdiction of this Court is discretionary as well as extraordinary in nature, which cannot be exercised in favour of a party who/which demonstrates a style of laxity and slackness; that a party guilty of gross negligence is not entitled to the discretionary relief; that it is well settled that if the Court is satisfied as regards the *laches*, it can non-suit any person/party on the said ground; that the petitioner is a habitual litigant and tries to procure a job in the Federal Board by blackmailing its Administration/management; that it is the 3rd writ petition having been filed by the petitioner on the same subject matter; that the earlier two writ petitions filed by the petitioner were disposed of by this Court; that the present petition is bereft of factual and justifiable reasons; that the petitioner has no *locus standi* to file the present writ petition; that the petitioner does not claim himself to be a ***"publico pro bono"*** rather he is agitating his

grievance under the garb of public interest in order to gain some personal interests; that it is well settled that a writ of ***"quo warranto"*** cannot be issued as a matter of course on glaring technicalities; that in a writ of ***"quo warranto"***, the conduct of a relator/informer is of pivotal importance; that the conduct of the petitioner is such that disentitles him from the relief sought by him in the present petition; that respondents No.4 to 7 are not suffering from any disqualification; that the appointments of the said respondents were made strictly in accordance with the mandate of the 2005 Regulations; that since the petitioner is an "interested person" thus, the present writ of ***"quo warranto"*** is not maintainable on the said score too; that the petitioner has invoked the Constitutional jurisdiction of this Court with sullied hands by suppressing material and factual facts from this Court; that the petitioner's father stood retired as Controller of Exams from Federal Board and during his tenure, he (i.e. the petitioner's father) had managed to get his three sons and one son-in-law appointed illegally in the Federal Board besides other relatives while using his official position; that the petitioner has raised certain factual controversies, which cannot be resolved in the writ jurisdiction of this Court.

6. it was next contended that the petitioner has no cause of action to file the present writ petition; that the claim of the petitioner is based on misconception of facts as well as the law; that the short-term appointments were made by the Federal Board in accordance with ESTA Code (7th Edition), Volume-I, Chapter No.2, SI. No.129, Para-2 on daily wages basis for a period of 89 days; that the services of respondents No.4 to 7 were regularized pursuant to the recommendations of the Committee; that the judgment dated 17.03.2014 rendered by the Hon'ble Supreme Court has been misinterpreted inasmuch as the same is altogether on different footings; and that strict compliance with all

the applicable Rules and Regulations was shown while regularizing the services of respondents No.4 to 7. Learned counsel for Federal Board prayed for the writ petition to be dismissed with costs. During the course of the arguments, he placed reliance on the judgments reported as **1998 SCMR 1235, PLD 2003 SC 143, 2005 SCMR 126, 2012 SCMR 280 and 1004, PLD 1984 SC 385, PLD 1984 385, PLD 1989 SC 166, 2004 SCMR 1299, 2004 PLC (CS) 1142 (SC), 2003 PLC (CS) 1105 (Lahore High Court), 2002 SCMR 1209, 2009 SCMR 644, 2011 SCMR 290, 2006 SCMR 12 and 2006 SCMR 276.**

SUBMISSIONS OF RESPONDENTS NO.4 to 7:-

7. Respondents No.4 to 7 have filed their one pager separate written comments, which are all similar in nature. In the said comments, it has been pleaded that the petitioner is a habitual litigant and the purpose of filing the present writ petition is only to get a job for himself in the Federal Board; that the father of the petitioner is a retired employee of the Federal Board and during his tenure, he illegally got appointed certain family members in the Federal Board. Furthermore, it is asserted in their written comments that their services in the Federal Board were regularized on the analogy of thousands of other government employees, who were regularized by the Committee; and that the superior Courts of the country have ordered for implementation of the decision taken by the Committee. It has, therefore, been prayed that the petition in hand be dismissed with costs.

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

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

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

10. In the case of **Ch. Muneer Ahmad and others Vs. Malik Nawab Sher and others (PLD 2010 Lahore 625),** it was held as follows:-

> *"Regarding the objection of respondent No.1 about the delay in filing the instant petition and the applicability of the principle of laches,* ***suffice to observe that the question of limitation or laches does not apply in cases of "quo warranto", as Courts cannot allow to perpetuate the usurper to continue in a public office. Unlawful holding of a public office is a continuing wrong, which can be called in question by any c party at any time. Furthermore, a Constitutional petition cannot be dismissed on the ground of laches, without examining dictates of justice in claim of each party****, in addition to examination of law and jurisdictional point involved in the petition."*
>
> **Emphasis laid:**

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

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

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

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

13. In the case of **Syed Ali Raza Asad Abidi Vs. Ghulam Ishaq Khan, President of Pakistan and another (PLD 1991 Lahore 420)**, it has *inter alia* been held as follows:-

> *"****"quo warranto"****---Laches----****Laches would not generally apply in cases of "quo warranto"*** *but then the Court can also not ignore the application of this principle if the attendant circumstances are such which militate against the bona fide's of the petitioner.*

14. Similarly, in the case of **Muhammad Siddique, Advocate v. Farhat Ali Khan and another (PLD 1994 Lahore 183)**, it was *inter alia* held that:-

> *laches---Validity---Illegal occupation of the office being a recurring wrong, each day the office remains illegally occupied furnishes a fresh cause of action---* ***Constitutional petition, seeking direction in the nature of "quo warranto" could not be dismissed merely on the ground of delay or laches"***

15. Thus, it could safely be held that *laches* in writ of ***"quo warranto"*** would generally not apply as such the objection regarding the maintainability of the present petition on the ground of *laches* is spurned.

16. Now turning to the merits of the case, perusal of the record reflects that vide office orders dated 16.12.2011, 01.11.2011, 04.11.2011 and 18.04.2012 issued by the Federal

Board, whereby respondents No.4, 5, 6 and 7 (Syed Kashif Ali Kazmi, Audit Officer (BPS-17), Atif Imran, Network Engineer (BPS-17), Muhammad Riaz Khan, Developer (BPS-17) and Fozia Maroof, Director Physical Education (Female) (BPS-17), respectively were appointed on daily wage basis against different posts in anticipation of the approval of the BOG with effect from the date of joining of their respective duties for a period of 89 days or till the joining of the regular incumbents of the respective posts, whichever was earlier. The said respondents were to be paid on the basis of their daily duty days actually performed by them. This contractual engagement of the said respondents was purely temporary, terminable at any time without assigning any reason and the same had to confer on them no title, claim or right to permanent appointments/absorption in the Federal Board. On 02.08.2013, the Federal Government/Senate Secretariat nominated two Senators as Members of the BOG of the Federal Board for a period of three years. Apparently, the BOG had confirmed and approved the action taken by the Chairperson in anticipation of the approval of the BOG in relation to engaging the services of respondents No.4 to 7.

17. On 29.11.2012, a meeting of the Committee was held under the Chairmanship of Syed Khursheed Ahmed Shah, ex-Federal Minister for Religious Affairs, Mr. Qamar Zaman Kaira, ex-Federal Minister for Information & Broadcasting, Sardar Al-Haj Mohammad Umar Gorgeij, ex-Federal Minister for Postal Services, Sheikh Waqqas Akram, ex-Federal Minister for Education & Training, Mir Hazar Khan Bijarani, ex-Federal Minister for Coordination and Ch. Manzoor Ahmed, Chairman, Peoples' Labour Bureau/Member of Central Executive Committee of PPP. In the said meeting, it was unanimously decided that the contract/daily wages employees, who had completed one year of contractual service and/or three spells of 89-days as daily wagers respectively up to

31.12.2012, will be considered for regularization during the said meeting and onward.

18. The Federal Board comes under the administrative control of the Ministry of Education & Training. In the meeting of the Committee, the representative of the Ministry of Education & Training presented the cases of 14 contractual employees of the Federal Board for regularization of their services, who had completed more than one year of service and whose services were required to be regularized. The Committee, which also consisted of the Federal Minister for Education, discussed and approved the regularization 14 employees of the Federal Board subject to the availability of the vacancies and fulfillment of the recruitment criteria. Out of the said 14 employees, the names of respondents No.4, 5 and 6 are also mentioned at Sr. No.1, 2 and 3 of the list of such employees.

19. Another meeting of the Committee took place on 13.03.2013 and the minutes of the said Committee were forwarded by the Ministry of Education & Training vide its letter dated 30.04.2013 to the Secretary, Federal Board informing the latter as to the approval given by the Committee regarding regularization of the Federal Board's employees contractual services. The said approval was subject to the availability of the vacant seats coupled with the fulfillment of the recruitment criteria and completion of one year of contractual service/three spells of 89 days. In the list of the Federal Board's employees, the name of respondent No.7 also find mentions at Sr. No.1 of the said list.

20. On 27.02.2013, a meeting of the Selection Board was held in order to consider the cases for regularization of contractual/daily wages employees (BPS-16 and above) of the Federal Board in light of the minutes of the Committee's meeting held on 29.11.2012. In the

said meeting of the Selection Board, the regularization of the said respondents were recommended.

21. Similarly, the BOG of the Federal Board in its 95th meeting held on 30.04.2013 approved the minutes of the meeting of the Selection Board/Departmental Promotion Committee held on 27.02.2013 regarding regularization of respondents No.4 to 6's services. Additionally, in pursuance of the Ministry of Education and Training's letter dated 30.04.2013 and in anticipation of the approval of the recommendations of the Selection Board by the BOG, the services of respondent No.7 were also regularized against the vacant seat of Director Physical Education (Female) (BPS-17). The employees of the Federal Board so regularized were placed under probation for a period of one year with effect from the date of their regularization.

22. Additionally, in one of the prayer clauses, a direction has been sought in the following manner:-

a)….

b)….

c) ***A direction may be issued to advertise the above four vacancies as well as other vacancies enabling the petitioner also to apply for one of the same*** *and to fill in the same afresh strictly in accordance with applicable rules and regulations subject to requisite qualification and merit criteria.*

23. The petition in hand appears to be in the nature of mandamus under the garb of a writ of ***"quo warranto"*** in order to hoodwink the law of limitation. Perusal of the said prayer clause makes it abundantly clear that in fact the petitioner in a clandestine manner seeks his induction in the service of the Federal Board since he prays for a direction to be issued to the Federal Board to advertise the posts against which respondents

No.4 to 7 have been appointed, enabling him to apply for one of the same.

24. It is within the domain of the Executive/Appointing Authority to engage the services of the eligible and most suitable candidates subject to fulfillment of the recruitment criteria set out in the relevant Rules/Regulations. It may also not be out of context to mention that it is the Executive, which has ample power to regularize the services of daily wages employees. The Court of constitutional causes cannot order the regularization of the contract/daily wages employees. At best, the Court in writ jurisdiction can order for consideration of such employees for regularization provided such employees fulfill the standardized criteria/procedure prescribed in the relevant law governing the subject. It is the Executive's domain and not that of the Court to make policies regarding recruitment/regularization and other matters. Moreover, the public functionaries can hire the services of the eligible persons either on daily wages/contract basis or on permanent basis in exigencies of services subject to the fulfillment of the requisite criteria. The Court cannot direct the Executive/ Appointing Authority to appoint a candidate according to his/her whims and wishes. As discussed above, it is the prerogative of the Federal Government/Executive Branches of the State to make policies regarding regularization and other service matters according to their wisdom. It would also not be out of context to mention that the Constitution was based on the principles of trichotomy of powers where the Legislature was given the powers of law making, the executive to enforce the same, and the judiciary to construe the law properly. It is my view that the Courts cannot assume to itself the role of the policy maker or the law maker. All that the Court is expected` and required to do is that it ought to interpret the law and ensure its strict implementation/compliance.

COURT CANNOT INTERFERE IN THE POLICY MATTERS.

25. Regularization is in fact based on a policy decision of the competent authority for its implementation across the board for a particular category of employees' viz daily wagers/contract employees. What the Committee did and what did not is not the domain of the High Court. Interference into the affairs of the Executive *qua* policy making goes against the basic principle of separation of the powers and entering into domain of the Executive. Guidance in this regard may be sought from the law laid down in the case of **Khushal Khan Khattak University Vs. Jabran Ali Khan (2021 SCMR 977)**, wherein the Hon'ble Supreme Court has *inter alia* held as follows:-

> *"We also find that the learned* ***High Court arrogated to itself the executive function of being the appointing authority which function is beyond the pale of jurisdiction of the High Court and militates against the fundamental concept of trichotomy of powers which is a foundational block of our Constitutional scheme****."*
>
> **Emphasis laid.**

COURT CANNOT FUNCTION AS A SELECTION/APPOINTING AUTHORITY:-

26. As discussed above, this Court in exercise of its Constitutional jurisdiction cannot arrogate to itself the role of the Executive or a policy maker. The role of the Court is to interpret the law and not delve in matters involving policy issues. The responsibility of deciding the suitability of an appointment, posting or transfer is the exclusive domain of the Executive Branches of the State. It is also well settled that the Court of Constitutional Causes should ordinarily refrain itself from interfering in the policy making domain of the Executive. Reference in this regard may be made to

the law laid down by the Hon'ble Supreme Court in the case of **Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others (2008 SCMR 960)**, wherein it was held as under:-

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

27. In the case of **Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others Vs. Sher Aman and others (2022 SCMR 406)**, it was *inter alia* held as under:-

> ***"The role of the courts is to interpret the law and not delve in matters involving policy issues.*** *The learned High Court could not have assumed the role of the executive or a policy maker and held that constituting a committee for fresh appointments would have been "wastage of time and resources".*

28. In the case of **Syed Ali Hamza and others Vs. Province of the Punjab and others (2022 PLC (CS) 525)**, it was *inter alia* held as follows:-

> *"In assessment of suitability of a particular nature of job and its scope in the context of particular employer* ***the Courts cannot prescribe the eligibility or experience qualifications and work experience as these are matters of policy and best be left to the department. As the matter in hand relates to the policy matter of the government/department, therefore, Court cannot interfere into it. It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic***

> ***requirement of the Constitution. It was for the Department to decide how and in what manner the reservations should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness.***

29. Similarly, in the case of the **Secretary Punjab Public Service Commission, Lahore and others Vs. Aamir Hayat and others (2019 SCMR 124),** the Hon'ble Supreme Court has held that ***"Courts could not interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own".***

30. A similar view was taken in the case of **M. Nazir Ahmad Vs. Muhammad Aslam and others (2013 SCMR 363)**, wherein it was held as under:-

> *"**An employer has the discretion to formulate appropriate policy viz.a.viz job qualification and criteria for various positions in line with its peculiar requirements and organizational structure** hence no person had a vested right to be appointed on a post rather the authorities made a selection for the post as per criteria set out in Rules/policy and had to find the most suitable candidate for the job who could capably discharge the duties".*

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

Emphasis laid.

32. In the case of **Muhammad Ashraf Sangri Vs. Federation of Pakistan and others (2014 SCMR 157)**, it was held as follows:-

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

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

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

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

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

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

CONDUCT OF THE PETITIONER.

36. The conduct of a party seeking a relief in the Constitutional jurisdiction of the High Court is of paramount importance for the exercise of discretionary powers by the High Court. The exercise of writ jurisdiction by a High Court has to be founded on sound discretion and on consideration of the recognized judicial principles governing exercise of such discretion. The High Court cannot refuse to take into account a litigant/petitioner's conduct which disentitles him / her from such relief. The High Court in exercise of the powers conferred by Article 199 of the Constitution can grant relief only to a person whose conduct is such that does not disentitle him

/ her to obtain such a relief. It is well settled that a writ of ***"quo warranto"*** is not to be issued as a matter of course rather it is the Court's discretion whether to refuse or grant it keeping in view the facts and circumstances of the case. The exercise of writ jurisdiction by a High Court has to be based on sound discretion and on consideration of the recognized judicial jurisprudence governing the exercise of such discretion.

37. The Court must, while hearing a petition seeking the issuance of a writ of ***"quo warranto"***, enquire into the conduct and motive of the relator and when the Court is not satisfied as to the conduct of the petitioner/relator, it may, in its discretion, refuse to issue a writ where it would be vexatious to do so. Reference in this regard may be made to the law laid down in the case of **Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899),** wherein it was *inter alia* held as follows:-

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

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

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

39. The admitted position of the matter is that earlier the petitioner had filed writ petition No.2744 of 2011 before this Court challenging the extension in the deputation period of the then Chairperson of the Federal Board on the ground that she was indulged in corrupt and malpractices. The petitioner stood succeeded in getting the relief sought in the said writ petition. The said writ petition culminated in the passing of the judgment reported as **"Nazar Aslam Vs. Federal Government and 6 others (2013 PLC (CS) 974),** which judgment was assailed by the then Chairperson of the Federal Board in Intra Court Appeal No.92 of 2012. The said I.C.A. met with the fate of dismissal vide judgment dated 19.03.2013. The judgment dated 19.03.2013 passed in I.C.A. No.92 of 2013 was further subjected to a challenge in Civil Petition No.385 of 2013 before the Hon'ble Supreme Court, but the said petition was dismissed as withdrawn. The matter does not end here. The petitioner filed another writ petition No.2912 of 2013. This time, he had challenged the appointments of the same respondents (i.e. respondents No.4 to 7 herein). The order dated 07.01.2014 passed in the said writ petition reads thus:-

> *"Since it is an admitted fact that Petitioner has filed appeal on 04.03.2013 before the Secretary Establishment Division which is pending therefore,* ***learned counsel for the Petitioner feels satisfied if direction is issued to the Secretary Establishment Division to decide the appeal of the Petitioner within one month.***
>
> *Order accordingly. Writ Petition stands disposed of"*

40. In compliance with the said directions, the Establishment Division disposed of the petitioner's appeal with the observation that the matter pertains to the defunct Capital Administration & Development Division and not to the Establishment Division. Yet again the petitioner filed writ petition

No.2256 of 2014 before this Court questioning therein the appointments of the very same respondents *viz* respondents No.4 to 7. The said writ petition was also disposed of vide order dated 09.05.2014 with the following observations:-

> *"It is the Petitioner, who opted wrong forum for redressal of his grievance and in the light of contents of Writ Petition No.2912/2013 order dated 07.01.2014 was passed. The petitioner should have approached to the Secretary, CADD for redressal of his grievance instead of filing Constitutional Petition more particularly after observation made by the Secretary, Establishment Division, while disposing appeal of the petitioner.*
> *In this view of the matter, Petitioner, if so advised, may approach the Secretary, CADD for redressal of his grievance and in case any appeal is filed, the Secretary, CADD shall decide the same in accordance with the law, after providing opportunity of hearing to the Petitioner.*
> *Writ Petition stands disposed of."*

41. The petition in hand is the third in number having been filed by the petitioner on the same subject matter. In the earlier writ petition i.e. writ petition No.2912/2013, the petitioner's counsel had expressed his contentment provided a direction was issued to the Establishment Division to redress the petitioner's grievances. It is quite astonishing to notice that the petitioner has not disclosed the fact in his pleadings to the effect that his father had retired as Controller of Examination from the Federal Board. It is not until the Federal Board filed its written comments that it came to the limelight that the petitioner's father during his stay at the Federal Board had managed to get his three sons and one son-in-law appointed in the Federal Board including other relatives. The relevant excerpt of the said written comments reads thus:-

"The father of the petitioner was retired from Federal Board as Controller of Exams. During his stay in the Board he himself managed to get his three real sons (i.e. brothers of the petitioner) and one of his son in law together with many other relatives appointed in the Board using his official position."

Emphasis laid.

42. During the petitioner's father stay in the Federal Board, he (the petitioner) endeavored to get himself appointed in the Federal Board, but since his father stood retired hence, he could not get himself appointed. Subsequently, the petitioner embroiled the Federal Board in frivolous litigation by filing constitutional petitions one after the other challenging the appointments of respondents No.4 to 7 so that he could be accommodated on one of the four seats, but to no avail. The petitioner from his conduct appears to be a habitual and chronic litigant, who has been dragging the respondents Federal Board in different proceedings just to affect its smooth functioning, which plays an important role in imparting education, to say the least.

43. It appears that the petitioner has filed the present petition in the nature of public interest. It is well settled proposition of law that public interest litigation is a weapon which has to be used with great care and caution and the judiciary has to be careful to see as to whether any private malice, personal motive and publicity is lurking or not. Such a weapon ought to be used in the armory of the law for delivering the social justice to the ordinary citizens. In holding so, I am fortified by the law laid down by the Hon'ble Supreme Court in the case of **Dr. Akhtar Hassan Khan and others Vs. Federation of Pakistan and others (2012 SCMR 455),** wherein it was *inter alia* held as follows:-

"Public interest litigation is a weapon which has to be used with great care and circumspection and ***the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration****. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."*

44. This Court is not satisfied with the *bona fides* of the petitioner since his conduct is such that could not persuade this Court to grant him the relief sought by him through the petition in hand. Since the petitioner could not get a job during the life time of his father's stay at the Federal Board for whatever reasons, his personal vengeance/grudge against the management of the Federal Board cannot be ruled out. It is well settled that the Constitutional jurisdiction of the High Court cannot be resorted to settle personal grudges/differences between the parties. Hence, this Court is inclined to observe that the petition in hand is the outcome of the personal vengeance and the same is not maintainable on this score. Reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in the case of

Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary M/o Law, Islamabad and others (PLD 2013 SC 413), wherein it was inter alia held as follows:-

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

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

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

> *"5. There is no cavil to the proposition that the **"conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable***

considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on maxim "he who seeks equity must do equity". Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands.*"*
Emphasis laid.

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

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

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

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be

thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

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

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

49. It appears that the petitioner is trying to drag the other respondents in general and the Federal Board in particular in frivolous litigation as such creating hurdles in the way of dispensation of justice and wasting precious time of the Court. It is the bounden duty of the Courts not to allow any party to abuse the process of the Court and imposition of suitable cost may be one of the modes to curtail the propensity of filing unnecessary and frivolous litigation. Apparently, the petitioner has filed the present writ petition in order to achieve his ulterior motives which is required to be dismissed with imposition of the exemplary costs.

50. Consequently, this petition being without any substance and devoid of merits is hereby **dismissed** with costs to the tune of Rs.50,000/- which shall be paid to the Federal Board.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 06.07.2022.

JUDGE

ISLAMABAD | 06.07.2022
APPROVED FOR REPORTING.

//Kamran//