JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4738 of 2016
Zahid Ali
Versus
Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis & Human Resource Development and others

Dates of Hearing:	18.04.2022, 16.05.2022, 22.06.2022, 20.07.2022, 20.09.2022, 05.12.2022, 08.02.2023, 13.03.2023 and 18.05.2023
Petitioner by:	M/s Nisar Ahmed Shah and Ch. Muhammad Nisar Ali, Advocates.
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. M/s Hafiz Arfat Ahmad Ch., Tariq Zaman Ch. and Kashifa Niaz Awan, Advocates for respondent No.2. Mr.Zaheer Bashir Ansari, Advocate for respondent No.3. Mr. Muhammad Kamal Hassan, Advocate for respondent No.4. Mr. Abid Mehmood, Advocate for respondent No.5. M/s Khawaja Azhar Rashid and Komal Malik Joyia, Advocates. Respondent No.6 in person.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Zahid Ali, who is serving as Deputy Director (BS-18) in the Workers Welfare Fund (**"W.W.F."**), has prayed for the issuance of a writ of *quo warranto* to quash the appointments of respondents No.3 to 6 in W.W.F.

2. W.W.F. was established on 09.12.1971 pursuant to the provisions of the Workers Welfare Fund Ordinance, 1971 (**"the 1971 Ordinance"**) for providing residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto. Section 8(3) of the 1971 Ordinance provides that the Governing Body of W.W.F. shall determine the terms and conditions of service of the Secretary and the employees of W.W.F. with the previous approval of the Federal Government. The Governing Body with the approval of the Federal Government made the Workers' Welfare Fund (Employees Service) Rules, 1997 (**"the 1997 Rules"**). These Rules are set-out in notification (SRO

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1193(I)/97), dated 15.11.1997. Section 8(4) of the 1971 Ordinance provides that the Secretary and every employee of W.W.F. shall be deemed to be a public servant within the meaning of Section 21 of the Pakistan Penal Code, 1860.

3. Learned counsel for the petitioner submitted that the appointments of respondents No.3 to 6 have been made in violation of the 1997 Rules; that respondents No.3 and 4 were not appointed by adopting the procedure prescribed in the 1997 Rules for making initial appointments; that neither was any advertisement published nor was any test or interview conducted before the appointment of respondents No.3 and 4; that the posts against which respondents No.5 and 6 were appointed had not been created with the approval of the Governing Body of W.W.F.; that respondents No.5 and 6 were also appointed without any advertisement; and that the unlawful appointments of respondents No.3 to 6 have had an adverse impact on the petitioner's promotion prospects which amounts to a violation of his fundamental rights guaranteed by the Constitution.

4. I deem it appropriate to deal with the challenge to the appointment of each respondent separately.

Respondent No.3 (Sumaira Kausar)

5. The petitioner asserts that respondent No.3 was appointed on 15.10.2008 as Assistant Director (BS-17) on *ad-hoc* basis and on 01.09.2009, her services were regularized with effect from 01.09.2009 without adopting the procedure prescribed in the 1997 Rules for making the initial appointment. The petitioner also asserts that no advertisement was published before respondent No.3's appointment and that she was appointed without being subjected to a written test or interview.

6. The record shows that vide office order dated 15.10.2008, respondent No.3 was appointed as Assistant Director (BS-17) on *ad-hoc* basis for a period of six months extendable on the basis of her performance. Vide office order dated 15.04.2009, her *ad-hoc* service period was extended up to 14.10.2009. Office order dated 28.08.2009 issued by W.W.F. shows that respondent No.3's services were regularized with effect from 01.09.2009. The said office order also shows that respondent No.3 was to be treated as *a "temporary*

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employee" **and was to be on probation for one year. Unless the probation period was terminated earlier, it was deemed to have been extended for another year and on the lapse of such extended period, she was deemed to have successfully completed her probation period. Vide office order dated 22.12.2010, respondent No.3's probation period was terminated. With the termination of her probation period, her services as Assistant Director (BS-17) were confirmed. On 16.01.2014, the petitioner was promoted to the post of Deputy Director (BS-18).**

7. In the year 2007, respondent No.3 was awarded a degree of Bachelor of Business Administration (Honors) and in the year 2008, she was awarded a degree of Master of Business Administration by the Arid Agriculture University, Rawalpindi. On 10.05.2017 (i.e., after her appointment in W.W.F.), respondent No.3 was awarded a degree of Master of Science in Finance by Bahria University.

8. It is not disputed that several employees appointed on contract basis in W.W.F. were regularized pursuant to decisions taken by the competent authority in W.W.F. Several office orders issued by W.W.F. whereby the contractual / *ad-hoc* services of employees were regularized have been brought on record. In the case of Imran Ahmed Vs. Federation of Pakistan (2019 PLC (C.S.) Note 19), this Court has held in paragraph 123(ix) of the said report that employees who were already working in different Ministries, Divisions, etc. whose services had been regularized should not be disturbed as their cases fall within the ambit of past and closed transactions subject to the condition that they were appointed in accordance with the law and in a transparent manner. In this view of the matter, I am not inclined to interfere with respondent No.3's appointment as Assistant Director (BS-17) made more than a decade ago.

Respondent No.4 (Ejaz Ahmed)

9. The petitioner asserts that respondent No.4 was appointed as Assistant Director (BS-17) in W.W.F. on 31.10.2012 when there was no post available against which respondent No.4 could be appointed. It is also asserted that neither was any advertisement published inviting applications for appointment to the said post nor

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was any written test or interview conducted before respondent No.4's appointment.

10. The record shows that on 21.09.2012, W.W.F. published an advertisement inviting applications for appointment to different posts in W.W.F., including the post of Assistant Director (BS-17). In the said advertisement, the required age limit for the applicants was stated to be between 18 to 30 years, and that the upper age limit could be relaxed as per the Federal Government rules. On 27.09.2012, respondent No.4 applied for appointment to the said post and submitted his bio-data along with his educational testimonials for consideration by W.W.F. Respondent No.4 has done his Master in Business Administration from the University of Punjab. Vide letter dated 19.10.2012, W.W.F. required respondent No.4 to appear for interview on 24.10.2012 before the Selection Committee. On 25.10.2012, W.W.F. offered appointment as Assistant Director (BS-17) to respondent No.4. This offer was accepted by respondent No.4 who joined his duties in W.W.F.'s Secretariat on 31.10.2012. Vide office order dated 14.05.2014, respondent No.4's probation period was terminated and his services as Assistant Director (BS-17) in W.W.F. were confirmed.

11. Respondent No. 4 was 34 years of age when he was appointed as Assistant Director (BS-17). He claimed age relaxation of five years in the upper age limit of 30 years as mentioned in the advertisement dated 21.09.2012.

12. Rule 13(5) of the 1997 Rules provides that a candidate for initial appointment must possess the required educational qualifications and experience and must be within the age limit laid down for the post in Part-II of Appendix-2 to the said Rules. Part-II of Appendix-2 of the 1997 Rules prescribes an age limit of 22 to 30 years for appointment as Assistant Director (BS-17) in W.W.F. The *proviso* to Rule 13(5) provides that the maximum age limit may be relaxed up to five years by the appointing authority if no suitable candidate within the prescribed age limit is available. It is also not disputed that the advertisement dated 21.09.2012 clearly provided that the upper age limit could be relaxed as per Federal Government rules. The Initial Appointment to Civil Posts (Relaxation of Upper Age

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Limit) Rules, 1993 (“the 1993 Rules”), which have been made pursuant to Rule 12 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 provides for age relaxation admissible to different categories of candidates. Rule 4A (1) of the 1993 Rules entitles a candidate for appointment to a post in BS-17 to an age relaxation by a period of five years in the maximum age limit prescribed for initial appointment under any rules for the time being in force. By virtue of Rule 4A(1) of the 1993 Rules, respondent No.4 was entitled to age relaxation by five years in the maximum age limit of 30 years prescribed for appointment to the post of Assistant Director (BS-17) in Part-II of Appendix-2 to the 1997 Rules. Since respondent No.4 was 34 years of age when he was appointed as Assistant Director (BS-17) in WWF, I do not find his appointment to be in violation of the 1997 Rules.

13. Rule 13(2) of the 1997 Rules provides that initial appointment to a post in pay scale-18 and below shall be made by the appointing authority on the recommendations of the Selection Committee concerned. The documents on the record show that respondent No.4 was duly interviewed by the Selection Committee on 24.10.2012 after which he was offered appointment as Assistant Director (BS-17). The minutes of the meeting of the five-member Selection Committee that interviewed the 19 shortlisted candidates, including respondent No.4, for the post of Assistant Director (BS-17) show that respondent No.4 had unanimously been recommended for appointment to the said post as he was at the top of the merit list. The marks sheet brought on record through an application (C.M.No.2298/2022) shows that respondent No.4 had obtained the highest marks among the competing candidates. It is not disputed that the Secretary, W.W.F. is competent to make appointment to posts in BS-18 and below. The note file on the record shows that respondent No.4’s appointment was with the approval of the Secretary, W.W.F.

14. The organogram of W.W.F. shows that there were twenty two sanctioned posts of Assistant Director (Human Resource / Accounts) (BS-17) and thirteen posts of Assistant Director (Technical) (BS-17) in W.W.F. Eleven posts of Assistant Director

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(Human Resource / Accounts) (BS-17) were direct recruitment posts whereas eleven were promotion posts. Twelve posts of Assistant Director (Technical) (BS-17) were direct recruitment posts and one was a promotion post. Respondent No.4 had been appointed against one of the vacant posts of Assistant Director (BS-17) on 13.03.2012 and after him, Muhammad Zubair Malik had been appointed as Assistant Director (BS-17) on 13.03.2023. These appointments did not exceed the sanctioned strength for the post of Assistant Director (BS-17).

Respondent No.5 (Faiza Shabir Cheema)

15. Learned counsel for the petitioner submitted that respondent No.5 was appointed as Deputy Director (Information Technology ("I.T")) on 15.03.2012 and that before her appointment, W.W.F. did not publish an advertisement inviting applications for appointment to the said post; that respondent No.5 did not participate in any written test and did not have the requisite qualifications for appointment to the said post; that the Governing Body of W.W.F. had prescribed the qualifications required for appointment to the said post and these qualifications were mentioned in the advertisement dated 04.11.2011; that these qualifications were revised without the approval of the Governing Body just to accommodate respondent No.5; that respondent No.5's educational qualification was BCS (Honors) whereas the qualification prescribed by the Governing Body for the said post was Masters in I.T; that undue favour was extended to respondent No.5 because her husband was serving as Section Officer in the Ministry of Overseas Pakistanis and Human Resource Development and was dealing with the affairs of W.W.F.; that the matter regarding respondent No.5's illegal appointment was the subject matter of an inquiry; and that the Inquiry Committee has issued a show cause notice to respondent No.5 on 27.05.2016 and the proceedings are still pending.

16. The record shows that on 18.02.2012 and 22.02.2012, W.W.F. published advertisements in Urdu and English newspapers, respectively inviting applications for appointment to *inter alia* the post of Deputy Director (I.T) (BS-18). As per the said advertisements, applicants were required to possess at least

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Second Class Masters Degree in I.T / Computer Science or a four-year Bachelor's Degree in I.T / Computer Science or equivalent qualification from any recognized university/institution. Respondent No.5 was one of the applicants for the said post. At the time when respondent No.5 submitted her application, she was serving as Database Officer (BS-17) in the National Awareness Campaign on Energy Efficiency and Environmental Protection in the Ministry of Water and Power. Vide letter dated 08.03.2012, respondent No.5 was called by W.W.F. to appear for interview on 13.03.2012 before the Selection Committee. The evaluation *proforma* for the post of Deputy Director (I.T) (BS-18) shows that the Selection Committee had awarded respondent No.5 the highest marks among the eight shortlisted candidates. Vide memorandum dated 14.03.2012, respondent No.5 was offered appointment on regular basis against the temporary post of Deputy Director (I.T) (BS-18) in W.W.F. on the terms and conditions mentioned therein. After having accepted the said offer, she was appointed to the said post with effect from 15.03.2012. On 02.10.2012, respondent No.5's probation period was terminated and her appointment against the said post in W.W.F. was confirmed.

17. The petitioner has challenged respondent No.5's appointment on the ground that she did not possess the required educational qualifications for appointment as Deputy Director (I.T) (BS-18). It is not disputed that respondent No.5 has obtained a degree of Bachelor of Computer Science from Bahauddin Zakariya University, Multan. This degree was recognized as equivalent to M.Sc (Computer Science) by the Higher Education Commission vide letter dated 28.09.2005. Therefore, it is safe to hold that respondent No.5 had the requisite educational qualification set out in the advertisements dated 18.02.2012 and 22.02.2012 for appointment as Deputy Director (I.T) (BS-18).

18. The minutes of the 113th meeting of the Governing Body of W.W.F. held on 13.10.2011 show that the post of Deputy Director (I.T) (BS-18) was one of the posts created on regular basis at W.W.F.'s Secretariat. It is not disputed that the eligibility criteria for appointment to the post of Deputy Director (I.T) (BS-18) as

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mentioned in the advertisement is identical to the one for the post of Computer Programmer (BS-18) prescribed in the 1997 Rules. The petitioner's contention that the eligibility criteria for appointment to the post of Deputy Director (I.T) (BS-18) had been set out in the advertisement dated 04.11.2011 and that the said criteria were revised in the subsequent advertisements dated 18.02.2012 and 22.02.2012 is not borne out from the record. The petitioner has not even bothered to file a copy of the advertisement dated 04.11.2011, if at all any such advertisement exists.

19. When the Governing Body of W.W.F. in its 113th meeting created the post of Deputy Director (I.T) (BS-18), there was no I.T cadre in W.W.F. In order to create I.T cadre posts, the 1997 Rules needed to be amended. W.W.F. sent the amended draft rules to the Ministry of Overseas Pakistanis and Human Resource Development so that approval of the Federal Government could be sought in terms of Section 8(3) of the 1971 Ordinance. The Establishment Division, vide office memorandum dated 27.07.2017, conveyed its concurrence to the proposed amendments in the 1997 Rules. Thereafter the Governing Body of W.W.F., in its 138th meeting held on 13.09.2017, approved the amendments in the 1997 Rules which resulted in the inclusion of I.T cadre posts in W.W.F.'s Secretariat.

20. It is not unusual that relatives of employees in an organization are candidates for appointment to posts in such organization. Merely because a candidate happened to be a relative of an employee in an organization, his/her selection cannot be said to be the result of influence or favoritism on account of such relationship alone. A person may be exceptionally bright and meritorious, and the relationship cannot be used as an instrument to his/her disadvantage. However, what needs to be examined is whether he/she has been able to exploit the relationship and earned merit because of such relationship in any selection. There is nothing on the record to suggest any such exploitation in respondent No.5's appointment as Deputy Director (I.T) in W.W.F.

21. Apparently, on 27.05.2016, W.W.F. had issued a show cause notice to respondent No.5, who submitted her reply on 03.06.2016.

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Vide W.W.F.'s office order dated 06.06.2016, respondent No.5 was exonerated from the charges levelled against her.

22. Since the documents on the record show that the post of Deputy Director (I.T) (BS-18) had been duly created by the Governing Body of W.W.F., and since respondent No.5 had a degree of Bachelor of Computer Science which is recognized as equivalent to M.Sc (Computer Science) by the Higher Education Commission before she participated in a competitive process (i.e., interview conducted after an advertisement), her appointment to the said post cannot be held to be in violation of the law.

Respondent No.6 (Faisal Tariq)

23. Learned counsel for the petitioner submitted that respondent No.6 was appointed as Deputy Director (Legal) on 21.04.2011; that the advertisement inviting applications for appointment to the said post was unlawful as the creation of this post had not been approved by the Governing Body of W.W.F.; that even otherwise this post was unlawfully created just to accommodate respondent No.6; that respondent No.6 did not have the relevant experience and did not satisfy the age criteria for appointment to the said post; and that no written test was conducted before the appointment of respondent No.6.

24. The petitioner has tried to impeach respondent No.6's appointment on the ground that the post of Deputy Director (Legal) (BS-18) had not been created by the Governing Body of W.W.F. Respondent No.6 has brought on record a working paper proposing to the Governing Body of W.W.F. that a Legal Section be created in W.W.F.'s Secretariat, Islamabad so that in-house legal experts are available to W.W.F. and private lawyers are not engaged for obtaining legal opinions. It was also proposed that one post of Deputy Director (BS-18) and one post of Assistant Director (BS-17) be created in the Legal Section. The Governing Body, in its 109th meeting held on 07.02.2011, approved the creation of one post of Deputy Director (Legal) (BS-18) in W.W.F.'s Secretariat at Islamabad.

25. The petitioner had also asserted that no competitive process took place before respondent No.6's appointment as Deputy

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Director (Legal) (BS-18). It was not disputed that on 03.03.2011, W.W.F. had published an advertisement inviting applications for appointment to the post of Deputy Director (Legal) (BS-18). As per the said advertisement, the age limit for the applicants was 25 to 40 years. The said advertisement made it clear that age relaxation could be granted to different categories of applicants. Furthermore, applicants were required to possess at least a second-class law undergraduate degree and have eight years of experience in a well-known organization or firm.

26. Respondent No.6's matriculation certificate shows that his date of birth is 01.04.1975. This would make him 35 years and 11 months old when the advertisement dated 03.03.2011 was published. Since the advertisement dated 03.03.2011 had provided for the maximum age limit of 40 years for applicants for the post of Deputy Director (Legal) (BS-18), the petitioner's contention that respondent No.6 was over-age when he applied for the said post is just a bare allegation not supported by any document on the record.

27. The petitioner had also objected that respondent No.6 did not have the requisite eight-year experience when he applied for the appointment to the said post. Respondent No.6 was awarded an LL.B degree by Bahauddin Zakariya University in 2002. He was enrolled as an Advocate of the lower Courts on 13.07.2002 and that of the High Court on 16.08.2005. By 2010, respondent No.6 had the requisite eight-year experience as an Advocate. Respondent No.6 has also brought documents on the record to show that he was an active legal practitioner.

28. As regards the petitioner's contention that respondent No.6 had not been required to take a written test before his appointment as Deputy Director (Legal) (BS-18), letter dated 31.03.2011 from the W.W.F. shows that respondent No.6 was informed that the written test for the post of Deputy Director (Legal) (BS-18) was scheduled for 14.04.2011. After respondent No.6 passed the written test, W.W.F., vide letter dated 15.04.2011, called upon him to appear in an interview scheduled for 20.04.2011. After respondent No.6 emerged as the successful candidate, W.W.F., vide letter dated 21.04.2011, offered him appointment as Deputy Director (Legal) (BS-

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18) on the terms and conditions mentioned in the said letter. Respondent No.6 accepted the said offer and vide W.W.F.'s letter dated 07.02.2013, his probation period was terminated and his appointment to the said post was confirmed with effect from 02.05.2011.

29. Since the documents on the record show that the post of Deputy Director (Legal) (BS-18) had been duly created by the Governing Body of W.W.F. and since respondent No.6 was an active legal practitioner with the requisite eight-year experience before he participated in a competitive process (i.e., written test and interview conducted after an advertisement), his appointment to the said post cannot be held to be in violation of the law.

Whether the filing of this petition is motivated by the petitioner's grudge and animosity against the private respondents:-

30. Learned counsel for respondents No.3 to 6 were in unison on their submission that the petitioner was actuated by ill will and venom against the said respondents to file the instant writ petition. They drew the attention of the Court to memorandum dated 29.08.2016, issued by W.W.F. to the petitioner, accusing him of having availed unauthorized leave without the approval of the competent authority. He was also accused of being habitual in absenting himself from duty and leaving his workplace without prior approval of the competent authority. The petitioner's behaviour, according to W.W.F., amounted to misconduct warranting strict disciplinary action under the 1997 Rules. The petitioner was directed to explain as to why disciplinary action should not be taken against him. The said memorandum dated 29.08.2016 was signed by respondent No.3.

31. Vide letter dated 23.09.2016, W.W.F. turned down the petitioner's application dated 20.09.2016 for the grant of leave with full pay for the period between 26.09.2016 to 30.11.2016. The said letter dated 23.09.2016 was also signed by respondent No.3.

32. Vide letter dated 06.01.2017, W.W.F. turned down the petitioner's application for leave with full pay for a period of 42 days commencing from 20.12.2016 to 31.01.2017. Vide the said letter, the petitioner was called upon to immediately report for duty. He was

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also advised to desist from leaving his workplace without prior approval. The said letter dated 06.01.2017 was also signed by respondent No.3. The petitioner addressed letter dated 10.01.2017 to respondent No.3 referring to her as "naïve" and alleging that the petitioner and his family's life and liberty was under threat from respondent No.3, etc. Additionally, in the said letter, the petitioner took the position that respondent No.3's appointment in W.W.F. was illegal.

33. Respondent No.4 was Assistant Director (Administration) in W.W.F. when the show cause notice dated 01.12.2016 was issued to the petitioner.

34. Respondent No.5, in her written comments, has taken the position that while her husband was posted as Deputy Director (Administration) in W.W.F. on deputation basis, he had not succumbed to the pressure exerted by the petitioner to actualize his promotion as Deputy Director (BS-18). At that time, there was no vacant post of Deputy Director (BS-18) in the promotion quota. Respondent No.5 also asserts that the said promotion was withdrawn on 29.06.2016 and the petitioner had been issued an administrative warning on the directions of the Secretary, Ministry of Overseas Pakistanis and Human Resource Development.

35. The petitioner was directly recruited as Executive Officer (BS-16) on 11.05.2002 and promoted as Assistant Director (BS-17) on 01.12.2010. Along with the writ petition, the petitioner has annexed the seniority list of Assistant Directors (BS-17) which mentions the petitioner's name at serial No.1. Vide office order dated 30.06.2016, W.W.F. had constituted a two-member fact-finding committee to probe into the irregularities in the petitioner's appointment as Executive Officer (BS-16) and his re-designation as Superintendent (BS-16) as well as his promotion as Assistant Director (BS-17). Respondent No.6 was one of the members of the said committee. The other member was Muhammad Masood Raza, Director (Education), W.W.F. against whom the petitioner filed writ petition No.2699/2016 on 02.07.2016. The said writ petition was dismissed as withdrawn on the request of the learned counsel for the petitioner on 16.02.2023.

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36. The said committee submitted its report on 01.08.2016 according to which the petitioner was appointed against the post of Executive Officer (BS-16) which was neither created nor existed under the 1997 Rules. It was also reported that the petitioner was over-age by more than one year and did not have the requisite experience of five years on the closing date for the submission of applications. The petitioner's redesignation as Superintendent (BS-16) was found to be in violation of Section 8(3) of the 1971 Ordinance. It was also found that the Secretary, Ministry of Labour and Manpower, was not competent to redesignate the petitioner as a Superintendent (BS-16) and that the Governing Body had not accorded *ex-post facto* approval to the said redesignation. Furthermore, it was also found that the petitioner's promotion as Assistant Director (BS-17) had been regularized by the Governing Body in violation of Section 8(3) of the 1971 Ordinance and the 1997 Rules. The petitioner's seniority was also held to have been wrongly determined. It was found that Abdul Hameed, who had been promoted on 05.06.2009 as Superintendent (BS-16), was senior to the petitioner who was re-designated as Superintendent (BS-16) on 02.11.2010.

37. On the basis of the said report of the fact-finding committee, W.W.F., on 01.12.2016, issued a notice to the petitioner calling upon him to show cause as to why the penalty of removal from service should not be imposed on him under Rule 53(b)(iii) of the 1997 Rules. In the said notice, it was alleged that the petitioner's appointment as Executive Officer (BS-16) and his promotion to Assistant Director (BS-17) were in gross violation of the 1997 Rules. On 22.12.2016, *i.e.* three weeks after the issuance of the said show cause notice, the petitioner filed the instant writ petition to challenge *inter alia* respondents No.3 to 6's appointments in W.W.F.

38. Learned counsel for the petitioner submitted that the instant writ petition had not been filed as a reaction to the initiation of disciplinary proceedings against the petitioner. He explained that prior to the filing of the said writ petition, the petitioner had written letter dated 07.05.2016 to the Secretary, Ministry of Overseas Pakistanis & Human Resource Development, regarding the alleged

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irregularities in promotions, appointments and absorptions of some officers in W.W.F., and that after the said letter was written by the petitioner, he was called upon to explain as to why disciplinary proceedings should not be initiated against him. He referred to the judgment dated 20.01.2017 passed by this Court in writ petition No.2908/2016 titled "Zahid Ali Khan Vs. Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis and Human Resource Development" wherein it was observed as follows:-

> ***"It is the duty of public functionaries to point out illegalities and irregularities which take place in the organization in which they serve. As long as the officer pointing out such illegalities and irregularities does not violate the law, he cannot be penalized, victimized and harassed for doing so."***

39. Learned counsel for the W.W.F. submitted that the petitioner's letter dated 07.05.2016 did not question the appointment of respondents No.3 to 6. It was explained that through the said letter, the petitioner had questioned the appointment of (i) Mr. Abdul Hamid Jumani, Director General (Education) (who was appointed as the authorized officer with respect to the disciplinary proceedings against the petitioner and who had issued the show cause notice dated 01.12.2016 to the petitioner), (ii) Syed Mohammad Nouman Shah, Director (BS-19) (who had been appointed as the Inquiry Officer vide letter dated 24.04.2017) and had directed the petitioner to submit his defence within fifteen days and (iii) Muhammad Zubair Malik, Assistant Director (who had submitted complaint dated 20.05.2016 alleging irregularities in the petitioner's appointment as Executive Officer (BS-16), his redesignation as Superintendent (BS-16) and his promotion as Assistant Director (BS-17)). None of these three persons are respondents in the instant petition. In this view of the matter, I would tend to agree with the learned counsel for W.W.F. that at no material stage before the filing of the instant petition had the petitioner challenged respondents No.3 to 6's appointments in W.W.F. At least no such challenge is on the record.

40. Even though respondent No.3 was appointed on 15.10.2008; respondent No.4 on 31.10.2012; respondent No.5 on 15.03.2012; and respondent No.6 on 21.04.2011, the petitioner challenged their appointments with a delay of several years by filing the instant petition on 22.12.2016. The petitioner did not come up with any

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plausible explanation for the delay in filing the writ petition. An objection regarding delay in filing a petition seeking the issuance of a writ of *quo warranto* cannot be sustained where it would result in legitimizing usurpation of office or continuance in office of a person whose appointment clearly suffers from manifest illegality. It is my view that the exercise of discretion by this Court, even where such a petition is filed with a delay, is to be governed by the objective of promoting public interest and good administration. On this basis, it cannot be said that discretion would not be exercised to interfere where it is necessary to prevent the perpetuation of illegality.

41. It is well-settled that a writ of *quo warranto* should be refused where it is not *bona fide* or it is an outcome of malice or ill-will or is vitiated by malice and vendetta. Moreover, the issuance of a writ of *quo warranto* is discretionary, and in such proceedings the conduct of the petitioner is of vital importance. The Court must not allow its process to be abused for oblique considerations. In the case of Dr. Kamal Hussain Vs. Muhammad Sirajul Islam (PLD 1969 SC 42), it has been held *inter alia* that a writ of *quo warranto* is not to be issued as a matter of course on sheer technicalities on a *doctrinaire* approach, and that it is quite legitimate for the High Court to test the *bonafides* of the relator to see if he has come with clean hands. Additionally, in the case of Federation of Pakistan Vs. Haji Muhammad Saifullah Khan (PLD 1989 SC 166), it was held *inter alia* that there was nothing to stop the Court from testing the *bonafides* of the relator to see if he had come with clean hands.

42. The facts referred to in paragraphs 30 to 37 herein above unmistakably make it apparent that the filing of this petition is motivated by malice and grudge that the petitioner harboured against respondents No.3 to 6 as well as against the senior management of W.W.F. that had initiated disciplinary proceedings against him. A petition by such a petitioner is liable to be dismissed on this ground alone. Even though I am of the view that the petitioner was actuated to file the instant petition by malice and ill-will that he nurses against respondents No.3 to 6, given the petitioner's litigious nature, I deem it appropriate to answer the challenge thrown to respondents No.3 to 6's appointments in W.W.F.

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Whether the appointments of respondents No.3 to 5 could be declared unlawful as no written test was conducted before their appointment:-

43. It is not disputed that respondents No.3 to 5 did not participate in any written test before being appointed in W.W.F. Indisputably a writ of *quo warranto* can be issued *inter alia* when the appointment is contrary to the statutory rules. In the case of Muhammad Ali Vs. Province of KPK (2012 SCMR 673), it has been held *inter alia* that the principles of good governance required every appointment in the government service to be made in accordance with the relevant rules and completion of codal formalities. Additionally, in the case of Mubashir Raza Jaffari Vs. Employees Old-Age Benefits Institution (2014 SCMR 949), it has been held *inter alia* that appointments to public offices were to be made strictly in accordance with the applicable rules and regulations. Recently, in the case of Faisal Rasheed Vs. SESSI (2023 PLC (C.S.) Note 3), employees of Sindh Employees Social Security Institution had challenged the termination of their services before the Hon'ble High Court of Sindh. It was held as follows:-

> ***"23. The appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules, without any discrimination, and in a transparent manner. Thus, all appointments in the public institutions must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws, i.e. advertisement, written test, and interview by the recruitment/selection committee. However, if the candidate has applied based on such an admissible quota under the law he can be accommodated subject to his qualification for the post under the recruitment rules....."***

44. Although Rule 13(6) of the 1997 Rules requires W.W.F. to make appointment(s) to posts in W.W.F. after inviting applications from eligible candidates through an advertisement, and Rule 12(2) requires that appointment to a post in W.W.F. is to be made on the recommendations of the Selection Committee, the said Rules do not require the candidates to participate in a written test. Learned counsel for the petitioner could not point out any rule in the 1997 Rules which requires candidates for appointment to posts in W.W.F. to take a written test. This Court cannot read such a requirement in the 1997 Rules. It is difficult to accept the omnibus contention that selection on the basis of interview only is arbitrary and illegal or that

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selections solely based on interview are *a fortiori* illegal. However, appointments in W.W.F. solely on the basis of interview may lead to a suspicion that the Selection Committee awarded low marks in the interview to meritorious candidates with a view to ousting them and bolstering up others in the merit list for extraneous consideration or reasons other than merit. But it is also settled law that no amount of suspicion can take the place of proof. Therefore, unless it is proved that the appointments were the consequence of malice in law or malice in fact, the same cannot be set aside on the basis of suspicion.

45. Suitability or otherwise of a candidate for appointment to a post is the function of the selection authority and not that of the Court unless the appointment is contrary to the statutory provisions / rules. The selection authority is required to evolve criteria for the relative fitness and merit of the candidates and then select candidates in accordance with the evaluation carried out on the basis of such criteria. The Court has no instrument to measure the thought process of the interviewing body unless some material is brought on record to demonstrate the arbitrary and unfair action of such body.

46. Be that as it may, the 1997 Rules do not prevent W.W.F. from conducting a written test of a candidate participating in a competitive process for appointment to any post in W.W.F. Indeed, it is desirable for a written test to be conducted for such purpose. A process of selection consists of various steps like inviting applications through advertisement or public notice, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting an examination, calling for interview or viva voce, and preparation of a list of successful candidates for appointment. In this process, the written examination / test is of most significant importance. A written test carried out in a fair and transparent manner has multifarious virtues in a selection process. It provides an objective and standardized way to evaluate candidates' knowledge, skills, and abilities related to the job requirements. This helps to reduce bias and subjectivity in the selection process. A written test creates transparency in the

selection process as all candidates are evaluated based on the same criteria, and the results are visible to all stakeholders. It helps ensure that the candidates appointed to public offices are competent and capable, which is crucial for maintaining the quality and integrity of public services. A written test can increase public trust and confidence in the appointment process as it demonstrates that the selection of candidates is based on merit and objective criteria. It can help to promote meritocracy in the appointment process by ensuring that the most qualified candidates are selected based on their performance in the test. This can help to reduce nepotism and favouritism in the selection process. A written test can promote accountability in the appointment process by providing a clear record of the selection criteria and the performance of each candidate. This can help to reduce the risk of corruption or malpractice in the selection process.

47. Given the present-day rate of unemployment, it is not uncommon for hundreds if not thousands of candidates to apply for appointment to posts in statutory bodies like W.W.F. In such a scenario, it may not be humanly possible to interview each and every eligible candidate. It would, therefore, be permissible for the selection authority to conduct interviews of those candidates who obtain a higher percentage of marks in a written test or qualifying examination. A written test can help to streamline the selection process by reducing the need for lengthy interviews or subjective evaluations. It can also help to reduce the workload of selection committees by providing them with a clear guide to evaluate candidates. The significance of a written test in a competitive process for appointment to posts in Government-controlled bodies has been emphasised by the Superior Courts. Reference in this regard may be made to the following case law:-

48. In the case of Ehsan Ullafi Vs. Inspector General Punjab (2006 PLC (C.S.) 964), the relaxation of the rule for written examination for recruitment to the post of Assistant Sub-Inspectors, Police, had been challenged in the Constitutional jurisdiction of the Hon'ble Lahore High Court. It was held that a written examination ought to have been conducted as it was based on principles of transparency.

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Paragraphs 13 and 14 of the said report are reproduced herein below:-

> ***"13. The provisions of Article 7(3) of the Police Order envisage the involvement of the P.P.S.C. in the selection process with the object to make that process transparent, competitive and, fair as also contemplated by the Hon'ble Supreme Court. Each of the foregoing purposes is served when the selection process is objective in the assessment of merit of the candidates. The importance of a written examination for an objective assessment of merit cannot be underestimated. The Indian Supreme Court in Lila Dhar. v. State of Rajasthan and others (AIR 1981. SC 1777) made the following observation in this behalf:--***
>
> ***"It is now well-recognized that while a written examination assesses a candidate's knowledge and intellectual ability an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board, O. Glenn Stahl in his Public Personnel Administration points out:***
>
> > ***"Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less. The oral test has long served as a basic selection tool in private employment but has been more slowly accepted in the public field. This conservatism arises out of three considerations; (1) the difficulty of developing valid and reliable oral tests, (2) the difficulty of securing a reviewable record of an oral test; and (3) public suspicion of the oral as a channel for the exertion of political influence through the destruction of anonymity... The general principle is that resort should never be had to an oral [test] if the relevant factors to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral [test], even under the best of conditions, tends to be lower than that of the well-designed written test. The oral test should be confined, then, to the evaluation of relevant traits which cannot be measured in any other way."***
>
> ***In the United Nations Hand Book on Civil Service Laws and Practice it is said:-***
>
> > ***"The written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character which written papers***

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ignore; it attempts to assess the man himself and not his intellectual abilities".

14. To the mind of this court a written examination is a necessary means of fair assessment of the merit of the candidates for public posts. The resort to such a method of testing should not be left to depend on the statistical ratio between the number of applicants and the posts available."

49. In the case of Muhammad Azam Vs. Senior Superintendent of Police (2002 PLC (C.S.) 712), the appointment process for constables in the Police Force had been challenged before the Hon'ble Lahore High Court. The marks in the written examination had been disregarded and appointments were being made on the basis of interviews alone. The Hon'ble Lahore High Court held such process to be unfair and held as follows:-

"4. The official from the office of S.S.P. has appeared today and has produced the same list. He submits that after the interview, a final merit list was also prepared and since the petitioner had failed to qualify the interview, he was not selected. Neither the final merit list nor the record of interview was produced. On being questioned the representative of the office of S.S.P. was not able to tell how many marks were reserved for interview and what were the qualifying marks in the interview. Selection solely on the basis of interview without regard to performance in the written examination cannot be said to be an acceptable mode of selection because in that case the Appointing Authority will have absolute discretion to reject or accept a candidate at its sweet-will, besides rendering the written examination a meaningless formality. It may be added that when selection is to be based on written examination and the interview then the marks allocated for interview should bear a reasonable proportion to the marks for written examination because allocation of excessive marks for interview may also invest arbitrary discretion in the selection authority. The total marks obtained by a candidate in the written examination and the interview should be the basis for selection. The petitioner was a victim of suspicion that somebody else had appeared in his place in the written examination which proved to be wrong."

50. Rule 14(1) of the 1997 Rules requires all vacancies in W.W.F. that are reserved for initial appointment to be filled on all-Pakistan basis *"in accordance with merit"* and Provincial or Regional quota prescribed by the Federal Government. Merit of a candidate can be adequately gauged not just through a process of interview but also a written test. The requirement of a written test is implicit in Rule 14(1) of the 1997 Rules which mandates appointments to be made in accordance with merit. Given the virtues of a written test in the competitive process for appointment to posts in Government-controlled bodies, it is expected that henceforth W.W.F. would make

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recruitments / appointments through a process which must include a written test.

51. In view of the above, the instant petition is dismissed. For the reasons mentioned in paragraphs 40 to 42 above, the petitioner shall bear the respondents' costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 01/06/2023

(JUDGE)

*Qamar Khan** ***APPROVED FOR REPORTING***

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