JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1053 of 2018
Mirza Imtiaz Baig
Versus
Federation of Pakistan and others

Date of Hearing:	10.10.2022
Petitioner by:	Mr. Zahid Mehmood Raja, Advocate along with petitioner in person.
Respondents by:	Mr. Rashid Mehmood Ansari, Advocate for respondents No.2 to 5 along with Mr. M. Yaqub Tahir, Deputy Director (F.A.), P.S.F. Ms. Zainab Samantash, Advocate for respondent No.6.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Mirza Imtiaz Baig, seeks the issuance of a writ of *quo warranto* with respect to the appointment of respondent No.6, Muhammad Afzal as Assistant Director (Administration) (BPS-17) (**"AD (Admin.)"**) in Pakistan Museum of Natural History (**"P.M.N.H."**), which is under the administrative control of the Pakistan Science Foundation (**"P.S.F."**).

2. The facts essential for the disposal of the instant petition are that vide advertisement dated 13.09.2009, the P.S.F. invited applications for appointment to different posts in P.M.N.H. including one post of AD (Admin.). In the said advertisement, it was mentioned that the candidates were required to possess the qualification of Master of Business Administration (Human Resource) (**"MBA (HR)"**) or M.Sc. in Natural / Physical / Applied Sciences or equivalent qualification with two years experience in the relevant field.

3. Respondent No.6 was one of the candidates, who participated in the competitive process for appointment to the post of AD (Admin.). In the competitive process respondent No.6 emerged as the successful candidate. On 08.04.2010, respondent No.6 was offered appointment to the said post. After accepting the said appointment, he assumed the charge of his duties on 10.04.2010.

4. It appears that in the year 2016 complaints were filed against respondent No.6's appointment. Vide office order dated 27.03.2017 of the P.S.F., a fact-finding committee was constituted to probe into

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the matter regarding the appointment of respondent No.6. The said committee, in its report dated 30.08.2017, found that the required qualification for the post of AD (Admin.) was MBA (HR) whereas respondent No.6 had a degree of MBA in Finance. It was also found that the advertisement required a candidate to have two years experience in administration whereas respondent No.6's experience was in accounts. It was also remarked that despite the fact that the Short-listing Committee had not shortlisted respondent No.6 on account of his experience being in an irrelevant field, the P.S.F's Selection Board found respondent No.6 eligible for the appointment. The report of the fact-finding committee states that respondent No.6 was appointed as AD (Admin.) after he had been recommended for appointment to the said post by the Selection Board. The said appointment was approved by the Board of Trustees of P.S.F. in its 35th meeting held on 07.04.2010. It is almost eight years after respondent No.6's appointment as AD (Admin.) in P.M.N.H. that the petitioner, who is serving as AD (Admin.), has assailed respondent No.6's appointment through the instant petition which was filed on 15.03.2018.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that at the time when respondent No.6 applied for appointment to the post of AD (Admin.) he did not possess the required qualification of MBA (HR); that since respondent No.6 possessed the qualification of MBA (Finance), he could not have been appointed to the said post; that prior to his appointment, respondent No.6 did not have the required two years experience in administration; that respondent No.6's experience was restricted to accounts; that the fact-finding committee which had been constituted by the P.S.F. to probe into the matter regarding respondent No.6's appointment had found in its report dated 30.08.2017 that respondent No.6 did not have the required qualification of MBA (HR) but had an MBA degree in Finance; that the Selection Board of the P.S.F. ought not to have appointed respondent No.6; and that since respondent No.6 did not have the required qualification of MBA (HR), his appointment as AD (Admin.) is liable to be declared as without lawful authority and of no

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legal effect. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for respondents No.2 to 5 submitted that since neither P.S.F. nor P.M.N.H. has any statutory service rules or regulations, the instant petition is liable to be dismissed as not maintainable; and that the Hon'ble Supreme Court vide order dated 01.12.2011 passed in Civil Petition No.1507/2011 held that the High Court had no jurisdiction as P.S.F. did not have any statutory rules regulating the terms and conditions of service of its employees. Furthermore, it was submitted that since respondent No.6 was not a public office holder, a writ of *quo warranto* cannot be issued with respect to his appointment; and that there is a substantial delay of almost eight years in filing the instant writ petition. Learned counsel for respondents No.2 to 5 prayed for the writ petition to be dismissed.

7. Learned counsel for respondent No.6 submitted that although respondent No.6 did not have an MBA degree in Human Resource when he applied for the post of AD (Admin.), the advertisement dated 13.09.2009 made candidates with equivalent qualifications having two years experience in the relevant field also eligible for appointment to the said post; that respondent No.6 possessed the equivalent qualification of MBA (Finance) with two years experience in accounts; that respondent No.6 did not withhold any information from the Short-listing Committee or the Selection Board of the P.S.F. in the appointment process; and that respondent No.6 has obtained a Ph.D. degree in the Discipline of Management Sciences (Human Resource) in June, 2016.

8. Learned counsel for respondent No.6 further submitted that on 06.03.2017, a charge sheet was issued to respondent No.6 on the matter regarding his appointment as AD (Admin.); that the inquiry against respondent No.6 has culminated in the imposition of a penalty of censure and withholding of one annual increment for one year vide P.S.F.'s office order dated 05.09.2018; and that the petitioner has served as respondent No.6's sub-ordinate for the past nine years and the petitioner wants respondent No.6 to be removed from his position so that the petitioner's chances for promotion

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become brighter. Learned counsel for respondent No.6 prayed for the writ petition to be dismissed.

9. I have heard the contentions 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 instant petition have been set out in sufficient details in paragraphs 2 to 4 above and need not be recapitulated.

10. As mentioned above, complaints filed against respondent No.6's appointment as AD (Admin.) in P.M.N.H. caused the initiation of disciplinary proceedings against respondent No.6. Office order dated 26.12.2016 from P.S.F. shows that an inquiry committee had been constituted by the Chairman, P.S.F. to probe into the matter regarding respondent No.6's appointment as AD (Admin.). The inquiry proceedings were required to be conducted under the provisions of the P.S.F. Employees Efficiency and Discipline, Regulations, 1974. The charge sheet and statement of allegations dated 06.03.2017 issued to respondent No.6 show that one of the charges/allegations against him was that when he was appointed as AD (Admin.) he was not eligible for appointment to the said post. Vide office order dated 27.03.2017 a fact-finding committee had also been constituted for the said purpose.

11. The said fact-finding committee in its report dated 30.08.2017 found that respondent No.6 did not have the required qualification and experience for appointment to the post of AD (Admin.) in P.M.N.H. Be that as it may, the departmental proceedings culminated in the issuance of office order dated 05.09.2018 whereby penalties of censure, withholding of one annual increment for one year, and transfer from P.M.N.H. to another organization controlled by P.S.F. were imposed on respondent No.6. It ought to be borne in mind that the charge sheet and statement of allegations against respondent No.6 were not confined to his ineligibility for appointment as AD (Admin.) but there were other charges and allegations against him as well.

12. Before the imposition of the said penalties on respondent No.6, the petitioner has filed the instant writ petition. The petitioner, in effect, wants this Court to impose a harsher penalty of removing

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respondent No.6 from service while exercising jurisdiction under Article 199 of the Constitution. Once departmental proceedings against respondent No.6 had culminated in the order for the imposition of the penalty, this Court cannot interfere with the same at the instance of the petitioner, who is desirous for promotion and with this intended purpose wants to get respondent No.6 out of his way.

13. On 10.10.2022, the petitioner attended in person and submitted that he was a part of the Short-listing Committee and had raised an objection to respondent No.6's eligibility for appointment as AD (Admin.). The petitioner has not come with any plausible explanation for almost eight-year delay in filing the instant petition to challenge respondent No.6's appointment. The petitioner was candid enough to state that at the time when respondent No.6 was appointed, the petitioner was serving as Superintendent (BPS-16) in P.M.N.H. The petitioner has also been forthright in submitting that respondent No.6's appointment had adversely affected his seniority as well as his chances for promotion. This submission has caused me to deduce that the petitioner, in filing the instant petition, is motivated by self-interest rather than public interest. This is sufficient for casting a doubt on the petitioner's motives in filing the instant petition and holding that same is liable to be dismissed. In holding so, reliance is placed on the following case law:-

(i) In the case of Muhammad Hanif Abbasi Vs. Jahangir Khan Tareen (PLD 2018 SC 114), the Hon'ble Supreme Court has held as follows:-

> ***"There can be no cavil with the principle that to grant the relief in the nature of quo-warranto is within the discretionary power of the superior Courts, it should not be allowed as a matter of course, rather the conduct and the bona fides of the relator, the cause and the object of filing such petition is of considerable importance and should be examined; it should be ascertained if the petition has been filed with some mala fide intent or ulterior motive and to serve the purpose of someone else. We are of the considered view that quo warranto remedy should not be allowed to be a tool in the hands of the relators, who approach the Court with mala fide intentions and either have their own personal grudges and scores to settle with the holder of the public office or are a proxy for someone else who has a similar object or motive."***

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(ii) In the case of Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), the Hon'ble Lahore High Court has held as follows:-

> *"Though the proceedings in terms of writ of quo-warranto are not adversarial in nature but these are inquisitorial and anybody can move for the same being the wrestle blower but the blowing of wrestle must be for the benefit of public in general and not for the personal vengeance. It is always up to the judicial conscious of the Court to examine as to whether the same qualifies the yardsticks laid down in Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 or not. 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."*

14. An additional reason why the instant petition merits dismissal is that the petitioner has not impleaded P.S.F. as a respondent in the instant petition. Since P.S.F. had issued the offer for respondent No.6's appointment, it was a necessary party to these proceedings. P.S.F. was established under the provisions of the Pakistan Science Foundation Act, 1973 and has administrative control over P.M.N.H. and Pakistan Scientific and Technological Information Center. Hence the instant petition is liable to be dismissed also on the ground that the petitioner has not impleaded P.S.F. (which is respondent No.6's appointing authority and therefore a necessary party) as a respondent in the instant petition. Consequently, the instant petition is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 11.11.2022.

(JUDGE)

*Sanaullah**

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