JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1213 of 2018

Shahid Mehmood
Versus
Benazir Income Support Programme (BISP) and others

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Petitioner by:	Mr. Majid Rashid Khan, Advocate.
Respondent no.1 by:	Hafiz Ahmad Rasheed, AAG. Ch. Shafiq Ur Rehman, Advocate
Respondents 2 & 3 by:	Mr. Muhammad Yar Khan, Advocate Mr. Muhammad Sultan, S.O. Establishment Division
Date of Hearing:	**23.02.2023**

Sardar Ejaz Ishaq Khan, J: The proposition is long established that a writ of *quo warranto* does not lie in respect of subordinate posts or offices (permanent or regular, it doesn't matter) not created directly by the statute, where those subordinate posts come into existence subsequent to the promulgation of the statute by way of '*support functions*' for the public offices created originally by that statute. Yet we continue to receive petitions asking for writs of *quo warranto* to be issued in respect of such '*support-posts'* on the erroneous premise that they ought to qualify as public offices just because they exist in an organization created by statute.

2 This is yet another similarly misconceived petition. The petitioner prays for a writ of *quo warranto* to show under what authority of law respondents no.2 and 3 hold a public office. Respondents no.2 and 3, per para 3 of the memo of petition, were serving as '*Director Payments*' and '*Director Waseela-e-Taleem*' with the Benazir Income Support Programme (**BISP**) constituted under the *Benazir Income Support Programme Act, 2010* (the **Act**). Learned counsel for the petitioner contended that the said two offices were public offices for the purposes of Article 199(1)(b)(ii) of the Constitution, for that the BISP was funded by public funds, and that the BISP was performing functions in connection with the affairs of the Federation as a delegated sovereign function for public welfare. If the

learned counsel's submissions were to be accepted, then the meaning of public office for the purposes of a writ of *quo warranto* will extend all the way down to the stenos, office boys, drivers and naib qasids of BISP!

3 Many a judges have painstakingly journeyed through a long list of precedent to reiterate and reaffirm the principle laid down authoritatively in the seminal judgment of the apex Court in ***Salahuddin and 2 others vs Frontier Sugar Mills and Distillery Ltd, Takhatbhai & 10 others***[1] as follows:

> As early as 1846, the House of Lords in *Henry Farran Darley v. Reg.*[2] expressed the view that "a proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by Charter of the Crown alone, or by the Crown with the consent of Parliament, provided the office be of a public nature **and** a substantive office, and not merely the function or employment of a deputy or servant held at the will and pleasure of others. (emphasis supplied)

It couldn't be expressed more clearly than this. Yet the memos of petitions, counsel's submissions and, with respect, the analysis in many a law reports, get all tied-up in a loop of discussions over 'sovereign functions' and the distinction in this context between 'service of Pakistan' and 'public office', which, with respect, is quite irrelevant when the post in question is not one created directly by the statute, but is created subsequently, often by subordinate legislation (statutory or non-statutory, again it doesn't matter) to assist the statutorily created public offices to discharge the sovereign functions delegated to such public offices. To distinguish such subordinate posts from the statutorily created public offices, and to highlight this distinction for the purposes of this judgement, let us label such posts as '*support-posts*'.

4 We need go no further than two judgments of the Islamabad High Court.

i) In *Chaudhry Asghar Ali versus Shahid Nauman Afzal and others*[3], the posts in question were of an Executive Director,

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[1] PLD 1975 SC 244
[2] (1846) 8 E R 520
[3] ICA no. 184 of 2015, Islamabad High Court

Media Consultant, and the Principal Law Officer of the Oil and Gas Regulatory Authority, and were found to be not amenable to the writ of *quo warranto* for not being public offices; the public offices in terms of the Oil and Gas Regulatory Authority Ordinance being limited to the offices of the Chairman and the Members of the Oil and Gas Regualtory Authority for being created directly by the Ordinance.

ii) In *Amjad Ali, Regional General Manager, Pakistan Media Regulatory Authority (PEMRA) versus Federation of Pakistan and others*[4], the post, in respect of which a writ of *quo warranto* was sought, was that of a General Manager of PEMRA. Rejecting the submission that the post of General Manager was one of a public office for the purposes of a writ of *quo warranto*, the Court after citing a long list of precedent held that it was not, for it was not created by the PEMRA Ordinance. The Court cited passages, inter alia, from the celebrated decision in *Sohail Baig Noori versus High Court of Sindh through Registrar and 2 others*[5], out of which the following sentence is germane for this decision:

> The conditions necessary for issuance of writ of quo warranto are that the office must be public *and created by a statute or the Constitution itself* … (emphasis supplied)

5 A perusal of the Act reveals that the public offices created by the Act are those of the Members of the Board including the Chairperson, the Secretary, the Chief Patron, the Executive Patron and the Council[6], who devise the policies and the direction of BISP. Although the expression 'Management' is defined[7] to include the Secretary and the administrative and technical staff of BISP, the latter two categories are general description

[4] Writ Petition no. 2060 of 2018, Islamabad High Court
[5] 2017 PLC (C.S.) 1142
[6] Sections 5 and 8 of the Act
[7] Section 2(h), ibid.

of what we have labelled for this judgment as the '*support-posts*' and qualify as 'employees'[8] of BISP.

6 Learned counsel laid much emphasis on the definition of 'Management' and its functions per section 10 of the Act to urge that, by conferring specific functions on the Management, the Act intended to confer the status of public office on the Management also. This argument is misconceived. The 'Management' and its structure is left for the Board to decide, and is stipulated to function in accordance with the regulations made by the Board[9], and it is this feature which brings the subordinate '*support-posts*' in the Management within the ambit of the *Salahuddin*-approved test of '*deputy or servant held at the will of others*'. Let us recall here that, with the exception of the office of the Secretary, the Act neither stipulates the specific posts that will constitute the Management nor specifies their respective job descriptions. The unconventional device per section 10 of the Act of making the Management determine the terms and conditions of the employees (apart from attribution to carelessness of the draftsman) cannot in any event be taken to mean that the '*support-posts*' in question will appoint themselves: that would be the *sequitur* to the learned counsel's submission if the entire hierarchy of the Management was to be taken as 'the Management' for the purposes of the Act. That would be an absurd interpretation, and a statute cannot be interpreted to reach an absurd result. Therefore, section 10 of the Act does not translate into conferring the status of public office on the Management any more than it does on the general description of 'employees' per section 2(f) of the Act. The foremost objective of the Management per the Act is to carry out the policies and plans approved by the Board[10]. The delegation of the sovereign function of alleviation of poverty, for which the BISP was constituted, is therefore confined to the statutory public offices mentioned in the first sentence of the preceding paragraph, and the Management at all hierarchical levels is there to support the Board in the discharge of the latter's statutory functions delegated to it by the Parliament.

7 We now turn to the posts in question in this petition. The said posts are designated as 'Directors', but they are not directors in the sense of being

[8] Section 2(f)
[9] Section 5(2), read with section 23
[10] Section 10

members of the governing body of BISP; the designation 'Director' is only a job description as employees reporting to their Director General, who reports to the Secretary, who then reports to the Board. It is a common designation found in public and private sectors in various manifestations, and one has to see whether the designation is for a subordinate '*support-post*'. In this case it is. The job description for these two posts were reviewed, and were found at the 3rd tier, below the Director General (SPS-20) and the Secretary (SPS-21), and do not constitute 'substantive posts', but constitute posts of '*deputies and servants…at the will of others*' per the *Henry Farran* test approved in *Salahuddin*. Using the reformulation of the test per the opening paragraph of this judgement, the posts in question are subordinate '*support-posts*', not created by the Act itself, but created subsequently under the *BISP Employees Service Regulations* made by the BISP's Board, and therefore do not qualify as public offices for the purposes of a writ of *quo warranto.*

8 Applying the test reformulated for convenience in the opening paragraph of this judgement, the 3rd-tier administrative or management posts of '*Director Payments*' and '*Director Waseela-e-Taleem*' do not qualify as public offices for the purposes of a writ of *quo warranto* under Article 199(1)(b)(ii) of the Constitution.

9 Other prayers were sought raising petty squabbles, which all require a detailed scrutiny on the factual plane. These factual disputes cannot be gone into, and in any event become irrelevant where the primary prayer of *quo warranto* cannot be granted. The petition in respect of all these prayers reveals an ulterior motive. The petitioner's conduct in filing this petition is frivolous because the record reveals that the petitioner is a former employee of BISP and his service was terminated when respondents no.1 and 2 were absorbed as directors in BISP, and the petitioner in order to pressurize the respondents filed this petition after a delay of 5 years. Further, the petitioner is directly related to respondent no. 2, and both are involved in litigation in respect of some property dispute. Therefore, it appears that the petitioner is not acting as a *bona fide* informer of the court.

10 This petition is **dismissed with costs**.

11 **Costs**. The petition was filed in 2018, by when the two judgments of this Court and *Sohail Baig Noori* of the Sindh High Court were already in field. Learned counsel's insistence on arguing this petition as maintainable despite these clear pronouncements was vexatious. Further, as noted above, the petition is frivolous. The petitioner is therefore fastened with costs of Rs. 50,000/-, to be deposited in the Legal Aid and Justice Authority Fund created under the Legal Aid and Justice Authority Act 2020 within 30 days of this judgment. The deposit receipt will be delivered to the Deputy Registrar (Judicial) of this Court. If it is not delivered within 30 days, office is to put up the file in Chambers for appropriate orders.

(Sardar Ejaz Ishaq Khan)
Judge

Fazal Elahi
28.03.2023

Approved for reporting.