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

Writ Petition No. 3426 of 2018

Usman Zafar

Versus

Federation of Pakistan, etc.

Appellant by	:	Syed Khawar Ameer Bukhari, Advocate.
Respondents by	:	Syed Nazar Hussain Shah, learned Assistant Attorney-General. Hafiz Arfat Ahmad Ch., and Ms. Kashifa Niaz Awan, Advocates for respondent No.5. Mr. Rashid Hanif, Advocate for respondents No. 3 and 4/PTA. Yasir Yaqoob Director (HR), PTA.
Date of Hearing	:	25.03.2022

ARBAB MUHAMMAD TAHIR,J.:- Through the present writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Usman Zafar, seeks the issuance of a writ in the nature of *quo warranto* against respondent No.5 (Rabeeya Parvez), challenging her appointment as Assistant Director (HR) (EG-II) (wrongly mentioned in the advertisement dated 01.05.2005 as "EG-I") in the Pakistan Telecommunication Authority ("hereinafter referred to as the **"P.T.A."**), through Memorandum / Employment on Contract Basis dated 09.08.2005, issued by the P.T.A. The said appointment was made on ***"contract basis up to the age of superannuation".*** The petitioner's grievance is that respondent No.5 was appointed in P.T.A. in contravention of the advertisement as well as the P.T.A.'s applicable Regulations. After her induction in the P.T.A. on 22.08.2005, respondent No.5 got promoted to the post of Deputy

Director on 10.02.2009, so also to the post of Director in the month of July, 2020. The services of respondent No.5 were regularized on 10.11.2017, in line with the previous regularization of the P.T.A.'s employees made on 26.01.2012. Presently, as per respondent No.5's version, she is holding the post of Director (Coordination), P.T.A.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

2. Syed Khawar Ameer Bukhari, Advocate, learned counsel for the petitioner after narrating the facts leading to the filing of the present petition contended that the petitioner being an *"informer"* of the Court has filed the present petition for the betterment of the organization/P.T.A.; that respondent No.5 has been appointed as Assistant Director (HR) (EG-I) (*sic*) in the P.T.A. in violation of the advertisement dated 01.05.2005 as well as the Pakistan Telecommunication Authority Employees Service Regulations, 2004 ("hereinafter referred to as "**the 2004 Regulations**") (since amended); that respondent No.5 lacked the requisite qualification for appointment against the post of Assistant Director (HR) (EG-II) at the time of her initial appointment; that at the time of the submission of the application form, respondent No.5 did not possess a complete degree of Maters of Business Administration ("**MBA**"); that even after the completion of the recruitment process, she had completed only 84 credit hours out of total 90 credit hours; that the remaining credit hours were completed by respondent No.5 after two years preceding her appointment; that respondent No.5 got herself appointed against the post of Assistant Director (HR) (EG-II) in P.T.A. on the basis of forged credentials and misrepresentation; that respondent No.5 completed her Master's degree in the year 2007, whereas she deceitfully gained the appointment in P.T.A. in 2005 posing herself to be a holder of an MBA degree from Bahria University

Islamabad (respondent No.6); that according to 2004 Regulations, the qualification and experience required for appointment against the post of Assistant Director (HR) (EG-II) was a "First Class Master Degree in Social Sciences preferably in Public/Business Administration" and three years' experience in Administration or Finance/Accounts as Superintendent or eight years' experience as Assistant in BPS-15 in Administration / Finance or Accounts"; that none of these criteria has been met by respondent No.5.

3. It was next contended by the learned counsel for the petitioner that respondent No.5 was appointed as Assistant Director (HR) (EG-II) in P.T.A. on the basis of favoritism and nepotism; that to further oblige respondent No.5, she was further promoted to the post of Deputy Director (HR) on the basis of the services rendered by her as Assistant Director (HR), which employment was gained by her through misrepresentation and fraud; that in order to yet again favour respondent No.5, she has been promoted to the post of Director (HR); and that other eligible candidates, who had developed legitimate expectation to be appointed against the said post, were deprived of their legal rights inasmuch as respondent No.5 being a blue eyed lady of the then political / influential persons, was appointed against the said post. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief prayed therein, and for respondent No.5's appointment as Assistant Director (HR) (EG-II) in P.T.A. to be set-aside.

SUBMISSIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.5:-

4. On the other hand, Hafiz Arfat Ahmad Ch., Advocate, learned counsel for respondent No.5 while opposing the present writ petition contended that the same is not maintainable on the simple ground that the post which has been held by respondent

No.5 is not a post, falling within the term of a *"public office"*; that respondent No.5's appointment was made strictly in accordance with the applicable P.T.A.'s Regulations; that the criteria for appointment as set forth by the P.T.A. in the advertisement was indeed met by respondent No.5 at the time of her appointment; that the P.T.A. after finding respondent No.5 as a most suitable candidate, appointed her against the post of Assistant Director (HR); that the present writ petition has been filed by the petitioner only to malign respondent No.5; that the present writ petition has been filed at a belated stage i.e. after 13 years and that too when respondent No.5 has not only been confirmed rather she has been promoted to the higher post; that a writ of *quo warranto* cannot be issued on the basis of mere technicalities; that the conduct of the petitioner is not only unjust, but also unfair inasmuch as he obtained P.T.A.'s classified, unsigned, and confidential documents; that after serving for a long span of time i.e. for almost 16 years, respondent No.5 has developed legitimate expectation to remain as an employee of the P.T.A. till her superannuation; that there is no substance in the instant petition since the same is replete with misleading assertions; that the petitioner appears to be a surrogate and has filed the instant petition at the best of someone behind the screen; that respondent No.5 did not conceal any material fact *qua* her academic qualification since she submitted her "Interim Transcript" along with her application form to the P.T.A. at the time of her induction: that even otherwise, for omission on the part of the appointing authority, an appointee cannot be made to suffer; that strong vested rights have been accrued in respondent No.5's favour since she has been working in P.T.A. since the past almost 16 years; that the present petition badly suffers from laches; and that the petitioner is not an aggrieved person so as to

challenge respondent No.5's appointment concluded the learned counsel for respondent No.5. While making his submissions, he placed reliance on the law laid down in the judgments reported as **2005 SCMR 1829, PLD 1986 Lahore 310, 2005 PLC (CS) 894, 2005 PLC (CS) 997, 2004 SCMR 1299 PLD 1963 SC 203, 2004 SCMR 724 and PLD 2003 SC 724.** Learned counsel for respondent No.5 prayed for the present writ petition to be dismissed with costs.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE P.T.A.

5. Similarly, Mr. Rashid Hanif, Advocate, learned counsel for P.T.A./respondents No.3 and 4 contended that the petitioner being a stranger has filed the present petition as an informer of the Court with malafide intention; that the petitioner has raised certain factual disputes, which cannot be resolved in the constitutional jurisdiction of this Court; that the petitioner is attempting to unnecessarily pressurize the P.T.A./respondents; that the petitioner has no *locus-standi* to file the present writ petition since he does not fall within the term of *"an aggrieved person"*; that since the petitioner prays for an equitable relief hence, he ought to come to this Court with clean hands; that the petitioner in his petition is silent as to how and when he gained knowledge as to respondent No.5's appointment in P.T.A.; that the present writ petition is badly hit by the doctrine of *"laches";* that much water has been flown under the bridge since respondent No.5 appointment, as she has been working since 2005 and presently she is serving as Director (HR) on regular basis and there is a *plethora* of judgments of the Hon'ble superior Courts on the point that such an appointment is not open to be questioned; that the P.T.A. never violated any of its Rules and Regulations and no question regarding violation of the Regulation by the P.T.A. has ever been raised by any one before any forum; that if there was

any violation of the P.T.A.'s Regulations, the same would have been identified in the Audit Report and/or by the Auditors; that the observations of the Public Accounts Committee (herein after referred to as the **"P.A.C."**) were regarding the constitution of a Committee to probe into the appointments made by the P.T.A. and the same stood satisfied; that the petitioner has to explain as how he laid his hands on the official record of the P.T.A. and obtained confidential / internal communication from respondent No.5's personal file; that the petitioner at the behest of someone in the department has instituted the present writ petition; and that the petitioner has not disclosed any of his source through which, he had obtained the said confidential documents from the P.T.A.'s record. Learned counsel for the P.T.A. while placing reliance on the judgment reported as **PLD 2018 SC114** prayed for the instant writ petition to be dismissed with costs.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

FACTUAL BACKGROUND:-

7. Perusal of the record reveals that on 01.05.2005, an advertisement was published by the P.T.A. inviting applications from suitable candidates for appointment against the posts of (i) Deputy Director (HR) (EG-II) and (Assistant Director) (HR) (EG-I) (*sic*). The requirements set forth in the said advertisement for appointment against the post of Assistant Director (HR) (EG-I) were as under:-

> ***QUALIFICATION:*** *MBA in Human Resource Management from a Recognized University*
> ***UPPER AGE LIMIT:*** *30 years as on 15th May, 2005.*
> ***Quota'*** *Merit*
> ***SALARY PACKAGE;*** *PTA pay scale: EG-I- (Rs. 20,000-1,000-35,000) ,* ***Rs, 40,000/- p.m approx.*** *plus attractive fringe benefits like house requisitioning in lieu of house rent allowance, children*

> *education grant medical facilities, office and residential telephone/internet facility, recreation allowance, etc.*
> *Candidates should submit applications on the prescribed "Application form for Employment" available on PTA website:* ***www.pta.gov.pk*** *(under the icon* ***"jobs"****) alongwith comprehensive bio-data without any testimonials to undersigned by* ***15th May, 2005 through mail or by hand****. Only* ***short-listed*** *candidates will be called for interviews.*

8. Intending candidates were required to submit their application on prescribed "Application Form for Employment" available on the P.T.A.'s website. In response to the said advertisement, respondent No.5 applied for the post of Assistant Director (HR) on 01.05.2005 on the prescribed application form, wherein she had shown her qualification to be holding an M.A. degree from Bahria University Islamabad (respondent No. 6). Respondent No.5 had also filed her Interim Transcript issued by respondent No.6 / Bahria University according to which, she had completed 84 credit hours out of the total 90 credit hours. Respondent No.5 completed the remaining credit hours in the year, 2007. The cut-off date as provided in the said advertisement was 15th of May, 2005.

CONDITIONS FOR ISSUANCE OF A WRIT OF QUO WARRANTO AND ITS MAINTAINABILITY AGAINST THE HOLDER OF PUBLIC OFFICE:-

9. Learned counsel for respondent No.5 while relying upon the judgments of the Hon'ble Apex Court as well of this Court and of the Hon'ble sisters High Courts, submitted that since the appointment of respondent No.5 was initially made on contract basis and the said respondent is not a holder of a public office, hence the instant writ petition is not maintainable on this score alone. He has placed reliance on the law laid down by the Hon'ble Supreme Court in the case of **Masudul Hassan Vs. Khadim Hussain and another (PLD 1963 SC 203)** wherein, it has been held *inter alia* that for the issuance of a writ of *quo warranto,* it is necessary that the office

should be one created by the State, by Charter or by Statute and that the duty should be of a public nature. In Masudul Hassan's case (supra), it was further held as follows:-

> *"the writ of quo warranto in its nature is an information laying against persons who claimed or usurped an office, franchise or liberty and was intended to inquire by what authority he supported his claim in order that right to office may be determined.* ***It was further held that it is not necessary for the issuance of writ that the office should be one created by the State of character or by statute and that the duty should be of a public nature****"*

10. Learned counsel for respondent No.5 also referred to the judgment passed by the Hon'ble Supreme Court in the case of **M.U.A Khan Vs. Rana Muhammad Sultan (PLD 1974 SC 228)** wherein, a similar view was taken that a public office is an office created by the State, by Charter or by Statute when the duty attached to the office is of public nature. In the case of M.U.A. Khan (Supra), it was held as follows:-

> *"this Court held that writ of quo warranto could be moved by "****any person who-even may not be an aggrieved party but is holding a public office created by character or statute by the State****".*

11. He also referred to the law laid down by the Hon'ble Supreme Court in the case of **Salahuddin and 3 others Vs. Taj Muhammad Khanzada (PLD 1975 SC 244)** as well as by this Court in the case of **Dr. Farzana Bari Vs. Ministry of Law, Justice and Human Rights through Secretary and 3 others (PLD 2018 Islamabad 127)** and unreported judgments of this Court passed in writ petitions Nos.1476/2019 and 1457/2020.

12. To address the said arguments of the learned counsel for respondent No.5, it is imperative to first highlight the essential pre-requisites of a writ of *quo warranto*. In law, especially in British and American common law, *quo warranto* (Medieval Latin for *"by what warrant?"*) is a prerogative writ requiring the persons to whom it is

directed to show what authority they have for exercising some right, power, or franchise they claim to hold. A writ of the *quo warranto* is in the nature of laying an information before a Court of law, against a person who claimed and usurped an office, franchise or liberty, requesting for holding an enquiry to enable him to show the authority under which he supported his claim of right to the office, franchise or liberty. No doubt the object of the writ of *quo warranto* is to determine the legality of the holder of a statutory or constitutional office and decide whether he/she holds such an office in accordance with law or unauthorizedly occupies a public office. Where a person seeks the issuance of a writ of *quo warranto,* the Court would be under an obligation to enquire whether the incumbent is holding the office under the orders of a competent authority and also to examine whether he would be legally qualified to hold the office or to remain in such office. It is especially issued to determine the right of a person holding an office and directing him or her to disclose under what authority of law he / she is holding that office. The purpose of the writ of *quo warranto* is to ensure that a public office is occupied by a person in accordance with the law and not otherwise. There are two main essential pre-requisites of a writ of *quo warranto* (i) the appointment under challenge must be to a public office; and that (ii) the said appointment should have been made without the authority of law or in other words, contrary to the relevant statutory provisions.

11. In order to see the instant writ petition on the touchstone of the first pre-requisite of the writ of *quo warranto,* it is not disputed that the P.T.A. is a public office since it is the creature of a statute i.e. Pakistan Telecommunication (Re-organization) Act, 1996 (herein after referred to as **"the 1996 Act"**) as amended through (Amendment) Act, 2006 (Act No. II of 2006 dated 1st March, 2006).

Section 3(1) in Chapter-II of the said Act provides for the establishment of P.T.A., which read in the following terms:-

> ***"3. Establishment of Pakistan Telecommunication Authority.—(1)*** *As soon as may be, after the commencement of this Act, the* ***Federal Government shall, by notification in the official Gazette, establish an authority to be known as the Pakistan Telecommunication Authority*** *which shall be a body corporate, having perpetual succession and a common seal with powers, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable, and to sue and be sued by its name."*

13. Section 4 of the said Act deals with the functions of the Authority, which reads infra:-

> *"4.* ***Functions of the Authority.—(1)*** *The Authority shall—*
> *(a) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan;*
> *(b) receive and expeditiously dispose of applications for the use of radio-frequency spectrum;*
> *(c) promote and protect the interests of users of telecommunication services in Pakistan;*
> *(d) promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan;*
> *(e) promote rapid modernization of telecommunication systems and telecommunication services;*
> *(f) investigate and adjudicate on complaints and other claims made against licensees arising out of alleged contraventions of the provisions of this Act, the rules made and licences issued thereunder and take action accordingly;*
> *(g)* ***make recommendations to the Federal Government on policies with respect to international telecommunications, provision of support for participation in international meetings and agreements to be executed in relation to the routing of international traffic and accounting settlements****;*
> *(h) perform such other functions as the Federal Government may, from time to time, assign to it;*
> *[(i) regulate arrangements amongst telecommunication service providers of sharing their revenue derived from provision of telecommunication service;*
> *(j) ensure effective compliance by licensees with Universal Services Obligations;*
> *(k) regulate Access Promotion Contribution;*
> *(l) settle disputes between licensees; and*
> *(m) regulate competition in the telecommunication sector and protect consumer rights."*

14. Section 10 of the said Act provides for a mechanism for appointment of P.T.A.'s employees. The said Section reads as under:-

> ***10. Appointment of employees**.—(1) For performance of its functions, the Authority may, from time to time, employ such persons and on such terms and conditions as it may consider necessary.*
> *(2) Without prejudice to the generality of the foregoing powers, the Authority may— (a) appoint and remove its employees and exercise discipline and control over them;*
> *(b) regulate and manage its internal organization, set up divisions within the Authority and make appropriate appointments to those divisions;*
> *and (c) appoint advisory bodies, consultants and advisors on contract to advise the Authority in relation to its functions or powers.*
> *(3) The Authority may make regulations for appointment, promotion, termination and other terms and conditions of employment of its employees.*

15. In the case of **Dr. Bushra Ashiq Siddiqui Vs. Muhammad Aslam (1989 MLD 1351)**, it has been held *inter alia* that **in order to make an office as a public office, it should have been created by some law;** that it should involve exercise of some portion of sovereign function; and **that the public should have some interest to ensure that the person holding such office has the right to hold.**"

Emphasis added:

16. It may not be out of context to mention that the offices created under the Constitution or specific Statutes are deemed to be public offices. Since P.T.A. has been established by the Federal Government, therefore, all the functions performed by it in connection with the affairs of the Federation, are in the nature of public functions/services. Therefore, respondent No.5, for all intents and purposes, being an employee of the P.T.A. working on a regular post of Director, Coordination, P.T.A., is in fact holing an office falling within the term of "public office).

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17. As regards the second pre-requisite of the writ of *quo warranto*, the said appointment should have been made without the authority of the law or in other words, contrary to the relevant statutory/legal provisions. Although the advertisement dated 01.05.2005 is itself in conflict with the 2004 Regulations, but even then, if the said advertisement is deemed to be in conformity with the said Regulations, even then, respondent No.5 was not a qualified candidate at the time of her initial appointment since she did not have the requisite/complete degree of MBA. The qualification and experience prescribed in the 2004 Regulations were as under:-

> ***"QUALIFICATION:*** *First Class Master Degree in Social Science Preferably in Public/Business Administration,*
> ***EXPERIENCE:*** *Three year experience in administration or finance/accounts as superintendent or 8 years of experience as Assistant in BPS-15 in Administration/Finance/Accounts"*

18. Since in the prevalent Regulations governing the subject *viz* the 2004 Regulations, the requisite **QUALIFICATION** for the post of Assistant Director (HR) was a *"First Class Master Degree in Social Science Preferably in Public/Business Administration* coupled with **EXPERIENCE** of three years in Administration or Finance/Accounts as Superintendent or eight years' experience as Assistant in BPS-15 in Administration/Finance/Accounts, but none of these were satisfied by respondent No.5 as such her appointment was made in contravention of the 2004 Regulations. Since the appointment under challenge is with respect to a public office, the conditions for the issuance of a writ of *quo warranto* apparently stand fully satisfied.

WHETHER RESPONDENT NO.5'S APPOINTMENT IN P.T.A. WAS IN LINE WITH THE APPLICABLE REGULATIONS OR OTHERWISE:-

19. The pivotal questions that beg answers are (1) whether respondent No.5's appointment in P.T.A. was made in compliance with the method of appointment prescribed in the advertisement and/or the 2004 Regulations, (2) whether respondent No.5 was qualified at the time of her initial appointment as Assistant Director (HR), P.T.A., and (3) whether she was meeting the required threshold on date of the advertisement or on the cut-off date provided in the advertisement.

20. In the case of Muhammad Ali v. Province of Khyber Pakhtunkhwa (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.

21. As discussed above, from the facts so gathered from the record, it can safely be held that respondent No.5 did not have the requisite qualification at the time of the advertisement and/or at the cut-off date as she completed her MBA degree from respondent No.6 University on 03.08.2007 i.e. after two years of the advertisement. It is only when in the Audit Report for the financial year 2008-2009, whereby certain observations were made in the Audit Report regarding the alleged non-compliance of the Rules/Regulations while making appointments in P.T.A. made in year 2004-2005, which observations were incorporated in Audit Paras Nos.1.25 and 1.26 of the said report, the P.T.A. came to know about the incomplete qualification of respondent No.5. In the written comments, the P.T.A. has categorically admitted the illegality

committed by it while making the appointment of respondent No.5 as Assistant Director, P.T.A. in the following words:-

> *"... **there may have been some oversight by the appointing authority but the respondent No.5, completed her qualification in the year 2007**, years before any challenge to her appointment".*
> ***Emphasis added.***

22. Furthermore, it goes on to say that *"on the directives of the P.A.C. on audit Para 1.25 and 1.26 of Audit Report 2008-2009, an Inquiry Committee was constituted vide Office Order No.PTA/Cood/Miscellaneous /348/2016 dated 31.03.2016 and **as per recommendations of this Inquiry Committee, Respondent No.5 had submitted her Interim Transcript regarding MBA qualification at the time of her joining".*** Apparently, as per the P.T.A.'s own contradictory stance, respondent No.5 submitted her **"interim transcript"** regarding MBA qualification on the **recommendations of the Inquiry Committee** which was constituted on 31.03.2016 meaning thereby that she submitted **her interim transcript of MBA degree in the year 2016 only when it was so recommended by the Inquiry Committee**. Furthermore, it has been pleaded in the written comments in terms that "*however, the said transcript was treated by the HR department as final transcript of MBA without pointing out the short coming/non-completion of degree. She was selected, her appointment letter was issued without any condition. Subsequently Respondent No.5 submitted her final transcript of MBA (HRM). **Hence, even if there was some lacuna/irregularity of completion of degree, the same has been fulfilled / rectified in 2007** and she was promoted in next grade in 2009 and now she has about 14 years of continuous service at her credit in PTA".* It is evident from the record that P.T.A. rectified the said illegality in the year 2007. Additionally, perusal of the advertisement dated 01.05.2005 shows that

applications were invited for appointment against the post in question on **"contract up to the age of superannuation"** meaning thereby it was a post of a permanent nature, but the P.T.A. for the reasons best known to it, termed the said post to be *"a contractual post"* deceiving the other competent and efficient candidates. Had the said post been termed in the advertisement as a "permanent post" and / or likely to become "permanent" one, the arena of competition would have been broadened / enlarged and in this way, most capable and qualified persons could have been appointed.

23. It is well settled by now that a person who does not possess the required qualification for appointment to a specific post cannot be appointed to such a post. In the event, a candidate obtains the prescribed qualification after her/his induction, would not make the appointment valid. Reference in this regard may be made to the law laid down in the following cases:-

i. The Hon'ble Supreme Court in the judgment passed in Suo Moto Case No. 13/2016 (Action Against Illegalities, Contraventions And Violations In Appointments in NAB) **(2017 SCMR 838),** has inter alia held that *"the contention that a person can obtain the requisite qualifications subsequently, that is after he had already joined the service of NAB is unsustainable. If this concept or principle is accepted it would rendered meaningless the stipulated qualification for a particular job."*

ii. In the case of Muhammad Munir Malik, Vs. Allama Iqbal Open University **(2016 PLC (CS) 896),** this Court has observed as under:-

> *"it is therefore, axiomatic that the eligibility criteria and conditions, once unambiguously mentioned in an advertisement published in the press, cannot be ignored, altered or deviated from during the selection process, particularly after the deadline for the submission of applications as expired. Appointments made in violation of the principle of transparency and fairness are illegal and not sustainable in law."*

iii. In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority **(2015 PLC (CS) 144),** the Hon'ble Lahore High Court dismissed the writ petition filed by the petitioner who did not have the prescribed qualification of the advertised post on the date when the advertisement was published and on the last date fixed for submission of the applications. It was inter alia held that the mere fact that the petitioner had obtained the requisite qualifications after his appointment could not save the writ petition from being dismissed.

iv. In the case of Mst. Shagufta Vs. Chairman FPSC, Islamabad reported as **2015 PLC (CS) 819,** the Division Bench of the Hon'ble Balochistan High Court has held that it was the prerogative of the Government to prescribe the requisite qualification for a particular post. Furthermore, it was held that the eligibility of the candidate is to be determined in accordance with the advertisement for the posts keeping in view the stipulated requirements.

v. In the case of Mitha Khan Umrani Vs. Federation of Pakistan and others **2014 PLC (CS) 571**, a Division Bench of the Hon'ble Balochistan High Court has held that the eligibility of the candidate had to be determined in accordance with the advertisement for the post, the Service Rules governing appointment and any other instructions under the law and the Rules framed there under.

vi. In the case of Abdul latif v. Government of Punjab, **2003 PLC (CS) 975),** it was held that *"the petitioner admittedly did not possess degree of MA or MSC. Petitioner No.3 possess BA Degree while the remaining petitioners possess B.Sc Degree although they do possess the requisite professional degree viz M.Ed. but the requirement for the post applied for was an academic degree of M.A., M.Sc. which they admittedly did not possess; hence they cannot be deemed to possess the requisite qualification for the post applied for by them i.e. SSC Educators",* basic qualification for which was M.A or M.SC with additional qualification of a professional degree".

24. Respondent No.6/University filed its report/written comments on 15.10.2018, wherein it has *inter alia* been pleaded as follows:-

> *"it is humbly stated that Ms. Rabeeya Pervaiz (Respondent No. 5) got admission in Master of Business Administration (HRM) degree program in Bahria University, Islamabad Campus is September, 2002. Her enrollment number was 120022-022.* ***She finally completed her degree program on 09.02.2007"***

25. Perusal of the said comments reveals that respondent No.5 was admitted in respondent No.6/university in the year 2002 and completed her degree in the year, 2007. Likewise, in the written comments filed by the P.T.A., it took the following stance:-

> *"The degree of Master of Business Administration of the respondent No. 5 was* ***completed in year 2007*** *and issued on 03 Aug, 2007."*

26. The fact of the matter regarding the completion of the MBA degree by respondent No. 5 in the year **2007** is neither disputed by the private respondent (i.e. respondent No.5) nor by the official respondents (i.e. the P.T.A.), since the same was admitted by the said respondents. Hence, it can safely be said that at time of the initial appointment i.e. in the year 2005 when the advertisement came, respondent No.5 did not possess an MBA degree.

27. The crucial date to decide the instant writ petition regarding the submission of the documents by respondent No.5 was the cut-off date i.e. 15.05.2005 when respondent No.5 while filing her application form/documents through portal, had apparently concealed the correct fact by misstating the fact that she had completed her MBA (HRM) degree. As such, in the case at hand, I do not find respondent No.5's appointment to have been made strictly in accordance with the method of appointment prescribed in the P.T.A's Regulations as well as the advertisement.

DATE OF APPOINTMENT NOT CRUCIAL RATHER DATE OF ISSUANCE OF WRIT IS CRUCIAL:-

28. Learned counsel for respondent No.5 also put much stress on the point that the crucial date to determine the qualification of the person holding the post is not only the date of appointment, but also the date of issuance of a writ. He was of the view that if a person fulfills the qualification during pendency of a petition, the writ cannot be issued against such a person. Learned counsel in order to strengthen his arguments, placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Lt. Col. Farzand Ali Vs. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West **(PLD 1970 SC 98).** He further relied upon the case of Asseff Ahmad Ali Vs. Muhammad Khan Junejo **(PLD 1986 Lahore 310),** wherein it was held that ------- we have been unable to discover any principle of law whereby the High Court in exercise of the constitutional jurisdiction can order the removal of a person from public office despite the patent and admitted position that both at the time of institution of a writ petition and on the date of the decision, the respondents No.1 and 2 did not suffer from any disqualification to hold a public office. The learned counsel further relied upon the judgment passed by the Hon'ble Lahore High Court in the case of M. A. Jabbar Vs. Federation of Pakistan **(1999 PLC (CS) 686)**, wherein, it was inter alia held that the petitioner being no more suffering the disqualification to hold the post, the writ of quo warranto cannot be issued. Thus, the crucial date to determine the qualification of a person to hold a post is not only the date of appointment but also the date of the issuance of the writ and if pending disposal of the writ petition, a person fulfills the qualifications to hold such a post, writ of *quo warranto* cannot be issued against such a person.

29. The most important aspect of the matter in hand is that whether respondent No.5 has completed her MBA degree/requisite qualification before the filing of the instant writ petition or during the pendency of the present petition. If at all, respondent No.5 is considered to have qualified to hold the post in question, and if a writ is issued, whether it will take effect from the date of the issuance of the writ i.e. **the crucial date**. To deal with this aspect of the matter, it is observed after examining the referred judgments in general and the main case in particular i.e. the case which has been consistently followed/relied upon by the Hon'ble Sister High Courts was the case of **Lt. Col. Farzand Ali's case (supra)**.

30. In order to understand this aspect of the matter, the judgment in the case of **Lt. Col. Farzand Ali (supra)** has to be seen carefully. The issue involved in the said case was that a number of Government servants were retired through Constitutional amendments. The said employees challenged their retirement under *quo warranto* by taking a stance that since certain members of the Legislature were disqualified, who could not vote in favour of the legislation, therefore, the amendments were not made by the required majority and, therefore, could not have brought the required results. In this background, it was opined, that in case if the High Court would have allowed the writ, it would have taken effect only on the date of pronouncement of the High Court's judgment and not from any date anterior thereto and that would not have altered the decision with regard to the validity of the impugned amendments, as such the amendments would have still be protected not only under certain Articles of the Constitution, but under *de-facto* doctrine as well.

31. Furthermore, it was observed in **Lft. Col. Farzand Ali's case (supra)** that ***"If the quo warranto had been allowed by the High Court, It would have taken effect only from the date of***

the pronouncement of the High Court's judgment and not from any date anterior thereto and that would not have altered the decision regarding the validity of the impugned amendments."

32. It appears that this portion of the judgment was misunderstood firstly in the case of ***M. A. Jabbar*** *(supra)*, wherein it was inter alia held that ***"if a person during the pendency of the constitutional petition fulfilled the requisite qualification to hold such a post then writ of quo warranto could not be issued against such person as such Employees no more suffered disqualification to hold the post in question.".*** Likewise, in the case of ***Sajjad Hussain v. Shah Abdul Latif University Khairpur (PLD 2012 Sindh 232),*** it was held inter alia that ***"both at the time of institution of the writ petition and on the date of decision it must be shown that the holder suffered from any disqualification to hold the public office."***

33. The Hon'ble Supreme Court in the case of Asif Hassan Vs. Sabir Hussain **2019 SCMR 1720** has inter alia held as follows:-

> ***"we simply cannot subscribe to the view so taken by the High Court as mislead interpreting the judgment of this Court in the case of Farzand Ali supra; providing tacit leverage to those who get rid of such disqualification during pendency of proceedings, which finding are not only self-contradictory, endorses retention of illegal gain but also provide leverage to the executive by condoning their wrongs and that to at the cost of giving up a jurisdiction conferred by the constitution.".***

34. The above referred judgments stood not approved/quoted with an approval in the judgment pronounced by the Hon'ble Supreme Court in Asif Hassan's case *(supra).*

35. The Hon'ble Supreme Court in an identical case of *Dr. Shamim Tariq v. International Islamic University, Islamabad through*

President & others ***(2020 SCMR 568)*** has graciously held in terms that:-

> *"The candidates were required to meet the above criteria on the date of submission of their applications i.e. 30th June, 2011; the respondent did not possess the requisite qualification on the said date and as such was not qualified to be considered for the job, a position at a seat of learning, maintained by the exchequer.* ***Respondent's acclaimed academic brilliance as well as extensive teaching experience notwithstanding, nonetheless, digression from the prescribed criteria cannot be countenanced without setting an ominous precedent, casting its fall out on other disciplines as well. Adherence to the statutory rules and procedures for selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted into the fundamentals of equal opportunity, equal treatment and equal protections; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law;*** *it is their bounden duty to do right to the all manner of people, without any distinction. It is most important that right people are selected for official positions to serve the Republic as it is imperative to survive and sustain into today's competitive World; deviation would be treacherously seditious. Constitutionally recognized principle of equal opportunity is strengthened by divine affirmation, upheld and followed by every modern constitution of the day."*

36. It has further been held that:-

> *"as the respondent did not possess requisite qualification, the Selection Board had no occasion to consider her in preference to those who possessed the qualifications as advertised by the University itself; argument that the impugned appointment is based upon considerations other than noble does not appear to be beside the mark. Similarly, contention that the respondent acquired the requisite qualification soon after her selection and during the subsequent years, irretrievably gone by, mentored excellence and, thus, her expulsion from the service so late in the day would be an option, most inexpedient in circumstances, fails to impress us; none other than herself has to debit the blame, Selection Board being accomplice next to her. Stream of justice must run pure and clean."*

37. Hence, the judgment of the Hon'ble Supreme Court in the case of **Asif Hassan (supra)** currently holds the field, thus the judgment in the case of **Farzand Ali** ***(supra)*** relied upon by the

learned counsel for respondent No.5 is of no help to respondent No.5.

CONSTITUTION OF THE INQUIRY COMMITTEE:

38. The record shows that on 31.03.2016, the P.A.C., after going through the objections raised in the Audit Report for the financial year 2008-2009, ordered for an inquiry to be conducted into the matter. Consequently, the P.T.A. constituted an Inquiry Committee vide office order No.PTA/COOD/Misc./348/2016 dated 31.03.2016 with the mandate to complete the inquiry proceedings at the earliest, but no later than 15.04.2016 and to submit a report in that regard. The very purpose of the constitution of the said Committee was to give effect to the P.A.C.'s directives on Audit Paras Nos.1.25 and 1.26. The Terms of References/mandate of the said Committee were as under:-

> *"Fix responsibility for deviation from the criteria for appointment and promotions.*
> *Way forward on regularization of the cases mentioned vide para 1.25 and 1.26 of Audit Report 2008-2009".*

39. The Inquiry Committee while averting to the points raised regarding the appointment of respondent No.5 made the following observations, as earlier observed in the Audit Report for the year 2008-2009. Which is reproduced as under:-

> "Audit Preliminary Observations;-
>
> i. *Ms. Rabeeya Parvez applied for the post of Assistant Director (HR) on 01.05.2005 in the light of advertisement No. PID (1) No. 7066/04. The officer was appointed on 22.08.2005 pm the basis of MBA (HRM)*
> ii. ***The year of passing MBA (HRM) was mentioned as 2005 whereas the certificate placed in the personal file revealed that he officer passed the requisite exam in September, 2006 from Bahria University Islamabad. Hence, the appointment was not justified.***
> iii. *The selection of the officer indicates that undue favour was given. Kindly clarify."*
>
> ***Emphasis added:***

40. The said Committee observed that the post in question was advertised in pursuance of the approval accorded by the Chairman, P.T.A. on 27.04.2005. The case for recruitment was initiated by the then Assistant Director (Establishment). It further observed that subsequently Director (Administration) constituted a Board for short listing of candidates for final interview under the chairmanship of Chairman P.T.A.

41. The Inquiry Committee further observed that a total of 407 applications were received for the post in question i.e. Assistant Director (HR)), out of which 30 candidates were shortlisted by the above referred Board, including respondent No.5. Later on a Departmental Selection Board (hereinafter referred to as "**D.S.B.**") was constituted by the Chairman, P.T.A.

42. The D.S.B. invited the 30 shortlisted candidates on 04th & 05th August, 2005 for interview and recommended respondent No. 5 for appointment as Assistant Director (HR), whereafter she was issued offer letter on 09.08.2005, which was accepted by her on 22.08.2005 and she joined P.T.A. accordingly.

43. It is also revealed from the Inquiry Report filed by the P.T.A. that the officers involved in the short-listing process, were called upon and questioned, who admitted their signatures on the documents and relevant files. The officers informed the Inquiry Committee that they shortlisted the candidates on the basis of the information given in their application /employment forms and CVs. The Members of the short-listing Committee and the Selection Board relied upon the information provided by the Establishment Section of the P.T.A. on the basis of data/applications submitted by the candidates/applicants. The report of the Inquiry Committee further transpires that the then Assistant Director (Establishment) and Director (Administration), who were responsible for processing

the recruitment case of Assistant Director (HR) were required to ensure the eligibility of the applicants and verify the original/required transcripts/degrees of the candidates. **It has further been observed that the said officers being responsible for recruitment process neither pointed out/verified the required degrees/transcripts at the time of short-listing and/or interview nor they verified respondent No.5's educational testimonials at the time of issuing of the offer letter**. Thus, while fixing the responsibility, the then Assistant Director (Establishment) and Director (Administration) were held responsible for not doing the needful.

44. The said Committee while concluding the case of respondent No.5 alongwith other appointees in the year 2005, concluded as under:-

> *"The committee also examined the case law/decisions of the superior Courts in such like cases. The Superior Courts have held in various cases that if any irregularity had been committed by an official/department while appointing any person, the concerned official/department should be held responsible rather than the employee especially where a considerable time has been lapsed since the time of appointment. Reliance in this regard can be placed on cases cited as 2011 PLC (CS) 1239, 2006 SCMR 678. It would be apt to quote relevant observation by the Hon'ble Lahore High Court, Lahore in 2011 PLC (CS) 1239 as under:-*
>
> > *"Certainly it is incumbent on the appointing authority to apply conscience mind while scrutinizing the petitioner's application and antecedents before issuing the appointment letter in his favour. Once petitioner produced certificates having been accepted as valid, proper and equivalent to that as required the same cannot be questioned after eighteen years of his service."*
>
> *In view of the above findings and conclusion, the committee suggests that,* ***the Authority may condone the irregularities committed at the time of the appointment of the above mentioned officers in 2004 and 2005****."*

45. The Committee concluded its findings in the above terms and no action was ever initiated against the responsible persons/officers in the P.T.A. or respondent No. 5.

APPOINTMENT ON CONTRACT BASIS:-

46. As regards the contention of the learned counsel for respondent No.5 regarding her appointment on contract basis, the same does not hold force since respondent No.5 was appointed in P.T.A. on 09.08.2005 on *"contract basis* ***up to the age of superannuation****"*. The term **"up to the age of superannuation"** cannot be termed as an appointment on contract basis rather the same can be termed as an appointment "on permanent basis". The P.T.A. in the written comments has clearly pleaded that in the year 2009, respondent No.5 was promoted in the next grade viz Deputy Director (HR) and as per respondent No.5's stance, she is presently serving as Director (Coordination) in the P.T.A. and has about 14 years of continuous service at her credit in P.T.A. Had the said appointment been made on contract basis, the period of her contract could have been extended from time to time. There is nothing on the record to show that the period of respondent No.5's contract was ever extended. Moreover, had respondent No.5 been working on contract basis, she could not have been regularized on 10.11.2017 and subsequently, promoted to a sanctioned post of Director HR that too without there being a competitive process.

FUNCTIONS OF SELECTION COMMITTEE NOT TO BE PERFORMED IN WRIT JURISDICTION:-

47. The learned counsel for respondent No.5 contended that this Court in exercise of its Constitutional jurisdiction is not expected to perform the functions of the Selection Authority in service matters. He placed reliance upon the dictum laid down by the Hon'ble Supreme Court in case of **Dr. Mir Alam Jan Vs. Dr. Muhammad**

Shahzad (2008 SCMR 960). True, the Court of Constitutional Causes cannot ascribe to itself the role of a Selection/Appointing Authority and the responsibility of deciding 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 should ordinarily refrain from interfering in the policy making domain of the executive. Indeed, the High Court in exercise of its Constitutional jurisdiction is not expected to perform the functions of the Selection/Appointing Authority in service matters. Reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in case law 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 added.***

48. A similar view was taken 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".*

AGGRIEVED PERSON:-

49. With regard to the objection raised by the learned counsel for the contesting respondents that the petitioner is not an aggrieved person within the meaning of Article 199 (1) (b) (ii) of the Constitution. It is well settled that for the issuance of a writ of quo warranto, the person invoking the jurisdiction of the High Court under Article 199 of the Constitution is not required to comply with the stringent conditions required for brining himself within the term of "an aggrieved person". Any person can move the High Court to

throw a challenge onto the usurpation or unauthorized occupation of a public office by the incumbent of that office and he/she is not required to establish his/her *locus standi* to invoke the Constitutional jurisdiction of the High Court under Article 199 of the Constitution in a manner as generally required by the said Article. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court in the case of **Attaullah Khan Vs. Ali Azam Afridi (2021 SCMR 1979)**, wherein it has been *inter alia* held as follows:-

> *"no prohibition existed in law as to who could file a writ of quo warranto however, the power to issue such writ was discretionary and nobody could claim that the court was bound to issue this writ."*

50. Similarly, in an earlier judgment passed in Human Rights Case No.11827-S of 2018 (2019 SCMR 1952), the Hon'ble Supreme Court has held *inter alia* that ***"for issuance of writ of quo warranto, person/petitioner laying information before Court need not be an aggrieved person."*** Reliance is also placed on the law laid down in the cases of **Lt. Col. Farzand Ali and Asif Hassan (supra).**

51. Additionally, in the case of **Muhammad Naseem Hijazi Vs. Province of Punjab (2000 SCMR 1720),** it was held as under:-

> *"---For a petitioner who acts, in fact, as* ***an informer is not required to establish his locus standi to invoke the jurisdiction of the Court****"*
> ***Emphasis added***

52. A similar view was taken in the case of **Hafiz Hamdullah Vs. Saifullah Khan (PLD 2007 SC 52),** wherein it was held as follows:-

> *"A writ of the quo warranto is in the nature of laying an information before a Court, against a person who claimed and usurped an office, franchise or liberty, requesting for holding an enquiry to enable him to show the authority under which he supported his claim of right to the office, franchise or liberty. Its object is to determine the legality of the holder of a statutory or constitutional office and decide whether he*

was holding such office in accordance with law or was unauthorizedly occupying a public office. Where a person prays for a writ of quo warranto the Court would be under an obligation to enquire whether the incumbent is holding the office under the orders of a competent authority and also to examine whether he would be legally qualified to hold the office or to remain in the office. ***For issuance of a writ of quo warranto the person invoking the jurisdiction of the High Court under Article 199 of the Constitution is not required to fulfill the stringent conditions required for brining himself within the meaning of an aggrieved person. Any person can move the High Court to challenge the usurpation or unauthorized occupation of a public office by the incumbent of that office and he is not required to establish his locus standi to invoke the constitutional jurisdiction under Article 199 of the Constitution in a manner as generally required by the said Article."***

Emphasis added.

53. Additionally, in the case of **Nazar Aslam Vs. Federal Government and six others (2013 PLC (C.S.) 974)**, this Court has held that if there were any violations of rules or statutes in making the appointment of the Chairperson of a statutory body, anybody can point out those illegalities and can approach the Court for the issuance of writ of *quo warranto*.

54. The said pronouncement to the said effect has been reiterated and followed in the cases of **Al Jahad Trust through Raees-ul-Mujahidin Habibul Wahabul Khairi vs. Federation of Pakistan and others (PLD 1996 SC 324), Malik Asad Ali and others vs. Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs Islamabad and others (PLD 1998 SC 161) and Captain retired Muhammad Naseem Ejazi v. Province of Punjab (2000 SCMR 1720).**

55. It thus could be observed that the Hon'ble Supreme Court has consistently held that a writ of *quo warranto* can be instituted by a person though he may not come within the meaning of the word of an "aggrieved person". In this view of the matter, the

objection as regards the petitioner being not an "aggrieved person" is dispelled.

WRIT OF QUO WARRANTO:-

56. As discussed earlier, through the petition in hand, the petitioner has sought the issuance of a writ of *quo warranto* challenging the appointment of respondent No.5. It ought to be borne in mind that it is not mandatory for the issuance of a writ in the nature of *quo warranto* that any of the fundamental and/or legal rights of a person seeking such a writ are infringed. A person is at liberty to throw a challenge on the validity of an appointment of an individual to a public office, but nonetheless, the Court must satisfy itself as to the filing of a petition of *quo warranto* that the same has been filed with *bona-fide* intention. It is well settled preposition of law that a High Court is vested with discretionary powers under Article 199 of the Constitution, 1973 to grant discretionary relief to a person by issuing directions, writs and orders.

57. This Court in the case of **Ayaz Ahmed Khan Vs. Federation of Pakistan and others (2021 PLC (C.S.) 1394 Islamabad)** while deliberating upon the issue of *quo warrant* has held as follows:-

> *"**A writ of quo warranto is not to be issued as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The foremost obligation of the Court while hearing a petition seeking the issuance of a writ of quo warranto is to enquire into the conduct and motive of the relator and may, in its discretion, decline to issue a writ where it would be vexatious to do so.** Reference in this regard may be made to the judgments in the cases of Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899), Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Mirza Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526)"*
>
> *6. For instituting a writ of quo warranto, it is not necessary that any fundamental or other legal right of the petitioner is infringed. Any person is free to challenge the validity of an appointment to a public office. However, the Court must be satisfied that the petition*

is bona fide and not motivated by any malice against the person whose appointment is under challenge. A 4 W.P. No.2490/2021 writ of quo warranto should be refused where it is an outcome of malice or ill-will. The Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object."

57. Similarly, in the case of **Dr. Y. S. Rajasehara Reddy and others Vs. Sri Nara Chandrababu Naidu and others (AIR 2000 A.P. 142)**, the Court has summarized the scope for the issuance of writ of quo warranto.

APPOINTEE CANNOT BE PENALIZED

58. Learned counsel for the P.T.A. as well as respondent No.5 contended that even if there are any minor lapses in the appointment of respondent No.5, she cannot be penalized for the wrong doing committed by the P.T.A. It is well settled law that an appointee cannot be penalized for those lapses/irregularities of the department while appointing an employee. **In the case of Secretary to Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar Vs. Sadullah Khan (1996 SCMR 413)**, it was graciously held that **the department having itself appointed a civil servant on temporary basis in violation of the Rules could not be allowed to take the benefit of its lapses in order to terminate the services of the civil servant merely because it had itself committed irregularity in violating procedure governing such appointments**.

Emphasis added.

59. In the case of **Muhammad Zahid Iqbal and others Vs. D.E.O. Mardan (2006 PLC (CS) 1216)**, it was inter alia held that once the appointees were qualified to be appointed, there services could not subsequently be terminated on the basis of lapses and irregularities committed by the department itself.

LACHES IN FILING THE WRIT of QUO WARRANTO:

60. Another important aspect highlighted by the learned counsel for respondent No.5 was that the issuance of writ in nature of quo warranto after passage of fourteen years of appointment particularly when respondent No.5 had not only been confirmed in her service, but also got promoted to higher posts, the writ suffers badly from *laches*. The learned counsel while arguing this aspect of the matter has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Muhammad Rafique Vs. Muhammad Pervaiz **(2005 SCMR 1829),** wherein, it was *inter alia* held that constitution petition was filed after a period of five years when the petitioners have already been confirmed in their appointments after successful completion of probation period constitution petition suffered from gross *laches* without there being any justifiable reason ----- some minor irregularities in the appointment of petitioners were not sufficient for issuance of a writ of quo warranto against them. He has also placed reliance upon the judgment of the Hon'ble Lahore High Court, Lahore in the case of **Ammad Ahmad Vs. National Highway Authority (2018 PLC (CS) Note 187)**, wherein, it was inter alia held that undeniably services of respondents have already been confirmed/regularized and instant petition is suffering from gross *laches,* without their being any justifiable explanation. It is well settled that delay defeats equity, as equity aid the vigilant and not the indolent. The learned counsel for the respondent No. 5 further relied upon the judgment of Hon'ble Apex Court in the case of **Muhammad Liaquat Munir Rao v. Shams-ud-din & others (2004 PLC (CS) 1328)** wherein it was held that -------- the learned counsel for the respondent No. 1 could not give any explanation whatsoever as to what had prompted him to file the writ petition after a deep slumber of more than a decade. It was further held that in an appropriate case, the Court is entitled to look into the conduct,

motive or lack of *bonafide* of a writ petitioner and also the delay in filling the writ petition in the nature of *quo warranto* for the purpose of grant or refusal of relief in the exercise of discretionary jurisdiction. The writ of quo warranto is not issued as a matter of course on hyper-technicality. The Court can see whether such a person has come with clean hands so as to deserve its indulgence.

61. Now turning to the preliminary objection raised by the learned counsel for respondent No.5 as well as the P.T.A. regarding 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. 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 supported 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****."*

62. In the case of **Ch. Muneer Ahmad and others VS. Malik Nawab Sher and others (PLD 2010 Lahore 625)**, wherein, 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 added:**

63. In the case of **Raja Muhammad Asghar Khan, General Manager, AKLASC, Mirpur Vs. Muhammad 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 added:**

64. 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 added:**

65. Law to the said effect has also been laid down in the cases of **Syed Ali Raza Asad Abidi v. Ghulam Ishaq Khan, President of Pakistan and**

another (PLD 1991 Lahore 420) and **Muhammad Siddique, Advocate v. Farhat Ali Khan & another (PLD 1994 Lahore 183).** Consequently, it is held that the present writ petition is not barred by the principle of laches.

OBJECTION ON FILING OF THE OFFICIAL DOCUMENTS OBTAINED OTHERWISE IN ACCORDANCE WITH LAW:

66. Learned counsel for P.T.A. raised an objection on the filing of the official/secret documents annexed with this petition as well as brought on record by the petitioner through C.M.A. No.743/2020. In order to address this argument of the learned counsel for P.TA, The documents obtained other than in accordance with the law *ex-facie* amounts to gross misconduct on the part of any litigant. In the case of **Dr. Azim-ur-Rehman Khan MEO Vs. Government of Sindh and another (2004 SCMR 1299),** the Hon'ble Supreme Court has inter alia held that the employee of the provincial government by taking out record from the office unlawfully filed a Constitutional petition before the High Court alleging that the government was acting in violation of law and that too not in a case where his rights were not affected **----such action, *ex-facie* amounted to misconduct on his part.** Similarly, the Hon'ble Lahore High Court in the case of **Muzaffar Hussain, Principal, Government Weaving and Finishing Institute, Shahdarah, Lahore Vs. Punjab Public Service Commission (2001 PLC (CS) 634)**, has *inter alia* held that appending of the documents with the Constitutional petition, obtained otherwise than in accordance with the law by the petitioner was a misconduct.----Such a misconduct on the part of any litigant was sufficient to disqualify him for grant of any discretionary relief. A similar view was taken in the case of Muhammad Amin Vs. Ministry of Interior, through Secretary, Government of Pakistan **(2021 PLC (CS) 615 ISLAMABAD)**, wherein, it was graciously held as follows:-

"17. Before parting, it is relevant to observe that in some of the petitions ***the internal note sheets of communication inter se the Ministry of Interior or other Departments have been appended. The said practice is in violation of law and dicta of the Hon'ble Supreme Court of Pakistan as well as the Hon'ble Lahore High Court****."*
Emphasis added

67. As regards the arguments advanced by the learned counsel for P.T.A. qua obtaining confidential documents statedly received by the petitioner from anonymous source. The documents brought on the record through C.M.A. No. 743/2020 as well as annexed with the present petition are detailed as below:-

Sr. No.	**Description**	**Date**
1.	Memorandum, employment on contract basis	09.08.2005
2.	Advertisement dated	01.05.2005
3.	Respondent No.5's Application form for Employment	---
4.	Interim Transcript	---
5.	Final Transcript	---
6.	Statutory Notification (S.R.O.)20.09.2004	---
7.	Respondent No.5's MBA degree	---
8.	Respondent No.5's CV	
9.	Letter regarding Constitution of inquiry committee	31.03.2016
10.	Office order for constitution of DPC	18.10.2019
11.	Office order for constitution of DPC	19.10.2019
12.	Office order qua imposition of major penalty	21.09.2017
13.	Office order qua imposition of major penalty	22.12.2016
14.	Office order qua imposition of major penalty	22.12.2016
15.	Office orders regarding regularization of contract employees	10.11.2017
16.	Office order regarding promotion of P.T.A.'s employees	10.02.2009

68. Admittedly, all the said documents are the internal/confidential communications of the P.T.A. and the same being private documents ought not to end up in the hands of persons, who are not authorized to have access to the official files. The said documents in fact form part of the confidential / private documents and same could not have been obtained by the petitioner without there being any resort to the legal process enshrined under the provisions of Right of Access to Information

Act, 2017. This act on the part of the petitioner is *ex-facie* a misconduct on his part, which disentitles him to the relief sought by him in the present petition.

69. The Hon'bel Supreme Court in the case of **Dr. Azim ur Rehman Khan Meo v. Government of Sindh and another (2004 SCMR 1299)** has observed that if the petitioner approaches the Court with *mala fide* intention and ulterior motives and as an instrument of fraud the relief can be declined. It was also observed that ***where a person has no authority to take out the documents from the record the conduct ex facie amounted to misconduct on his part***.

70. Similarly, in the cases of **Muzaffar Hussain, Principal, Government Weaving and Finishing Institute, Shahdarah, Lahore vs. Punjab Public Service Commission through Secretary and 2 others (2001 PLC (C.S.) 634)** and **Tanveer Ahmed Khan Vs. Registrar, Lahore High Court , Lahore (PLD 2013 Lahore 386),** the Hon'ble Lahore High Court observed that the Federal Government shall look into the matter that **its internal record or confidential documents do not end up in the hands of persons who are not authorized to have access to the files** and in case such a practice happens, an inquiry should be held and the culprits should be dealt with in accordance with law.

CONDUCT OF THE PETITIONER.

71. The conduct of a person seeking a relief in the constitutional jurisdiction of the High Court is of paramount importance for the exercise of such powers. 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 consideration a 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 of a High Court has to be based on sound discretion and on consideration of the recognized judicial jurisprudence governing the exercise of such discretion. The High Court cannot refuse to take a petitioner's conduct into account in the writ of *quo warranto* which disentitles him / her from such relief.

72. 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. Reliance may be placed on 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 an information in the nature of quo warranto."*
> **Emphasis added.**

73. In the case of **Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335)**, it was inter 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**.",*

73. It is an admitted position that the petitioner is not an employee of the P.T.A. The record shows that three of the P.T.A.'s employees, namely, Waqas Ahmed Hashmi, Office Attendant, Mr. Umair, Office Attendant and Mr. Nadeem Azam, Assistant Admin Officer were departmentally proceeded, and were dismissed from service on 22.12.2016 and 21.09.2017, respectively while imposing major penalty of dismissal from service upon them. The present writ petition has been filed on 13.09.2018. Apparently, the petitioner appears to be a surrogate of anonymous sources since it is not only until 13.09.2018 i.e. (the date of the institution of the writ petition) that the petitioner came to know about the appointment of respondent No.5 dated 09.08.2005 in the P.T.A. The petitioner has not come up with an explanation as to why he did not challenge respondent No.5's appointment in the year 2005 when he himself admits in his pleadings that respondent No.5, at the time of her appointment, lacked the requisite qualification. The petitioner claims himself to be an **"informer"** of the Court, but he has not disclosed the source of information as who had provided him the information as regards respondent No.5's appointment in P.T.A. Had he been an informer of the Court, he could have informed the Court well in time by filing a petition in the year 2005 and not in the year 2018 at a belated stage, but his conduct is highly doubtful. This conduct of the petitioner clearly demonstrates the motivation and *mala fide* on the part of the petitioner to file the petition challenging the appointment of respondent No.5. Since the said three employees of the P.T.A. were dismissed from service in December, 2016 and September, 2017 personal vengeance/grudge of the said respondents against respondent No.5 cannot be ruled out particularly when she is holding the post of Director, P.T.A. as such it could safely be held that the present petition is an outcome of malice and ill-will.

74. During the course of the hearing, learned counsel for the petitioner was confronted with the fact as to on whose behest the petitioner has filed the present petition, but no plausible explanation was offered in this regard. It is well settled that the Constitutional jurisdiction of the High Court cannot be resorted to settle the 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 grudge and the same is not maintainable on this score alone. 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 added.**

75. 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."*

77. 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 be issued as a matter of course."*

78. 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."*

79. 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."*

80. As a necessary corollary to the discussion made herein above, this Court reaches to the conclusion that although all the requirements with regard to the issuance of a writ of *quo warranto* stand fully satisfied in the case at hand, but since the conduct of the petitioner is such that does not persuade this Court to grant the relief to the petitioner in the Constitutional jurisdiction of this Court sought by him in the present petition. Consequently, for the reasons mentioned herein above, this Court, with a heavy heart, dismisses the petition at hand.

Needless to observe that this Court could not have dismissed the present writ petition provided, it had been instituted by a *bonafide* litigant. It is high time that the growing tendency on part of public servants and other persons to institute proceedings by way of writs of quo warranto, with oblique

consideration or motives and just like puppets is to be depreciated by the Courts. Had the conduct of the petitioner as highlighted in detail in paragraphs No. 70 to 74 (*above)* not been tainted with malice, he could not have been deprived of the relief sought by him, in the present petition. It is further observed that the appointment of respondent No. 5 as Assistant Director in P.T.A. could be subjected to a challenge in a competently instituted proceedings by a *bona fide* litigant subject to the fulfillment of the essential pre-requites in relation to a writ of *quo warranto* coupled with satisfaction of the Court regarding the *bonafides* of the person throwing a challenge onto such an appointment. Consequently petition fails and stands **dismissed** with no order as to cost.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on **16.05.2022.**

JUDGE

ISLAMABAD | 16.05.2022
APPROVED FOR REPORTING.

//Kamran//*