

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No.D-1642 of 2008

Hadi Bux — vs — Province of Sindh Govt

Date of hearing 17.3.09

Order with signature of Judge

Petitioner Hadi Bakhsh through Mr. Muhammad Arshad Khan Tanoli, advocate.

Respondents Nos.1 to 3 through Miran Muhammad Shah, Addl. AG Sindh.

Respondent No.4 through Mr. Asim Mansoor Khan, advocate.

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MUHAMMAD KARIM KHAN AGHA, J., The petitioner in this case has filed a Const. Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for quo warranto. The petitioner has requested the Court to set aside and quash the Notification dated 24.4.2008, issued by respondent No.1 whereby respondent No.1 reinstated the services of respondent No.4 as Sub-Inspector, Anti-Corruption Establishment, Sindh, (hereinafter referred to as "ACE").

2. According to the petitioner the post in question (sub-inspector) requires the successful applicant to be a Law Graduate. This is not disputed by any of the parties to the present proceedings. The petitioner claims that respondent No.4's law degree is fake and bogus. The complaint of the petitioner to this effect was forwarded by respondent No.3 to the Deputy Director, ACE for enquiry. After Inquiry the Circle Officer informed the Deputy Director, ACE vide his letter dated 17.10.2000 that respondent No.4 had been appointed in the year 1996 on the basis of two bogus and forged certificates, one of which was his LL.B degree.

3. Based on the above findings and enquiry by Circle Officer, ACE, Badin, respondent No.3 suspended respondent No.4 from service with the direction to conduct an inquiry against respondent No.4. Such inquiry report confirmed at the departmental level that respondent No.4 had obtained the post of Sub-Inspector, ACE, Sindh, on the basis of forged and fabricated certificates of B.A.Part-II and



LL.B Final. Accordingly, an FIR bearing No.7/2001 was registered against respondent No.4 on 19.3.2001 and the case was challaned in the Court of Special Judge, Anti-Corruption, Hyderabad and is pending trial before that Court.

4. Respondent No.4 disputed that his degrees were forged and fabricated and he, therefore, requested for re-verification of both the degrees/certificates. On re-verification vide letter dated 03.7.2004, issued by Controller of Examination, University of Sindh, Jamshoro, both the certificates were confirmed to be forged and manipulated.

5. Based on the above, relevant departmental proceedings were initiated against respondent No.4, which led to him being awarded major penalty of removal from service vide order dated 21.4.2003.

6. According to the 'Petitioner notwithstanding his removal from service respondent No.4 through manipulation managed to get himself reinstated. The petitioner being disgruntled and dis-satisfied with the initial reinstatement order dated 29.9.2003 represented before the Chief Minister Sindh against such highhandedness of the authorities. The Chief Minister on receipt of such complaint ordered an investigation through Inspection Team of the Chief Minister regarding whether or not respondent No.4 should have been reinstated.

7. The Chief Minister's Inspection Team reached the conclusion that respondent No.4's two certificates were forged and recommended the cancellation of respondent No.4's reinstatement. Accordingly, based on the findings and recommendation of the Inspection Team, the Chief Secretary, Government of Sindh, vide order dated 07.8.2004 withdrew the reinstatement order dated 29.9.2003.

8. According to the petitioner all of a sudden after about four years from the withdrawal of the reinstatement order, the respondent No.1, Chief Secretary, Government of Sindh, vide his order dated 24.4.2008 has again reinstated



respondent No.4 in service as Sub-Inspector, ACE. It is this order which the petitioner has challenged as being without lawful authority and liable to be quashed.

9. Respondent No.4 has challenged the filing of the Const. Petition by the petitioner against him as according to him the petitioner is not an aggrieved person within the meaning of Article 199 of the Constitution, 1973 and as such has no locus-standi to file the present petition.

10. The respondent No.4's case is that both the certificates in question are genuine and are neither forged nor bogus and as such he is qualified and entitled to hold the position of Sub-Inspector and has been properly reinstated. Respondent No.4 further claims that the petitioner has filed the petition against him on account of enmity between the petitioner and himself.

11. The respondent No.4 concedes that an FIR was registered against him in the Anti-Corruption Court at Hyderabad and that the case has been sent-up in the Court of Special Judge, Anti-Corruption, Hyderabad, which is still pending adjudication. He further concedes that he was suspended from his duty and then removed from service vide order dated 21.4.2003, passed by Director, ACE, Sindh after relevant departmental proceedings had been completed against him. He however alleges that these departmental proceedings were defective as he was not given an opportunity to be heard.

12. Respondent No.4, appealed his dismissal from service to the Chairman, ACE, Sindh and after hearing his appeal respondent No.2 passed an order dated 29.9.2003 reinstating respondent No.4. According to respondent No.4 he was shocked to find vide order dated 07.8.2004 that his reinstatement order had later been withdrawn.

13. Respondent No.4 claims that he made an appeal to the Chief Secretary, Government of Sindh (respondent No.1) against withdrawal of his reinstatement



order dated 07.8.2004. Thereafter, he was again reinstated through the impugned notification.

14. The respondents Nos.2, 3 and 4 have filed their respective comments in response to this petition.

15. Having heard the learned counsel for the petitioner, learned Addl. AG Sindh and learned advocate for respondent No.4 at length and after a detailed study of the documents on file the Court comes to the following conclusion.

16. Respondent No.4's preliminary objection that this petition is not maintainable under Article 199 of the Constitution, 1973 is misconceived as this is a quo-warranto petition under Article 199(1)(b)(ii), and under the said Article a petition can be filed by any person. The filing of the petition does not have to be filed by an aggrieved party thus the petitioner has *locus-standi* to file the petition and the petition is maintainable. Reliance is placed on the case of MUHAMMAD NASEEM HIJAZI v. PROVINCE OF PUNJAB (2000 PLC (C.S.) 1310) which held as under:-

“Under Article 199(2)(ii) of the Constitution of the Islamic Republic of Pakistan the High Court in exercise of its Constitutional jurisdiction is competent to enquire from any person, holder of a public office to show that under what authority he is holding the said office. In such-like cases where a writ in the nature of quo warranto is instituted the duty of the petitioner is to lay an information before the Court that such and such officer has no legal authority to retain such office. For a petitioner who acts, in fact, as an informer is not required to establish him *locus standi* to invoke the jurisdiction of the Court. 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 is 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. Writ of quo warranto could be invoked 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”. Any person can move the High Court to challenge the unauthorized occupation of a public office. On any such application Court is not only to see that the incumbent is holding the office under the order of a Competent Authority but it is to go beyond that and see as to whether he is legally qualified to hold the office or to remain in the office. The Court has also to see



if statutory provisions have been violated in making the appointment. The invalidity of appointment may arise not only from want of qualifications but also from violation of legal provision for appointment."

17. Learned counsel for the respondent No.4 has also referred to the cases of MUHAMMAD ISLAM v. GOVERNMENT OF N.W.F.P. (1998 PLC (C.S.) 1430) and GORDHANDAS v. WATER AND POWER DEVELOPMENT AUTHORITY (WAPDA) (1989 SCMR 14). Both the citations in essence state that the filing of an FIR against a civil servant should not be held against him during the pendency of the case. These judgments, however, are of little assistance to respondent No.4 as in a nutshell the instant case revolves around his alleged bogus law degree and as to why he was being reinstated for a second time after adverse findings against him by the Chief Minister's Inquiry Team.

18. Comments filed by Director, ACE (respondent No.3) do not challenge the version of events as narrated by the petitioner except to say that with regard to reinstatement he simply followed the orders of the competent authority. The respondent No.2 in his parawise comments again does not contradict the petitioners version of events except to say that the initial order dismissing Respondent No 4 from service was withdrawn because he had not been given a chance to fully present his case before the Inquiry Committee. This conforms with Respondent No.4's contention regarding his initial dismissal from service.

19. Learned Addl. AG Sindh representing respondent No.1 was unable to satisfactorily explain to the Court on what basis after a period of nearly four years, respondent No.4 had now been reinstated by the Chief Secretary vide impugned notification in the face of the findings of the earlier Chief Minister's Inspection Team.

20. According to learned counsel for respondent No.4, respondent No.4 had made an appeal to the Chief Secretary for his reinstatement who had moved the



summary, which had led to his reinstatement. But no such appeal or summary is available on record to prove this position.

21. The Court has borne in mind the history of this case as narrated above. It appears that it has never been shown that the respondent No.4 ever possessed genuine certificates, in particular LLB, which would qualify him to be appointed to the post of Sub-Inspector. He was initially removed from service on this ground but allegedly was reinstated because he did not have the chance to be heard in person. It is significant that this initial reinstatement was not because Respondent No.4's degrees had been found to be genuine but because he had not been given his right to be heard. This initial reinstatement however was withdrawn on the basis of a detailed inquiry, carried out by the Chief Minister's Inspection Team, which contained the following observations:-

"4. With regard to disputed educational certificate of Sub Inspector Niaz Hussain Chachar, the Enquiries & Anti-Corruption Establishment reported the Controller of Examination, University of Sindh, Jamshoro confirmed their genuineness. The University vide letter No.X/Secret/verification/1352 of 2003 dated: 10-12-2003 informed that after verification of certificate, it was found genuine (Annexure-IV).

5. However, the CMIT was not satisfied with the confirmation of above educational documents. Therefore, the Controller of Examination, University of Sindh, Jamshoro vide this Team's letter dated: 14th July' 2004 (Annexure-V) was asked to re-verify the position of educational documents of Mr. Niaz Hussain Chachar, SI, ACE, Hyderabad as well as to verify the genuineness / authenticity of the contents of the letter of University of Sindh mentioned at Annexure-IV.

6. The Controller of Examinations, University of Sindh, Jamshoro, denied any confirmation whatsoever made by the University regarding the educational documents of Mr. Niaz Hussain Chachar and termed the documents bogus. Similarly, the Controller of Examination, University of Sindh also denied the genuineness / authenticity of the contents of letter No:X/Secret/verification/1352 of 2003 dated: 10-12-2003. (Annexure-VI)."

22. Notwithstanding his withdrawal of reinstatement after the Inquiry of the Chief Ministers Inspection Team, respondent No.4 has kept quiet for almost four years in respect of his dismissal from service. No adequate explanation has been given



as to why the findings of the Chief Minister's Inspection Team have suddenly become redundant after a lapse of almost 4 years. Neither has any adequate explanation been given to show why Respondent No 4 now merits reinstatement. Furthermore, no relevant rule or regulation has been referred to which in the given situation enables the Chief Secretary to reinstate dismissed employees at his whim.

23. Under the above circumstances, the Court finds that the Respondents have failed to satisfy the Court of the legal basis under which Respondent No 4 holds the office of Sub Inspector, ACE.

24. The above are the reasons for our short Order dated 17.3.2009, whereby we allowed the petition and declared the impugned order dated 24.04.2008 passed by Respondent No.1 to be without jurisdiction, without lawful authority and of no legal effect.

Karachi,
24th March, 2009

Sd/- Chief Justice
Sd/- Mr. Justice



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