

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No.D-1124 of 2007

Present: Mr. Justice Anwar Zaheer Jamali, CJ.,
Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 06.5.2009

Petitioner: Through Mr. Abrar Bukhari, advocate.

Respondents: Through Ch. Muhammad Jamil, advocate.

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J., The Petitioner was serving as Assistant Professor (BPS-18) since the year 1984 in respondent No.1-Institute of Business Administration, ("IBA"). The petitioner alleges that he has been continuously dealt with prejudicially and given bias treatment by the director of respondent No.1.

2. According to the petitioner, the respondent No.1 ordered the petitioner to be compulsorily retired on 28.06.2004 without issuing any show-cause notice or disclosing any reason while the petitioner was on Foreign Service Leave, which was duly sanctioned up to December, 2002 notwithstanding that the petitioner had already applied for an extension in his Foreign Service Leave.

3. The petitioner challenged the aforesaid compulsory retirement order before the Sindh Service Tribunal ("**Tribunal**"). The Tribunal by its order dated 10.2.2006 (hereinafter referred to as the "**Tribunal's Order**"), held as under:-

"On careful consideration of the argument advanced before us it transpires that before awarding major penalty to the appellant no procedure of whatsoever nature was observed. In the absence of such, the impugned punitive order is not sustainable.

Accordingly, without touching the merits of the case the impugned order dated 28.06.2004 is set-aside and matter is remanded to respondent No.1 for passing fresh order after observing all the legal requirements as provided under Removal from Service (Special Powers) Sindh Ordinance IX of 2000, within a period of 6 months from the date of receipt of copy of this order. Meanwhile appellant is directed to be reinstated in service for the purpose of facing inquiry. The intervening period

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would follow the outcome of fresh disciplinary proceedings. In case for any reason the proceedings are not concluded within specific period, appellant shall be reinstated for all purposes." 17

4. According to the petitioner, after passing of the Tribunal's Order respondent No.1 again issued him with a letter of compulsory retirement from 19.5.2006 without issuance of any show cause notice, charge sheet or statement of allegations, which was violative of Section 5 of Removal from Service (Special Powers), Sindh Ordinance, 2000 ("**Ordinance, 2000**").

5. In a nutshell, the petitioner's case is that he was not given the right to be heard and that the formalities provided under Ordinance, 2000, were not followed prior to him being "compulsorily retired".

6. In this background, through this petition, the petitioner has prayed for the following relief:-

"i) To set aside the impugned compulsory retirement order dated 19.5.2006 issued by the incompetent authority the Director IBA, and reinstate in service as Assistant Professor with all consequential service benefits including pay and allowances admissible to him from the date of impugned order passed.

ii) To grant such relief which may be deemed fit and proper in the circumstances of the case."

7. During the course of arguments, learned counsel for the petitioner conceded that he had been served with the show-cause notice dated 04.3.2004 prior to his removal from service, after which, he had been reinstated by the Tribunal's Order. He contended, however, that no charges were ever framed against the petitioner and the Inquiry Committee was formed by the director of respondent No.1, who had no power to constitute such an Inquiry Committee. According to him, the Chancellor was the competent authority under the Ordinance, 2000 and only he could remove the petitioner and not the director. According to the petitioner such procedural irregularities vitiated the entire proceedings against him.

8. With regard to the maintainability of this petition, the petitioner contended that the respondent No.1 is a part of Karachi University pursuant to

Section 28(1) (g) of the University of Karachi Act, 1972, and as such it is performing functions in connection with the affairs of the Federation or a Province and, therefore, falls within the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution, 1973**").

9. The petitioner has also relied on the case of MUHAMMAD DAWOOD v. FEDERATION OF PAKISTAN (SBLR 2007 SINDH 495) and stressed on paragraph 30(ii) and (iii) at page 516, which are set out below:-

- ii) All petitions complaining of removal under the provisions of the Removal from Service (Special Powers) Ordinance, 2000, having been taken in exercise of statutory powers, are maintainable and this Court would be competent to consider whether the action complained of is in accordance with provisions of the Ordinance.
- iii) Where there is violation of law as explained herein above is alleged and within the parameters of the exercise of constitutional jurisdiction of the Courts this Court would be competent to entertain petitions and grant appropriate relief within the parameters of its jurisdiction under Article 199 of the Constitution.

10. In support of his various contentions, learned counsel for the petitioner, has placed reliance on the following case law:-

- (i) MUHAMMAD IQBAL v. WAPDA (2002 SCMR 922);
- (ii) GOVERNMENT OF BALOCHISTAN v. MARJAN KHAN (2003 PLC SC 245);
- (iii) NAZEER AHMED CHAKRANI v. GOVERNMENT OF PAKISTAN (2004 SCMR 623);
- (iv) OSMAN GHANI v. FEDERAL SERVICE TRIBUNAL (1986 SCMR 1875);
- (v) EXECUTIVE ENGINEER v. EJAZ AHMAD (2007 SCMR 1860)

11. On the other hand, learned counsel for the respondent No.1 has contended that this petition is not maintainable as the respondent No.1 is not a part of Karachi University pursuant to Sections 3 and 4 of The Institute of Business Administration Act 1994 (Sindh Act No.XX of 1994) ("**IBA Act**"). As such, the IBA does not fall within the purview of Article 199 of the Constitution, 1973 as it is not a person performing functions in connection with the affairs of the Federation or a Province. He has placed reliance in this regard on the case of

QAMAR-UL-ISLAM v. INSTITUTE OF CHARTERED ACCTT. (1993 MLD 1362).

12. The learned counsel for the respondent No.1 has refuted the arguments made by learned counsel for the petitioner and contended that a show-cause notice was served on him after the Tribunal's Order (as well as before) wherein the allegations against the petitioner were disclosed to him and that the codal formalities, as required by the Ordinance, 2000 and the Tribunal's Order, were also complied with.

13. Learned counsel for the respondent No.1 has further contended that the petitioner has not come to this Court with clean hands. This is because whilst he was supposed to have been on foreign service leave working in Ajman, UAE, he was actually working in Karachi.

14. We have reviewed the documents on record, in detail, and carefully considered the arguments of learned counsel for the respective parties.

15. On the issue whether the petition is maintainable under Article 199 of the Constitution, 1973, IBA Act, at Sections 3, 4 and 18(1), provides as under:-

"3. The Institute of Business Administration Karachi, as reconstituted and reorganized in accordance with the provisions of this Act shall be a body corporate by the name of the Institute of Business Administration Karachi and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

4. All properties, right and interest of whatever kind, used enjoyed, possessed, owned or vested in, or held in trust by or for the Institute of Business Administration as established under the First University Ordinance of the University of Karachi 1962 and reconstituted under section 28(i) (g) of the University of Karachi Act, 1972 and all liabilities legally subsisting against the Institute shall pass to the Institute of Business Administration as reconstituted under this Act.

18. (1) The Statutes to establish the Institute of Business Administration by the University of Karachi under section 28(1)(g) of the University of Karachi Act, 1972 are hereby repealed."

16 The above sections read together would seem to suggest that Karachi University may have sought to divest its authority over the Institute of Business Administration.

17. The Supreme Court in SALAHUDDIN AND 2 OTHERS v. FRONTIER SUGAR MILLS AND DISTILLERY LIMITED (PLD 1975 SC 244) held as follows :-

“However, private organizations or persons, as distinguished from Government or semi-Government agencies and functionaries cannot be regarded as persons performing functions in connection with the affairs of the Federation or a Province simply for the reason that their activities happen to be regulated by laws made by the State. Accordingly a joint stock company incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity performing State functions, just for the reason that its functioning is regulated by law or that the distribution of its manufactured products is subject to Governmental control in the public interest. *The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power, whether the control of the organization vests in a substantial manner in the hands of Government and whether the bulk of the funds is provided by the State.* If these conditions are fulfilled, then the person including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province, otherwise not.” (italics added)

18. The above case was recently followed by a Division Bench of this Court in the case QAMARUL-UL-ISLAM (supra).

19. Notwithstanding the above position however there is no getting away from the fact that the IBA is a statutory body created under the IBA Act.

20. Other sections of the IBA Act clearly show that the Government of Sindh has a major control over the IBA and that it is performing its functions in connection with the affairs of the Province.

21. For example, the following Sections of the IBA Act, as set out, provide as follows:-

Section 2 (j)

“(j) “Patron” means the Governor of Sindh,

Section 7

"7. (1) The Governor of Sindh shall be the Patron and the Controlling Authority of the Institute.

(2) The Patron shall, when present, preside at the convocation of the Institute.

(3) if the Patron is satisfied that the proceedings of the Board, Selection Board, or the Academic Board are not in accordance with the provisions of this Act, he may after calling upon such Board to show-cause why such proceedings should not be annulled by order in writing annul the proceedings.

(4) In the absence of the Patron, the Chairman shall preside the convocation.

Section 8

"8. (1) The Patron may cause a visitation or enquiry to be made in respect of any matter connected with the affairs of the institute appoint such person or persons as may deem fit for the purpose.

(2) The Patron shall, on receipt of a report under subsection (1) shall issue such directions as he thinks fit and the Director will comply with such directions.

Section 9

9.(1) The Director shall be appointed by the Patron who shall hold office during his pleasure and unless removed earlier hold office for a period of four years on such terms and conditions as may be determined by the Patron.

(2) The Director shall be the Chief Executive of the Institute having authority over academic, administrative and financial affairs and shall ensure that the provisions of this Act and the rules are faithfully observed.

Section 10(1)

10(1) The Director of Finance shall be appointed by the Patron on such terms and conditions as may be determined by him.

Section 12(1) and (2)

12(1) There shall be a Board of Governor, consisting of the following:-

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| (i) A Judge of the High Court of Sindh to be nominated by the patron from amongst a panel of three Judges. | Chairman |
| (ii) Vice Chancellor, University of Karachi, | Member |
| (iii) Vice Chancellor, University of Sindh | Member |

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|---|---------|
| (iv) The Director (Chief Executive) | Member |
| (v) Secretary Education, Govt. of Sindh | Member |
| (vi) One nominee of the University Grants Commission not below the rank of a whole Time Member. | Member |
| (vii) President of the Sindh Chamber of Commerce | Member |
| (viii) President, Chamber of Commerce and Industries, Pakistan | Member |
| (ix) Two prominent business executives of the Province to be nominated by the patron | Members |
| (x) Two prominent educationist of the Province to be nominated by the patron. | Members |
| (xi) Two prominent citizens to be nominated by the patron. | Members |
| (xii) Two Professors or Associate Professors nominated by the Chairman. | Members |
| (xiii) One member of the Registered Graduates of the Institute elected from amongst themselves. | |

(2) The members other than ex-officio members, shall hold office during the pleasure of the patron and unless removed earlier shall hold office for three years commencing from the date of the first meeting of the Board.

Section 13(1)

13(1) The Board shall be the policy formulation and executive body of the Institute and shall, subject to the provisions of this Act and the rules, exercise general supervision over the affairs of the Institute.

Section 16(1) and (5)

"16(1) The Institute shall have a Fund to which shall be credited all grants made by any Government or contribution and donations made by individual local bodies, organizations or agencies and income from fees received, sale proceeds and royalties on publications and such other sources as may be approved by the Board.

- (2)
- (3)
- (4)

(5) The Institute shall furnish to Government each year a report on annual audited accounts, report on the activity of the Institute during the preceding year and such information relating to its activities as may be asked for by Government.

22. When the IBA Act is read as a whole with particular reference to the above sections it becomes clear that the IBA is performing functions within the affairs of the Province. For example, the Patron is the Governor of Sindh who is the controlling authority of the Institute who under Section 7 even has the power to set aside all the decisions of each and every board created under the IBA Act.

23. The Board of Governors under S.12 are for the most part either nominees of the Governor or persons connected with the Provincial or Federal Government, for example, Secretary of Education Government of Sindh. As indicated above the Board of Governors under S.13 have significant functions under the IBA Act.

24. Furthermore, most of the other key appointments under the IBA Act are made by the Governor (such as the Director and Director Finance). In addition the Institution receives funds from the University Grants Commission. As such the IBA would even seem to meet the requirements laid down in the case of SALAHUDDIN (*supra*), as italicized and alluded to above.

25. We are also fortified in our findings by reliance on the following cases, both of which involved a similar Institution namely Aitcheson College, Lahore, on the same point of maintainability:-

- (i) MUHAMMAD ZUBAIR IKRAM v. AITCHISON COLLEGE, LAHORE (NLR 2000 Civil 519);
- (ii) AITCHISON COLLEGE v. MUHAMMAD ZUBAIR (PLD 2002 SC 326)

26. In the case of MUHAMMAD ZUBAIR IKRAM (*ibid*), a Full Bench of Lahore High Court has held as under:-

"It is, thus, obvious from the reading of the various clauses of the statutes that the government has an effective control over the affairs of the college. This control is not a marginal or illusory but deep and pervasive. It was held in *"M/s Huffaz Seamless Pipe Industries Ltd. v. Sui Northern Gas Pipelines Limited and others"* (1998 CLC 1890) as follows:-

"it is, thus, clear that the companies/corporations registered under the Companies Ordinance, 1984 which are funded by the Federal or Provincial Government and which are under dominative control of State (Federal Government,

Provincial Government) and which provides amenities of life to citizens are in substance instrumentalities/agencies of the state which discharge the function, which fall within the area of police power of state. Action/orders of such institutions are administrative actions and are subject to judicial review of this Court."

In the above said judgment, Mian Allah Nawaz, as he then was, who spoke for the Court reviewed the total case law on the subject and reached the conclusion afore-note. At another place, it has been observed as follows:-

"With the march of time, the activities of state had multiplied manifolds. Today, the government is the regulator and dispenser of special services, large number of benefits including jobs, contracts, licenses, quotas, mineral rights, leases of state land and utility services to its citizens. The Government has assumed the role of even entrepreneur. Normally, the state does not involve itself entrepreneurial activities through its bureaucracy, but enters these fields with the help of corporation/instrumentalities, which might be created under some statutes or might be registered under the Companies Ordinance, 1984. This increases the largess of state and enhances the magnitude of range of governmental functions. Should these activities/functions of such instrumentalities be immune from principles of check and balance embodied in the constitution?"

The answer to the said question has been found in negative by reviewing various judgments of our own country as well as that of the other countries and it has been held that since the corporation remained under the dominative control of the Government, therefore, amenable to the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973."

27. It was further held in the case of MUHAMMAD ZUBAIR IKRAM (supra), as follows:-

"The said institution is no doubt mentioned in the head of autonomous bodies but it is common knowledge that even the autonomous bodies do get financial aid from the government which even otherwise is the obligation of the government. The Aitchison college is the most prestigious educational institutions of the country having huge property of its own and large establishment which is being governed by the Board of Governors and the dominative control of the said board is that of the Provincial Government, therefore, it falls within the definition of the word "person" as defined in sub-Article (5) of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, thus, it is amenable to the Constitutional jurisdiction of this Court."

28. The Hon'ble Supreme Court of Pakistan upheld the decision delivered by Full Bench of Lahore High Court in the case of MUHAMMAD ZUBAIR IKRAM (above) reported as AITCHISON COLLEGE v. MUHAMMAD

ZUBAIR 9PLD 2002 SC 326). Some relevant observations passed by the Hon'ble Supreme Court are as follows:-

"But in our opinion merely on account of non-getting financial assistance, the Aitchison College cannot be considered to be an educational institution not functioning under the control of Provincial Education Department through the Board of Governors headed by the Governor as its President. In this behalf, it would not be out of context to point out that there are certain Provincial Educational Institutions who have sufficient means to generate funds for its functioning but still they are deemed to be under the dominating control of the Government as its affairs are being regularized or being run by adopting such mechanism in which the Constitutional Head of the Province i.e. Governor can directly participate. Examining the proposition in hand, adverse to above reasons namely that if the Governor of the Province being its President and other officials belonging to the Provincial Government have only the ceremonial representation in the Board of Governors and the affairs of the College can be run without their participation by the private Members of the Board of Governors, then what was the object to take over the management of the College by promulgating MLC No.86 (Zone-B) because prior to taking over the management and the control of the College under this provision of law, the College was already functioning under the control of a registered Society. Under MLO No.86 control of Aitchison College was taken over as back as on 11th November, 1961 by means of issuing Notification in exercise of powers conferred upon the Government because latter had considered it fit and expedient for the efficient management and control of the College to ensure its improvement and to satisfy the will of law i.e. MLO No.86 (Zone-B). Admittedly, a ceremonial head or official participants would not make improvement unless it had not taken over management and control of the Institution, therefore, we are of the opinion that notwithstanding the fact that the Aitchison College is not receiving any financial assistance from the Provincial Government but as its management and control and all other matters relating to running its affairs through a statutory body functioning under the system which has been provided under MLO No.86 (Zone-B) vests in Provincial functionary, therefore, the Institution would fall within the definition of a person under Article 199(5) of the Constitution."

29. It was further held by the Hon'ble Supreme Court as follows:-

"Applying the above test (namely that laid down in the earlier noted Salahuddin's case) on the facts of instant cases, we feel no hesitation in drawing inference that the Board of Governors, Aitchison College, Lahore headed by the Governor of the Province as its President along with other officers i.e. Secretaries Education, Finance and General Officer Commanding as well as unofficial Members are involved in providing education which is one of the responsibility of the State and by taking over its management and control the Board, exercises sovereign powers as well as public powers being a statutory functionary of Government who in order to provide it full legal/Constitutional protection had brought it into the folds of its Education Department by amending the Provincial Rules of Business as back as in 1994 and even if for sake of arguments if it is presumed that

no financial aid is being provided to the College from the Provincial Public exchequer, even then, the College remains in dominating control of the Provincial Government through Board of Governors. Therefore, the above test stands fully satisfied and we are persuaded to hold that organization of the Aitchison College, Lahore falls within the definition of a person."

30. Furthermore in Dawood's case, as referred to above, it has been held that all petitions complaining of removal under the provisions of Ordinance, 2000, having been taken in exercise of statutory powers, are maintainable and this Court would be competent to consider whether the action complained of is in accordance with provisions of the Ordinance, 2000.

31. To summarize, since the IBA is a statutory Body, which is performing functions in connection with the affairs of the Province and the Province has a major control over the IBA which even itself had purportedly proceeded against the petitioner under the Ordinance 2000, we find this petition to be maintainable under Article 199 of the Constitution, 1973.

32. With regard to the action taken by the respondent against the petitioner we note that on 04.3.2004 a show-cause notice was issued to the petitioner by the respondent No.1 setting out why the respondent No.1 was considering taking action against him. This is the show cause notice, which the petitioner admits receiving. The contents of the same are reproduced herein below:-

"Mr. Mumtaz Ahmed Khan
Assistant Professor
IBA Karachi

Dear Mr. Mumtaz A. Khan

This refers to your Foreign Service Leave.

You have been granted Foreign Service Leave for one year from January 1, 2003 to December 31, 2003. You have asked for extension in your leave period vide your letter dated December 18, 2003, which was not granted vide our letter dated December 31, 2003.

You are once again requested to join your duty with immediate effect and explain the reasons for not joining IBA so far, for information of Competent Authority. Your explanation must reach the undersigned by Monday, March 8, 2004 positively, failing which we may be constrained to initiate disciplinary action on account of continued Absence Without Leave as per rules. (italics added)

Yours truly,

Sd/-

Col. Mozaffer Zaidi, SI (M), (Retd)
Director Administration

Cc: Director
Personal File"

33. In his first compulsory retirement order dated 28.6.2004 (which was later set aside by the Tribunal's Order), again the reason why the petitioner had been retired, was set out. A copy of this letter was even annexed to his appeal before the Tribunal

34. The above letters were *before* the Tribunal's Order holding that no procedure had been followed. Nevertheless, the above letters made it abundantly clear to the petitioner as to why he was being proceeded against. Furthermore, to enable the petitioner to challenge the initial compulsory retirement order before the Tribunal he must have been made aware of the show cause notice containing the allegations against him.

35. Even *after* the Tribunal's Order, respondent No.1 issued another letter dated 07.4.2006, which can be regarded as a show cause notice by reference to the earlier show cause notice dated 04.3.2004, calling upon the petitioner to appear before the Inquiry Committee to answer the allegations against him. The contents of the said letter are reproduced as under:-

"Prof. Mumtaz Ahmed Khan
B-36, Block 4,
Gulshan-e-Iqbal
Karachi

Dear Sir,

As per order of the Hon'ble Sindh Service Tribunal dated 10.02.2006, *directing us to hold an inquiry against you regarding misconduct committed by you, stated in our letter of Show Cause dated 4/03/2004.* You are hereby informed that Dr. Sayeed Ghani, Chairman MIS & CS has been appointed as President Inquiry Committee to conduct the inquiry in the said charges. Kindly appear on April 13, 2006 at 11:00 a.m. before the said Inquiry Officer/Committee at City Campus to conclude the inquiry proceedings within the time specified by the Hon'ble Tribunal in the above noted matter. (italics added)

Yours truly,

Sd/-

Danishmand
Director

C.C. President, Inquiry Committee
Director Administration
Office Record"

36. Further letters dated 12.4.2006, 18.4.2006, 25.4.2006 and finally on 08.5.2006 were sent by the respondents to the petitioner intimating him to appear before the Inquiry Committee on the date, time and place to conclude the inquiry proceedings initiated in response to the show-cause notice dated 04.3.2004.

37. These letters show that the maximum accommodation was given by the respondent No.1 to the petitioner to appear before the Inquiry Committee and present his case.

38. The allegations against the petitioner, in essence, were that he failed to return to duty after his sanctioned leave was over. This was not a complex allegation and could easily have been answered by the petitioner had his intention been bona fide. Instead, it seems that the petitioner deliberately chose not to appear before the Inquiry Committee in order to explain his position after the Tribunal's Order despite being given countless opportunities to do so.

39. In this context, it is significant that pursuant to the Tribunal's Order unless the inquiry process was completed within six months the petitioner would stand reinstated. In the view of the Court, there is a distinct probability that this was the reason why the petitioner was avoiding to attend the inquiry especially when read in light of his dishonest conduct as found by the Inquiry Committee as alluded to later in this Judgment.

40. The petitioner's contention that the director of respondent No.1 did not have the authority to initiate the inquiry is of little significance in a case of such simplicity. Section 13(2) (xiii) of the IBA Act seems to indicate that the

competent authority in cases of compulsory retirement is probably the Board of Governors (though the word retirement is not used).

41. The Director under Section 12(1) is a member of the Board of Governors and is also given a great deal of authority concerning the running of the Institute as Chief Executive under Section 9 of IBA Act. Under Section 13(2) (x) the Board of Governors can even delegate any of its powers to the Director and under Section 15(1) all appointments of BPS-16 and above shall be made by the Board on the recommendation of the Selection Board. The Director is the Chairman of the Selection Board.

42. Moreover, the petitioner has failed to show any prejudice which he may have suffered on account of the procedure which was followed. Reliance is placed on the case of KHALI KHAN v. NAZIR (PLD 1997 SC 304) where it was held as under:-

“Another principle in the realm of writ jurisdiction well entrenched in our system as elsewhere is that a void order is not always to be struck down regardless of the consequences of such a decision, but that a void order shall be struck down provided there is no statute or principle of law which would make it unjust or inequitable to strike it down.”

43. Furthermore, the findings of the Inquiry Committee dated 12.5.2006, at paragraphs 6 and 7 are significant as they show that the petitioner did not come to this Court with clean hands and are reproduced below:-

“6. The documentary evidence produced by witness no.2 also reveals that Prof. Mumtaz A. Khan instead of going abroad, joined Mohammad Ali Jinnah University, Karachi, for teaching purposes, which is a gross violation of rules on the subject.

7. The Enquiry Committee also found out from Ajman U.A.E office of Crafters International that Mr. Mumtaz A. Khan never attended their office. Mr. Mumtaz A. Khan's contention that he was appointed to serve in Karachi Office is at gross variance with his initial appointment letter of Crafter International dated Dec. 10, 2002, which placed Mr. Mumtaz A. Khan as General Manager, Export Sales in the company office located at Ajman U.A.E.”

44. The opinion of the Inquiry Committee is reproduced below and we find no reason to interfere with the same.

"The Enquiry Committee, therefore, opines that Prof. Mumtaz A. Khan has committed extremely serious misconduct and has no regards for Rules and Regulations.

The Director IBA may, therefore, take any action against Mr. Mumtaz A. Khan according to rules."

45. Before leaving this matter we would like to stress that the courts powers to grant relief under Article 199 are of a discretionary nature which are to be exercised in order to meet the ends of justice and equity. In this case the petitioner has not come to this Court with clean hands so notwithstanding our above findings we would not have been inclined to afford relief to the petitioner under A.199 on the facts and circumstances of his particular case. Reliance is placed on the case of KANIZ FATIMA v. MUHAMMAD SALIM (2001 SCMR 1493) where it was held as under:-

"Let we mention here at this juncture that "paramount consideration in exercise of Constitutional jurisdiction is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretion power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it cures a manifest illegality, then the extraordinary jurisdiction ought not be allowed to be invoked."

46. For the foregoing reasons, by our short order dated 06.5.2009, we had dismissed the petition in limine.

Karachi,
Dated: 22.5.2009