

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-3877 of 2013

Present:

Yousuf Ali Sayeed and
Muhammad Osman Ali Hadi, JJ.

Petitioner : Atta Muhammad Chaniho,
through Rafique Ahmed
Kalwar, and Ghulam
Muhammad, Advocates.

Respondent No.1 : Shazia Jannat Marri, through
Rabia Khan, Advocate.

Respondent No.3 : Election Commission of
Pakistan, through Mehreen
Ibrahim, DAG, along with
Abdullah Hanjrah, Deputy
Director Law and Muhammad
Bilal Malik, Assistant Director
Law, ECP.

Respondent No.5. : University of Karachi through
Ameeruddin and Sana Qamar,
Advocates.

Dates of hearing : 30.03.2026, 06.05.2026 and
18.05.2026.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner essentially seeks to de-seat the Respondent No.1, an elected member of the National Assembly of Pakistan from the constituency of NA-216 Sanghar II (previously NA-235 Sanghar II), on the touchstone of Articles 62(1)(d) & (f) and 63 of the Constitution of Pakistan, 1973, read with Section 231 of the Election Act, 2017.

2. In that regard, it has *inter alia* been prayed by the Petitioner that this Court be pleased to:

A. Declare that the Respondent No.1 having failing to fulfill the conditions of Article 62(1)(d) & (f) and Article 63 of the Constitution of Pakistan, 1973, read with Section 231 of the Election Act, 2017 (previous Section 99(1)(f) of the Representation of Peoples Act, 1976) is not qualified to hold the office of Member of National Assembly from NA-216 Sanghar II (previously NA-235 Sanghar II) constituency.

B. Direct the Respondent No.3 to de-notify/disqualify the Membership of the Respondent No.1 from the National Assembly of Pakistan;

C. Declare that the Respondent No.1 was not qualified to be elected/nominated to the Provincial/National Assembly for the election terms of year 2002 till date on the grounds of being disqualified;

D. Declare that the Respondent No.1 is disqualified for life from contesting any election in Pakistan and/or holding any public office;

E. Direct the Respondent No.3 to recover the perks and privileges/salaries/allowances/expenditures enjoyed by the Respondent No.1, while selected as MPA, MNA and Minister from 2002 till to date.

F. ...”

3. The prayers proceed on the assertion that, at the time of filing her nomination papers from the aforementioned constituency in respect of the general elections held in the years 2002, 2008 and 2013, the Respondent No.1 had falsely declared that she was a graduate and fraudulently passed-off a of BA (Pass) degree issued by the University of Karachi, bearing Seat No.31071 dated 23.8.2002, in favour of the Respondent No.2 (i.e. Shazia D/o Atta Muhammad) as her own.

4. It was pleaded that the impugned degree submitted by the Respondent No.1 was suspicious and doubtful as the Respondent No.1's name, date of birth, father's name, address and signature were different from those mentioned on the underlying enrolment form and the Matriculation certificate and Intermediate Marks sheet submitted therewith, and that the Respondent No.2 was in fact the real student who applied for BA (Pass) Degree through enrolment form bearing No.5701 and Enrolment No.R-3578/95 dated 16.12.95 and submitted her Matriculation Certificate bearing Roll No.242377 dated 16.04.1994 and Intermediate Mark sheet bearing Roll No.76085 completed in 1995, all from Raunaq Islam College for Women, Lyari.
5. On that basis, it was averred that the Respondent No.1 did not fulfill the requirements of Article 62 and 63 of the Constitution and did not qualify for the membership of any of the Provincial Assemblies and/or the National Assembly of Pakistan and was liable to be disqualified accordingly.
6. As it transpires, the same allegation was levelled against the Respondent No.1 through Election No. S-01 of 2028 preferred by a contesting candidate under Section 139 read with Section 142 of the Election Act 2017 before an Election Tribunal at Hyderabad in respect of the General Election of 2018, where, while referring to and considering the present Petition, the Tribunal repelled the argument raised in respect of the Respondent No.1's degree vide its Judgment dated 12.11.2022 so as to dismiss the Petition. The relevant passages from that Judgment read as follows:

“20. This petition is conferred to the genuineness of the degree of Bachelor of Arts of respondent No.2, questioned by the petitioner that the same does not relate to respondent No.2/returned candidate but it is of someone other Ms. Shazia daughter of Atta Muhammad and the respondent No.2 has impersonated by using it to be her own for the reason that there was the mandatory condition in the General Elections of 2002 for contest, candidate must be graduate or having equivalent qualification. The petitioner also questions such condition when pertains to the General Election of 2002 that respondent No.2 since had no Graduation Degree has used the Degree of another Shazia daughter of Atta Muhammad. The petitioner in his petition has also referred that one Atta Muhammad Chanhio had also filed a petition bearing C.P No.D-3877 of 2013 challenging the degree claimed by respondent No.2 to be of some other Shazia, which is pending adjudication before the Hon’ble High Court of Sindh at Karachi.

21. PW Abdullah the Senior Law Officer, Election Commission of Pakistan examined by the petitioner in his evidence has deposed that since the Electoral Roll for the Election-2002 has been disposed of and handed over to the approved contractor of the Election Commission of Pakistan, as such, the same is not available in their record. Despite the production of documents by this witness, the same could not establish the claim of the petitioner and the entire case of the petitioner as stated above is based on the allegation that the returned candidate/respondent No.2 does not have a Degree of Graduation being condition to contest the Elections of 2002. Further, this is very essential as to whether or not to the not the documents since were not admissible in evidence and not exhibited, can be considered. However none of the parties argued on this point. Certainly, the documents not exhibited in evidence cannot be considered. And, the Photostat copies of documents exhibited in evidence are to be weighed in the eyes of law as to applicability. As stated above, the witness Abdullah the Senior Law Officer, Election Commission of Pakistan examined by the petitioner in his evidence has categorically deposed that since the Electoral Roll for the Election-2002 has been disposed of and handed over to the approved contractor of the Election Commission of Pakistan, as such the same is not available in their record. Therefore, the non-availability of original documents makes a question mark upon their authenticity especially when one party claims forgery in the documents or impersonation against an opposite party who denies such allegation. In the instant case, the returned candidate has owned her CNIC bearing No.42301-

8113615-2 and previously owning of CNIC No.48875012383 while denies to the suggestion of petitioner’s counsel previous possession of CNIC No.51475193058 as well CNIC bearing No.48875012383. In such a situation obviously like the issue can only be resolved after having scrutinized the original record.

22. PW-02 Mohsin Ehsan-ul-Haque examined by the petitioner himself produced the Enrolment Form of the University of Karachi in the name of Shazia at Ex:02/B, which shows the date of birth of Shazia as “08.10.1972”. This Enrolment Form also describes the details of the Certificate or Degrees, Board or University along with year of passing and seat number. Such details mentioned in the Enrolment Form is as under:-

Certificate or Degree	Board or University	Year of passing		Division	Subject of major interest
		Annual/ Supp	Seat No.		
Matriculation	Karachi Board	Annual	242828	“B”	--
Intermediate	Karachi Board	---	29373	“D”	--
M.A./M.Sc./M.Com./ M.Ed.					

He also produced Statement of Marks, Board of Intermediate Education Karachi at Ex.02/C, which describes to be of “Shazia Jannat Marri Father’s Name Atta Muhammad Marri” bearing Roll No.29373. He has also produced a Secondary School Certificate issued by the Board of Secondary Education, Karachi bearing Roll No.242828 in the name of ‘Shazia daughter of Atta Muhammad’ at Ex:02/C-I. The roll numbers mentioned in both the documents [Ex:02/C and Ex:02/C-I] are also mentioned in Enrolment Form [Ex:02/B] as designated above. The original documents Ex:02/B to Ex:02/C are lying with the Nazir of Honourable High Court of Sindh at Karachi in C.P No.D-3877 of 2013 as deposed by PW-02. The respondent No.2/returned candidate in her evidence has produced her CNIC No.42301-8113615-2 [Ex:C-2/C) and MNIC bearing No.488-72-012383 [Ex:06/E], both these CNIC and MNIC describe the date of birth of the returned candidate Ms. Shazia as **“08.10.1972”**. The CNIC & MNIC of returned candidate has also been confirmed with the document i.e. Computerized National Identity Card Form [Ex:04/C] produced by the witness of petitioner i.e. PW-04 Abdul Jabbar, Assistant Director NADRA Hyderabad. Ex:04/C also shows the date of birth of returned candidate Ms. Shazia as **“08.10.1972”**

23. **Section 416 PPC provides the definition of cheating by personation;-** A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such person really is. Admittedly, the petitioner is questioning the degree of BA claimed by returned candidate/respondent No.1, to be of another Shazia daughter of Atta Muhammad, but he has failed to make said Shazia a witness or examine her before this Tribunal. Ever the petitioner failed to bring on record the admission slips of another Shazia having affixed a picture of the student to substantiate his claim. If the position as claimed by the petitioner in respect of the Degree of another Shazia could have been the same, he must have cited such documents viz. Examination Admit Card/slip etc. to bring on record but did not. Even otherwise, in order to validate his claim, he was at liberty to produce the documents /qualifications certificates of the returned candidate through Board or University, if put his version, the same are different as are being claimed by the returned candidate; however, neither he cited any witness of Board or University through whom could have been produced nor got exhibited the same in his evidence.

24. In the instant proceedings, the documents brought on record are negating the claim of the petitioner rather than demonstrating that the degree of B.A., which is questioned by the petitioner, is obviously to be of the returned candidate Ms. Shazia. Consequently, I hold that respondent No.2 has not impersonated or filed fabricated qualification documents or used forged NIC in violation of provisions of the Election Laws.”

7. That Judgment was challenged before the Supreme Court through C.A. No.3604/2022, which too came to be dismissed on 13.03.2023, with the Order reading thus:

“The learned counsel for the appellant submits that a writ petition bearing No.3877/13 seeking writ of quo-warranto is pending before the High Court on the same question of alleged disqualification of the respondent No.2 as is raised in the present appeal. The entire record on the matter in issue is before the High Court. In the circumstances, he does not press the present appeal in order to proceed with the aforesaid petition. He prays that the decision of the learned Election Tribunal should not prejudice the outcome of the said Petition. Allowed. Dismissed as not pressed.

8. Proceeding with his submissions, learned counsel for the Petitioner, who as it happens had also represented the unsuccessful election petitioner before the Supreme Court, canvassed the same points as had been advanced before the Election Tribunal but argued that the degree in question and the records of the University underpinning the same ought to be examined notwithstanding the Judgment of that forum. He contended that such an exercise would irresistibly lead to the divergent conclusion that the degree was not awarded to the Respondent No.1 and had been passed off by her as her own at the time of submitted her nomination papers and Affidavit in respect of the General Elections held in the year 2002 for overcoming the hurdle posed in terms of the requirement then in place that contesting candidates be graduates. He prayed that the degree be declared to be that of the Respondent No.2 and the Respondent No.1 be declared ineligible to hold public office as a legislator.
9. Conversely, learned counsel appearing on behalf of the Respondent No.1 and the Respondent No. 5 University respectively refuted the contention of the Petitioner as being baseless and emphasized that the degree had withstood scrutiny of an evidentiary proceeding before the Election Tribunal. Furthermore, they argued that the Petition was not maintainable in light of the judgment rendered by the Supreme Court in the case reported as Hamza Rasheed Khan v. Election Appellate Tribunal, Lahore High Court, Lahore and others PLD 2024 SC 1028.

10. On query posed to learned as to the scope for the veracity/status of the degree claimed by the Respondent No.1 as being her own to be challenged under Article 199 of the Constitution and the *locus standi* of the Petitioner to mount that challenge, learned counsel for the Petitioner argued that the matter was in the nature of *quo warranto*, under Article 199(1)(b)(ii), hence there was no need for the Petitioner to be personally aggrieved. The further question which arises as a corollary to that submission, if the *quo warranto* argument were to be accepted, is whether this Court could firstly create a disqualification by making a declaration regarding the impugned degree and then apply the same to the Respondent No.1 so as to declare her to be disqualified in terms of Article 62(1)(f) to hold office as a member of Parliament.

11. As it transpires, the definitive answer to both questions as well as the overall scope for a declaration of the nature sought by the Petitioner to be made under Article 62 of the Constitution lies in the judgment rendered by the Supreme Court in Hamza Rasheed Khan (Supra), where it was observed that:

5. The facts of the present cases are somewhat different from each other, which shall be described later, but they have given rise to a common question as to the interpretation of Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan ("Constitution") and reconsideration of the construction put to the provisions thereof by a five-member Bench of this Court in *Sami Ullah Baloch v. Abdul Karim Nousherwani* (PLD 2018 SC 405).

6. Since the whole matter revolves around the provisions of Article 62(1)(f), they are cited at the outset for reading and reference:

62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-

(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;
(*Emphasis added*)

A bare reading of Article 62(1)(f) shows that the qualification of being *sagacious, righteous, non-profligate, honest and ameen* is presumed to be fulfilled by every person unless there is a declaration against him or her to the contrary by a court of law. The matter of interpretation of Article 62(1)(f), therefore, begs answers to the following questions raised in *Ishaq Khakwani*,⁵ which have slightly been rephrased for precision and clarity:

- (i) Which court is competent to make the declaration mentioned in Article 62(1)(f)?
- (ii) Who has *locus standi* to seek such declaration?
- (iii) ...”

12. Upon examination of the relevant Constitutional provisions and caselaw relating thereto, the Court went on to answer those questions as follows:

16. We have no cavil, but rather agree, to the law declared in *Farzand Ali* that in a case where the disqualification is a continuing one which debars a person not only from being elected but also from continuing to hold the office of a member of Parliament and where the remedy by way of an election petition is no longer possible, the remedy of writ of *quo warranto* remains available. We, with respect, only disagree as to using the power to issue a writ of *quo warranto*, i.e., to make an order in terms of Article 199(1)(b)(ii), by first creating a disqualification through making a declaration mentioned in Article 62(1)(f) and then applying that disqualification to declare the person as disqualified to hold the office of a member of Parliament.

5 Ishaq Khakwani v. Nawaz Sharif PLD 2015 SC 275

Scope of quo warranto proceedings

17. A *quo warranto* proceeding, in terms of Article 199(1)(b)(ii), involves a judicial inquiry in which the person holding a public office is called upon to show under what authority of law he holds that office. In essence, through such proceeding the appointment or election of a person to a public office is challenged on the ground that the same has not been made in accordance with the law, which may include that he does not fulfill the qualification or suffers from any disqualification prescribed by the law. On this challenge, the scope of inquiry extends to examining whether the person holding a public office fulfills the required qualifications or suffers from any disqualification prescribed by the law for holding such office. A *quo warranto* proceeding, thus, seeks to ensure that the person holding a public office does so in accordance with the law, including the fulfilment of the qualification prescribed therein for holding that office. It is not a medium to first create a disqualification and then apply that disqualification to the person holding the office for making him ineligible to hold the office. Rather, its purpose is to examine only existing disqualifications or lack of qualifications that may render a person ineligible for holding the office he currently holds.

18. Therefore, in a *quo warranto* proceeding the disqualification of a person holding the office of a member of Parliament cannot be created by making a 'declaration' in such proceeding in terms of Article 62(1)(f) that he is not sagacious, righteous, non-profligate, honest and ameen; just as his disqualification cannot be created, in such proceeding, by 'convicting' him for an offence involving moral turpitude in terms of Article 63(1)(h) of the Constitution. In a *quo warranto* proceeding, the scope of judicial inquiry as to qualification prescribed in Article 62(1)(f) is limited to see whether or not there is a 'declaration' by a 'court of law' of competent jurisdiction against a member of Parliament that has declared that he is not sagacious, righteous, non-profligate, honest and ameen. If the court, exercising *quo warranto* jurisdiction, finds that there exists such a declaration, either before or after his election, rendering him disqualified from holding the office of a member

of Parliament, it shall declare that the office is not held by him under the authority of law, and consequently, the office is vacant, to be filled in accordance with the law. But if the court finds that there exists no such declaration, it will drop the proceeding. In no way can the court proceed to make the 'declaration' mentioned in Article 62(1)(f) itself in exercise of its *quo warranto* jurisdiction. Therefore, in quo warranto proceedings the Supreme Court and the High Courts do not have the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) of the Constitution.

...

22. The above discussion leads to the conclusion that the Supreme Court, the High Courts, the Election Tribunals and the civil courts do not have the jurisdiction to make the declaration mentioned in Article 62(1)(f). The cases that held otherwise, including *Sami Ullah Baloch*, have not declared the correct law. Not only these courts, we may clarify, but also no other court of law, at present, has such jurisdiction.

Question (ii): Who has *locus standi* to seek such declaration?

23. The answer to this question, we think, is covered by the discussion made above as to the asserted competency of the civil courts to make the declaration mentioned in Article 62(1)(f). We have found that since no law, including the Constitution, confers on any person a right to seek the declaration as mentioned in Article 62(1)(f), the civil courts have no jurisdiction to try a suit seeking such declaration. The said finding also answers this question in terms that as per the existing legal position, no person has *locus standi* to seek against an other person the declaration mentioned in Article 62(1)(f).

...

28. Besides, being aware of the fact that the phrase "there being no declaration to the contrary by a court of law" was added in Article 62(1)(f) by the 18th Amendment in the year 2010, we cannot hold that this addition has made no change in the meaning and scope of Article 62(1)(f) as being previously understood and applied. Ignoring the purpose of the change would be tantamount to ignoring the intent of the legislature, which defies

the very object of the judicial act of interpreting a provision of law, i.e., to ascertain the legislature's intent. Nor can redundancy be attributed to the framers of the Constitution in making this addition in Article 62(1)(f). Before this addition, there were several instances³¹ in which without determining the disputed facts through a fair trial and due process, the provisions of Article 62(1)(f) were applied, or sought to be applied, for holding a person to be not sagacious, righteous, non-profligate, honest and ameen. It was this arbitrary and whimsical application of Article 62(1)(f), or the possibility of its application in such manner, that was intended to be remedied by the legislature through the addition of that phrase. The legislature's intent was to restrict, not to liberalise, the applicability of Article 62(1)(f).

29. In making this addition, the legislature's intent is more than clear in that every person must be presumed *sagacious, righteous, non-profligate, honest and ameen* unless a court of law has made a declaration against him to the contrary. Holding that the special forums under the elections law or the constitutional courts can declare a person disqualified under Article 62(1)(f) in the same way as they were doing before the addition of that phrase would be a sheer negation of the legislature's intent. By adding that phrase, the legislature made it clear that Article 62(1)(f) is not self-executory and therefore cannot be applied by the special forums under the elections law or by the constitutional courts to disqualify a person from contesting the election for, or holding, the office of a member of Parliament, unless a court of law has made a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Therefore, Article 62(1)(f) of the Constitution, in our considered opinion, is not a self-executory provision.

...

31 Muhammad Afzal v. Altaf Hussain 1986 SCMR 1736; Ghulam Dastgir v. Benazir Bhutto 1991 CLC 571; Muhammad Munir v. Appellate Tribunal 1993 SCMR 2348; Rafique Haider Leghari v. Election Tribunal PLD 1997 SC 283; Ghazanfar Ali v. Tajammal Hussain 1997 CLC 1628 and Qamar Javed v. Intisar Hussain PLD 2008 Lah 130.

31. How then can the disqualification envisaged by Article 62(1)(f) be made executory is the question that also begs the answer. The answer is quite simple and straightforward: through the legislative action, i.e., the enactment of a law. Just as the declaration and the convictions mentioned in Article 63(1)(a), (g) and (h) are to be made by the courts of law that have been conferred jurisdiction, and in accordance with the procedure provided, by or under the laws enacted by the legislature, the declaration mentioned in Article 62(1)(f) is also to be made by a court of law that is conferred jurisdiction, and in accordance with the procedure provided, by or under the law enacted by the legislature. There is, at present, no such law. Until such law is enacted to make its provisions executory, Article 62(1)(f) stands on a similar footing as Article 62(1)(d), (e) and (g), and only serves as a guideline for the voters in exercising their right to vote.

[Underlining added for emphasis]

13. In view of the foregoing, it is apparent that the Petition, predicated on eliciting a declaration in terms of Articles 62(1)(d) & (f) of the Constitution, runs contrary to settled law, as laid down in the judgment of the Supreme Court in the cited case, and is not maintainable.
14. That being so, the Petition stands dismissed, along with all pending miscellaneous applications.

JUDGE

JUDGE

MUBASHIR