

IN THE HIGH COURT OF SINDH, KARACHI
C.P No.D-389 of 2012

Present:-

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Sabir Hussain Petitioner

V E R S U S

Federation of Pakistan and others Respondents

Dates of hearing: **27.02.2018, 05.04.2018,**
26.04.2018 and 17.05.2018

Mr. Arshad Khan Tanoli, Advocate for Petitioner.
Mr. Ayan Mustafa Memon Advocate for Respondents No. 2 to 4.
Mr. Faizan Hussain Memon Advocate for Respondents No. 5 to 8.
Mr. Shaikh Liaquat Hussain, Standing Counsel.

JUDGMENT

ADNAN-UL-KARIM MEMON-J. Through the instant Petition, the Petitioner has asked for issuance of Writ of quo warranto against the Respondents No. 5 to 8 to vacate the office of Inspector Security (BS-15), Port Qasim Authority on the premise that they do not meet the qualification/criteria to hold the public office thus are not entitled to hold the aforesaid posts hence their appointments are in violation of the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements. Petitioner further claims that all the Respondents No. 5 to 8 are political appointees, who were appointed in the Respondent Authority without adopting the legal and codal formalities as provided under Port Qasim Authority Employees Service Regulation-2011 (herein after referred

to as **“PQAESR-2011”**). Petitioner has added that Inspector (Security) BPS-15 is a security related post of Port Qasim Authority “PQA” and the Respondents No. 5 to 8 were not qualified for the posts applied for. Petitioner has submitted that the post of Inspector (Security) BPS-15 can be filled from the candidates, who have Army Educational Certificate/Retired J.C.O/Inspector of Police and having 04 years relevant experience in the field. Petitioner has further submitted that the Hon’ble Supreme Court of Pakistan took cognizance of the unlawful recruitments made during the period in question in Pakistan Port Qasim Authority and had converted the Civil Petitions No.735-K of 2010 into Original Jurisdiction and passed an Order dated 31.1.2011 and thereafter Order dated 14.2.2011 for which PQA was directed to submit comprehensive report regarding illegal appointments made in the Port Qasim Authority. Petitioner further added that in compliance of the Order passed by the Hon’ble Supreme Court, the Respondent-Port Qasim Authority furnished its report accordingly, whereas the names of the Respondents No.5 to 8 are appearing in the report to be illegal appointees. Petitioner further submitted that from the aforesaid report, which shows that the appointment of the private Respondent No. 5 to 8 in PQA, who were appointed through bogus process of selection, during the interim order passed by the Hon’ble Supreme Court of Pakistan. Petitioner is being aggrieved by the direct induction of the Respondents No.5 to 8 in PQA in an illegal manner and holding the aforesaid security related posts in PQA, without legal and lawful authority.

02. Upon notice the Respondent No.2, 3 and 4 as well as private Respondent No.5 to 8 filed their Parawise comments in the Petition.

03. Mr. Arshad Khan Tanoli, learned counsel for the Petitioner argued that the Petitioner appeared in written test for security related posts in PQA and succeeded being ex-serviceman; however Respondent-PQA declared him failed in order to accommodate the private Respondents. He further added that impugned process of such appointments in PQA is a result of favoritism and nepotism to deprive meritorious candidates. It is further added by the learned counsel that the post of Inspector Security BS-15 in PQA can only be filled as per "PQAESR-2011" framed by PQA and not otherwise, for which certain experience of the post is mandatory requirement, which has been bypassed while filling the posts; and due to that dispute, the matter constrained the parties to file petition before the Honorable Supreme Court. The Honorable Supreme Court in Civil Petition No. 736-K of 2010 passed the following Order dated 31.1.2011 as under:-

"No more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of governor of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove".

The learned counsel next contended that the Respondents, in compliance of the order, had submitted the

concise statement/ report dated 29.11.2013 in C.P No.04/2013 before the Honorable Supreme Court, wherein the appointments made in PQA were termed as illegal; that the names of the private Respondents No. 5 to 8 are also listed in the aforesaid report. He further contended that as per advertisement dated 23.10.2010, which shows four posts of Inspector (Security). And the appointments were made above the required posts as advertised. In support of his contention, he relied upon Affidavit in rejoinder of Petitioner Annexure "B" (page 467). Per Petitioner the same was submitted along with the statement dated 29.11.2013, before the Honorable Supreme Court. For convenience, the relevant portion from the said Annexure "B" is reproduced as under:

ANNEXURE 'J'
Post of Inspector Security (BS-15)

"(1) Four vacant posts of Inspector (Security) (BPS-15) were advertised in daily Dawn dated 22.10.2010 for filling of advertised posts through direct recruitment. In response, total 284 applications were received, out of which 90 were short listed as per criteria. Short listed candidates were issued call letters to appear for written test on 18.10.2010. Out of 90 candidates, 38 cleared written test and appeared before Selection Committee for interview on 21.12.2010.

(2) The meeting of the Selection Committee was held in the Office of Director General (Admn) to assess/recommend the successful candidates against the vacant post of Inspector (Security) (BPS-15).

(3) Director (S&T)/Member apprised the said Selection Committee that strength of the security officials in Port Qasim Authority has been enhanced by the PQA Board vide resolution No.68/2010 dated 26.11.2010 in

consideration of the overall law and order situation in the country and specially in Karachi. Director (HRM) recommended that as per emergent requirement the approved additional post of 13 Inspector (Security) (BPS-15) may also be filled amongst the available candidates who have cleared the written test and interview in addition to the advertised post of Inspector (Security) (BS-15) in terms of Board resolution No.68/2010 dated 26.11.2010 for a period of two years on contract basis (extendable).

(4)(A) The Selection Committee recommended the candidature of four candidates, who secured first to fourth position respectively on the basis of their overall assessment for appointment against the four advertised posts of Inspector (security) (BPS-15) on usual terms and conditions.

(B) The Selection Committee further recommended that the candidature of 13 candidates who secured 5th to 17th positions respectively on the basis of their overall assessments for the post of Inspector (security) (BPS-15) may be considered for appointment against the 13 approved posts of Inspector (security) (BPS-15) vide Board resolution No. 68/2010 dated 26.11.2010 for the period of two years on contract basis which may or may not be extendable.”

The learned counsel next contended that all the appointees against the newly created posts including Respondents No. 5 to 8 were not eligible for appointments as per the criteria laid down in the Regulations as well as in the advertisement dated 23.10.2010 because they did not possess the prescribed security related experience of police or armed force and that the experience certificates of the Respondents No 5 to 8 were either not produced at the time of their appointment, or they did not have the requisite experience, which was a mandatory requirement under the said Regulations. He submitted that the appointments were not made

as per the Regulations; however, the Respondents No. 5 to 8 did not meet the criteria, which could not be circumvented. He further pointed out that the appointment of the Respondents No 5 to 8 was effected during the operation of stay order of the Hon'ble Supreme Court of Pakistan. Therefore, the recommendations of appointments of the Respondents No 5 to 8 could not have been processed. Learned counsel for the Petitioner next argued that the Respondents No. 5 to 8 are holders of the Public Office as embodied under Article 199 (1) (b) (ii) of the Constitution; that this petition has been filed on the ground that the Respondent-PQA be directed to remove them from the subject post held by them in violation of law and the judgment passed by the Honorable Supreme Court of Pakistan. He lastly prayed for issuance of Writ in the nature of quo-warranto against the Respondents No. 5 to 8 to meet the ends of justice. The learned counsel, in support of his contentions has placed reliance upon the case of Human Right case in Ref Abdul Jabbar Memon and others (1996 SCMR 1349).

4. Mr. Ayan Mustafa Memon learned counsel for Respondent No 2 to 4/PQA contended that the instant petition is not maintainable under the law; that the Petitioner has failed in written test which is mandatory requirement for appointment in PQA; that the Petitioner has approached this Court after a substantial delay and has slept over his purported right. Petitioner had applied for the post of Inspector (BS-15); that as per advertisement dated 23.10.2010 applications were invited for the four posts of Inspector (Security) BS-15 on merits. That the

petitioner failed in written test as such could not be selected, the selection committee recommended appointment of successful candidates including the private Respondents; that the Petitioner was not deprived from the appointment against the post of Inspector Security; that so far as criminal original petition 07 of 2014 in Constitution Petition No. 04 of 2013 before the Hon'ble Supreme Court of Pakistan is concerned the Hon'ble Supreme Court has not passed any order against the PQA and directed the Chairman PQA to scrutinize the illegal appointments with due process of law and disposed of the matter vide order dated 28.10.2015 available at page 387. He lastly prayed for dismissal of the instant petition.

5. Mr. Faizan Hussain Memon learned counsel for Respondent No.5 to 8 has argued that the Petitioner has approached this Court with unclean hands and with ulterior motives, inasmuch as, the Petitioner took part in the recruitment process and was not declared a successful candidate, thereafter he filed the instant petition claiming his appointment and cancellation of other appointments on frivolous grounds; that the instant petition is not maintainable as the Private Respondents are not holders of the public office to attract writ of quo warranto and the above conduct of the Petitioner clearly demonstrates his mala fide and ulterior motives in filing the instant petition as such the same is liable to be dismissed with exemplary cost; that the petitioner has failed to demonstrate the basic three ingredients mandatorily required for invoking writ of quo-warranto i.e. Appointment by

incompetent authority, lack of qualification for the post and violation of procedure of appointment; that the Authority reserved its rights to increase or decrease the number of vacancies as per its requirement. Furthermore, the Petitioner has failed to specify as to which rule has been violated on account of such increase in number of posts of Inspector Security in BPS15; that the Petitioner has failed to implead the rest of the appointees; that pursuant to the advertisement, mentioned hereinabove, the answering respondents invited them to appear in the written test, scheduled on 18.12.2010; that after qualifying the same, the answering Respondents were interviewed by the Selection Board and were declared successful candidates in accordance with merit; that the answering Respondents along with other candidates were consequently appointed on or after 18th October, 2010, after fulfillment of all codal formalities; that the restraining order dated 31.01.2011 passed by the Hon'ble Supreme Court of Pakistan was vacated vide order dated 14.02.2011, allowing PQA to make appointments strictly on merit for running day to day affairs of the PQA subject to information of the Hon'ble Supreme Court; that the appointment of the Private Respondents was not made during the restraining order passed by the Hon'ble Supreme Court; that the appointments on the subject posts was made in accordance with office memorandum dated 11.02.2005; that the Private Respondents have submitted their qualification and experience certificate vide statement dated 26.04.2018 and that they meet the requisite criteria as per the advertisement as well as under Recruitment Rules; that since the appointment of the Private

Respondent were made in accordance with law as such no action was taken against them and the Hon'ble Supreme Court finally disposed of the entire case vide order dated 28.02.2015. Learned counsel lastly submitted that CMA No. 7099 of 2013 submitted before the Hon'ble Supreme Court without approval of the Competent Authority has no sanctity under the law however the Hon'ble Supreme Court did not pass any order on the aforesaid CMA. Learned counsel for Respondents No. 5 to 8 in support of his contention has relied upon in the cases of Dr. Akmal Hussain and 7 others Vs. Muhammad Sirajul Islam and others PLD 1969 SC 42) Salahuddin and 2 others Vs. Taj Muhammad Khanzada (PLD 1975 SC 244), Dr. Azim-ur-Rahman Khan Meo Vs. Government of Sindh and another (2004 SCMR 1299) Muhammad Liaquat Munir Rao Vs. Shams-un-Din and others (2004 PLC (C.S) 1328), Muhammad Akhtar Shirani Vs. Punjab Text Book Board and others (2004 SCMR 1077), Inspector General of Police Punjab Vs. Tariq Mahmood (2015 SCMR 77) Sajid Hussain Vs. Shah Abdul Latif University & others (PLD 2012 Sindh 232), Shavar Khilji Vs. Munawar Iqbal Gondal and 2 others (PLD 2009 Lahore 677) and Mst. Basharat Jehan Vs. Director General Federal Government Education and others (2015 SCMR 1418). He lastly prayed for dismissal of the instant petition.

6. The learned Assistant Attorney General representing Respondent No.1 has adopted the arguments of the learned counsel for the Respondent-PQA.

7. We have considered the submissions of the learned counsel for the Parties along with case law and have also gone through the entire record carefully with their assistance.

8. First and foremost, we would address the question of the maintainability of the instant Petition.

9. The Port Qasim Authority Employees Service Regulations, 2011 are statutory Rules of Service and admittedly the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No XLIII of 1973. In the given circumstances, we are fully fortified by the view enunciated by the Hon'ble Supreme Court in para 50 of the judgment in the case of Pakistan Defence Housing Authority vs. Lt. Col. Syed Javed Ahmed (2013 SCMR 1707) that an aggrieved person can invoke Constitutional Jurisdiction of this Court against a public authority. The same principle is also enunciated in the case of Muhammad Rafi and another vs. Federation of Pakistan and others (2016 SCMR 2146). Accordingly, we are of the view that this petition could be heard and decided on merits by this Court, while exercising its Constitutional jurisdiction.

10. Now in our view, the Petitioner agitated the following legal points, for our determination as under:-

i) Whether the Respondent No 5 to 8 were appointed in accordance with the law and had requisite qualifications and experience of security related posts to

claim the posts in Port Qasim Authority under Regulations-2011?

ii) Whether the Respondents No. 5 to 8 are holder of Public Office?

iii) Whether the 124 surplus/redundant vacancies (BPS-03 to BPS-15) of Security cadre were abolished through Board Resolution No. 08/2014 dated 16.9.2014 pursuant to the statement made by the Chairman, Port Qasim Authority before the Hon'ble Supreme Court regarding illegal and irregular appointments?

11. In the first place, we would like to examine the issue whether the Respondents No. 5 to 8 are holders of Public Office and are holding the public post, therefore fall within the Purview of Sub-Clause (1) (b) (ii) of the Article 199 of the Constitution, which permits the High Court to issue a "Writ of Quo-warranto" requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that Office. We would like to see whether the services of the Respondents No.5 to 8 are services of Pakistan. In this respect, we refer to Article 260 of the Constitution of the Islamic Republic of Pakistan 1973.

"Service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal

Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly”

12. In view of the forgoing definition, we are of the considered view that the service of Respondents No.5 to 8 is governed under “The Port Qasim Authority Employees Service Regulations, 2011” as amended up-to-date, which are statutory Rules of Service and the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No XLIII of 1973, which clearly depict that the employees of the PQA are not Civil Servant as defined in Section 2(I) (b) of the Civil Servants Act, 1973 as well as under Section 4 read with Section 2(a) of the Service Tribunals Act, 1973. In the light of above the Office of the Respondent-Authority is a Public Office and for that reason they are amenable to the jurisdiction of this Court under Article 199 of the Constitution. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of the Public Office is not entitled, if the office in question of that post, it

comes to the conclusion that incumbent has no authority to hold the same. We are fortified on this issue by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Salahuddin and 2 others Vs. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 SC 6 244) and Barrister Sardar Muhammad vs. Federation of Pakistan and others (PLD 2013 Lahore 343). So the arguments of the learned counsel for the Respondents that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the Respondents is not sustainable under the law.

13. To address the next question, whether the Respondent No 5 to 8 were appointed in accordance with the law and had requisite qualifications and experience of security related posts to claim the posts in Port Qasim Authority under Regulations-2011.

14. We have found that prima-facie; there are manifest discrepancies in the appointment of Respondent No.5 to 8, which require serious attention. The record clearly depicts that as per the advertisement dated 23.10.2010 in the Newspapers (Daily Express) which pertained to 4 posts of Inspector Security (BS-15) in Port Qasim Authority and the candidates must possess the requisite experience for the advertised posts. The advertisement is reproduced herein below.

پورٹ قاسم اتھارٹی

بن قاسم، کراچی۔ 75020



Gateway to National Prosperity

ملازمت کے مواقع

پورٹ قاسم اتھارٹی درج ذیل اسامیوں کیلئے موزوں امیدواروں سے درخواستیں طلب کرتی ہے،
تقرری عارضی بنیادوں پر کی جائے گی جسے بعد ازاں مستقل کیا جاسکتا ہے۔

نمبر	اسامی کا نام اور اسکیل	اسامیوں کی تعداد	مجوزہ تعلیمی قابلیت اور تجربہ	ڈومیسائل	عمر کی حد
1	اسٹنٹ (BS-15)	01	کم از کم 2nd کلاس پیچرز ڈگری اور کمپیوٹر سے واقفیت 4 سالہ متعلقہ تجربہ	میرٹھ	30-40 سال
2	انسپیکٹر سیورٹی (BS-15)	04	گریجویٹ یا مساوی آرمی ایجوکیشنل سرٹیفکیٹ / ریٹائرڈ J.C.O. پولیس انسپیکٹر 4 سالہ متعلقہ تجربہ	میرٹھ	30-40 سال
3	لیبارٹری ٹیکنیشن (BS-15)	01	پیچرز سائنس (کیمسٹری) یا ٹیوٹیکم سٹری ایبل ایڈیوٹ اور کمپیوٹر سے واقفیت 4 سالہ متعلقہ تجربہ	میرٹھ	25-35 سال
4	ایٹینوٹا پوسٹ (BS-14)	03	میٹرک اور کمپیوٹر سے واقفیت شارٹ ہینڈ ایڈیوٹ 80w.p.m اور ٹائپنگ اسپید 40 w.p.m	میرٹھ-02 بلوچستان-01	25-35 سال
5	فائزر پوائزر (BS-12)	02	انٹرمیڈیٹ، جگہ سول ڈیفنس سے حاصل کردہ فائزین سرٹیفکیٹ کم از کم 5 سالہ متعلقہ تجربہ	میرٹھ-01 بلوچستان-01	25-35 سال
6	سب انسپیکٹر سیورٹی (BS-09)	03	انٹرمیڈیٹ یا مساوی آرمی ایجوکیشنل سرٹیفکیٹ، ریٹائرڈ حوالدار اسامیوں یا سب انسپیکٹر پولیس 3 سالہ متعلقہ تجربہ	میرٹھ	30-40 سال
7	ای۔ ایس۔ آئی۔ سیورٹی (BS-08)	08	میٹرک یا مساوی آرمی ایجوکیشنل سرٹیفکیٹ / ریٹائرڈ ٹائیک اسامیوں یا اسٹنٹ سب انسپیکٹر پولیس 3 سالہ متعلقہ تجربہ	میرٹھ	30-40 سال
8	ایڈنگ فائزین (BS-08)	02	میٹرک، جگہ سول ڈیفنس سے حاصل کردہ فائزین سرٹیفکیٹ 3 سالہ متعلقہ تجربہ	میرٹھ-01 پنجاب-01	25-35 سال
9	ڈرائیور (BS-06)	12	ٹیل ڈرائیونگ لائسنس (LTV/HTV) 5 سالہ متعلقہ تجربہ	میرٹھ	25-35 سال

درخواستیں جمع کرانے کا طریقہ کار:

- ♦ درخواستیں عمر، تجربے اور قابلیت کی تمام متعلقہ دستاویزات / کوائف کی مصدقہ نقول، CNIC اور پاسپورٹ سائز تصویر کے ہمراہ بکس نمبر: 105016 معرفت
ایکپریس، پلاٹ نمبر 5، ایکپریس وے بالمقابل کورنگی روڈ، کراچی پر اشاعت لہذا کے اندرون 15 یوم پہنچ جانی چاہئیں۔ اسامی کا نام لگانے کے دائیں جانب تحریر کیا جائے۔
- ♦ امیدوار ایک وقت میں صرف ایک اسامی کیلئے درخواست دے سکتے ہیں۔
- ♦ صرف شارٹ لسٹ کئے گئے امیدواروں کو ٹیسٹ / انٹرویو کیلئے بلا یا جائے گا۔
- ♦ ٹیسٹ / انٹرویو کیلئے کوئی TADA نہیں دیا جائے گا۔
- ♦ اتھارٹی کسی بھی ایک یا تمام درخواستوں کو بلا اظہار وجوہ مسترد کرنے کا حق محفوظ رکھتی ہے۔
- ♦ حکومتی قوانین کے تحت عمر کی حد میں نرمی کی جائے گی۔
- ♦ درج بالا اسامیوں کیلئے اہل، خواتین امیدواران کی حوصلہ افزائی کی جائے گی۔
- ♦ صرف بکس کے ذریعے وصول ہونے والی درخواستیں قابل غور تصور کی جائیں گی۔
- ♦ اتھارٹی ضرورت کے تحت اسامیوں کی تعداد میں اضافے یا کمی کا حق محفوظ رکھتی ہے۔

سیکرٹری

PID(K)855

Kimco

15. The aforesaid posts pertained to Security of Sensitive Installations at Port Qasim Authority, as such bare minimum qualification would not suffice in addition to which, experience of

the relevant field is also a necessary requirement. Therefore, apparently, in absence of the requisite qualification and experience, nobody can claim for the Post of Inspector Security in BS-15 in PQA. Even though the learned counsel for the Respondent No. 5 to 8, while exercising the right of rebuttal, argued that the qualification mentioned at Sr. No.5, 57 and 65 in Schedule IV of the Regulations in respect of the posts applied by the Respondent No. 5 to 8 is either Intermediate, Matric or equivalent army educational certificate, retired J.C.O/ Inspector of Police and four years relevant experience. Therefore, he argued that either of the qualification is required and not both as the word “or” is used. However, when confronted with the query, as to whether the Respondent No. 5 to 8 had the requisite experience of 4 years for the post applied for, the learned counsel for the Respondent No. 5 to 8 failed to give any satisfactory answer and referred to his statement dated 26.04.2018 and drew our attention to the pages No.1 to 49 and argued that the Private Respondents No. 5 had served Karachi City Cricket Association a Security Supervisor, Respondent No. 6 had served Al-Nafay Trading Company as Security Officer. Respondent No.7 Adeel Ahmed Khan had served Sabir Timber Mart as Security Supervisor and Respondent No.8 Shahnawaz Shaikh had served Marshal Security Services (PVT Ltd.) as Assistant Manager to deal with Security matters. We are of the considered view that the Respondent No. 5 to 8 did not have any experience for the post of Inspector Security (BS-15) as per the advertisement and “PQAESR-2011”) Rules. Learned counsels for PQA as well as AAG have also failed to justify

the impugned action of the official Respondents of PQA for the appointment of Respondents No. 5 to 8.

16. Additionally, as elucidated herein above, the Respondent No. 5 to 8 were appointed in complete disregard of the Regulations, having no requisite experience of 4 years of security related posts. Therefore, they cannot make a case for the valid appointments under Regulations-2011 as amended up to date, relevant portion of which is reproduced hereunder.

SCHEDULE-IV

QUALIFICATION, EXPERIENCE AND AGE LIMITS FOR INITIAL APPOINTMENT (STAFF)

S.No.	Designation and BPS of the post	Qualification and experience	Maximum age limit
5.	Inspector (Security) BPS-15	Intermediate or equivalent Army Educational Certificate/Retired J.C.O/ Inspector of Police	30 years

17. In absence of the above qualification viz experience for the aforesaid post as provided above, Respondent No.5 to 8 had no vested right to hold the post on regular basis under the law.

18. Furthermore, the case law relied upon by the learned counsel of the Respondent No.5 to 8, upon examination were found quite distinguishable from the facts and circumstances of the present case.

19. It is admitted fact that the Respondent-PQA, in compliance of the order, had submitted the concise

statement/report before the Honorable Supreme Court. The relevant para 19 of the concise statement reads as follows:-

“that the above appointment which are contrary to rules and law are necessary to be declared as being illegal, unconstitutional violated of law, Rules and Regulations, non-transparent and abuse of exercise of authority and also excess of jurisdiction vested in the competent authority

P R A Y E R

It is therefore most respectfully prayed that this Hon’ble Court may graciously declare, after examining the case and after hearing the parities, the aforesaid appointments as being illegal, without lawful authority and of no legal effect, non-transparent and in abuse of authority.”

Drawn by

Hafiz S. A. Rehman

Filed by

Mehr Khan Malik

Advocate on Record

Dated:- 29.11.2013

20. The aforesaid concise statement contains the names of the Respondent No. 5 to 8 were listed in the said report available at Page No. 131 to 133 along with statement filed by the petitioner.

21. Perusal of record reveals that the applications were invited against 4 posts of Inspector (security), However, appointments were made over and above the numbers of vacancies advertised in the Newspaper dated 23.10.2010 and the number of vacancies were increased via Port Qasim Authority (PQA) Board Resolution No.68/2010 dated 26.11.2010.

22. In addition to the above, Chairman, Port Qasim Authority submitted before the Hon’ble Supreme Court that all the

illegal appointments would be scrutinized and those found to be irregular would be undone. Pursuant to this statement, which was recorded in the Order dated 25.06.2014, the Port Qasim Authority (PQA) passed Board Resolution No.08/2014 dated 16.9.2014, relevant portion of which is reproduced as under:-

“Board Resolution No.08/2014 dated 16.09.2014

6. Considering the heavy expenditure being incurred on establishment charges the Board decided as under:-

The 124 surplus/redundant vacancies (BPS-03 to BPS-15) of Security cadre be abolished immediately. Besides, detailed working on redundant positions be made and put up to the Board in the next meeting.”

23. Even otherwise, the Port Qasim Authority declared the initial appointment of the Respondent No.5 to 8 illegal and submitted the report before the Honorable Supreme Court.

24. For what has been discussed above, we are of the considered view that the Port Qasim Authority (PQA) vide Board Resolution No.08/2014 dated 16.9.2014 abolished 124 vacancies (BPS-03 to BPS-15) of the Security cadre and that the discretionary power to do so vested with the Respondents No.2 to 4. The Hon’ble Apex Court also took cognizance of the matter in the affairs of Port Qasim Authority in respect of appointment, promotion and other ancillary appointments in suo-moto proceedings and the Chairman Port Qasim Authority admitted in the proceedings that the appointments were irregular and those had to be terminated.

25. During the course of arguments Mr Ayan Mustafa Memon learned counsel for PQA has filed application for withdrawal of vakalatnama on behalf of PQA on the premise that the comments filed in the aforesaid C.P and the contents of CMA dated 29.11.2013 submitted in the Hon'ble Supreme Court of contradictory in nature and in the circumstances they will not be in a position to further defend PQA's interest in a subject petition in a result of contradictory statements.

26. Upon perusal of letter dated 15th May, 2018 issued by Secretary, Port Qasim Authority, submitted alongwith application under Rule 15 of Sindh Chief Court Rules clearly depicts the intention of the PQA which reads as under:-

"2. It is to inform that CMA dated 29.11.2013 filed in CP No.04/2013 before Supreme Court of Pakistan, wherein appointments made in PQA were reportedly termed as 'illegal', was submitted without clearance and approval of the Competent Authority. The said CMA was required to be withdrawn and the Sr. ASC, Mr. Hafiz S.A. Rehman, PQA's counsel was approached for the same; however, in response he informed that since comments were submitted in the Court; therefore, no change in comments/stance could be made (Annex "A"). It was in this perspective that the Honorable Supreme Court without taking into consideration aforesaid CMA, passed order dated 19.12.2013 in the said petition (Annex "B") reproduced below:-

Order dated 19.12.2013

"Learned counsel for the Port Qasim Authority submits that he has instructions to make a statement before this Court that the Competent Authority shall examine the legality and vires of all the appointments and promotions made during the last five years within the Port Qasim Authority and shall pass appropriate orders within four weeks from today. Petitioner Mr. Abdul Jabbar Memon is satisfied with the statement made. That being so, all these cases are disposed of accordingly. However, it would be open for the petitioner to have the main case resurrected, if there is a live issue."

3. The CMA referred above lost its relevance as the same was retracted.

4. In view of foregoing, the subject case may be defended on its own merits as per comments/stance submitted earlier."

27. In the light of above statement, we are not persuaded to discharge the vakalatnama of the learned counsel for the Respondents for the simple reason the matter is being decided on merit, hence the said application is filed.

28. In view of the foregoing, initial appointment of Respondent No.5 to 8 for the post of Inspectors (BS-15) in Port Qasim Authority is declared null and void. We dispose of the instant petition accordingly, with directions to the Respondents-PQA to fill up the aforesaid Posts of Inspector Security BS-15 in accordance with Service Regulation of PQA, 2011 as amended up-to-date within a period of three months.

29. The instant petition is disposed of in the above terms along with listed application(s).

JUDGE

JUDGE

Shafi Muhammad P.A