

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

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

### **C.P No.D-3232 of 2018**

Muzzafar Iqbal ..... Petitioner

Versus

Federation of Pakistan & others ..... Respondents

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**Date of hearing: 30.05.2018**

Mr. Ahmed Ali Ghumro Advocate for the Petitioner

Mr. Aijaz Ahmed Shirazi Advocate for the Respondent No. 3.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General along with Mr. Sohail Shahzad, Deputy Director of Plant Protection Department.

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## **ORDER**

**ADNAN-UL-KARIM MEMON, J: -** Through the instant Petition, the Petitioner has asked for issuance of writ of quo warranto against the Respondent No.3 to vacate the look after charge of the office of the post of Director General (BS-20) Department of Plant Protection. According to the Petitioner, Respondent No. 3 is holding the same post without approval of the Competent Authority i.e. Prime Minister of Pakistan as per Recruitment Rules. The assertion of the Petitioner is that Respondent No. 3 does not meet the criteria to hold the public office, even for look after/current/additional charge, thus not entitled to hold the aforesaid post; hence his

posting to the aforesaid post is in violation of dicta laid down by the Hon'ble Supreme Court of Pakistan in various pronouncements. Petitioner claims that Respondent No.3 has been given look after charge for the post of D.G (Plant Protection) without adopting legal and codal formalities as provided under the law. Petitioner has added that the Respondents No.1 & 2 issued the impugned orders dated 19.3.2018 & 16.4.2018 without approval of the Competent Authority, and his posting on the aforesaid post is based on malafide intention and utter violation of the Rule-14 of Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 as amended up to date; that basically the Respondent No.3 belonged to Agriculture Department of Provincial Government Balochistan and was illegally absorbed in Ministry of National Food Security & Research Department, Government of Pakistan, thus is not entitled to hold the charge of the post of Director General (Plant Protection), which is a highly technical post, with certain qualifications.

2. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioner has argued that the Respondent No.3 is an illegal holder of public office as embodied under Article 199 (1)(b)(ii) of the Constitution; that this petition has been filed on the ground that Respondent No.3 be directed to vacate the charge of the office for the post of D.G, Plant Protection; that necessary directions be issued by this Court to the Respondents No.1 & 2 to post a senior officer of the department or any person having requisite qualification and experience of the post to look after the charge for the post of D.G,

Plant Protection till the availability of regular appointee, strictly in accordance with Rule 8-B of Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. He lastly prayed for issuance of writ in the nature of quo warranto against the Respondent No.3 to meet the ends of justice.

3. Syed Aijaz Ahmed Sheerazi, learned counsel for the Respondent No.3 has argued that the instant petition is not maintainable as the Respondent No.3 is legally absorbed under the law and he is only holding the additional charge of the post of Director General (BS-20) Department of Plant Protection, Karachi till the availability of the regular appointee; that transfer and posting is prerogative of the department concerned and the posting of the Petitioner cannot be called in question, which is purely temporary in nature till a regular incumbent is appointed. He lastly prayed for dismissal of the instant petition against the Respondent No.3.

4. During the course of arguments, the learned counsel for the Petitioner, at the very outset was directed to satisfy this Court with regard to the maintainability of the instant petition on the premise that the Respondent No.3 is only holding the post of Director General (BS-20) Department of Plant Protection, Karachi till the availability of a regular appointee. In response to the query, he replied that it is a writ of quo warranto and any person can come to this Court, in case any person is found to be illegally occupying the post in violation of law even if he is holding the

posting on look after/current/additional charge basis, which is required to be made strictly in accordance with law and not otherwise.

5. We have heard the learned counsel for the Petitioner at length, as well as learned counsel for the Respondent No.3 and learned AAG to the extent of look after charge of the post of Director General, Department of Plant Protection to the Respondent No.3

6. The issue of maintainability of the captioned Constitutional petition has been raised, as such we would confine our self to that issue of look after charge of the post of Director General, Department of Plant Protection to the Respondent No.3 vide Notification dated 19.3.2018 issued by Respondent No.2 only and refrain ourselves to dilate upon the merits of the case on other issues, if we find the petition is maintainable.

7. We are cognizant of the fact that the post of Director General BS-20, Department of Plant Protection is a public office, which, falls 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 this Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office. It is also cleared that while acting under clauses(b)(ii) of Article 199 of the Constitution the High Court could declare that

the holder of a 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 and the person invoking the jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent condition required for bringing himself within the meaning of an aggrieved person. Any person can move to a Court and challenge the usurpation or unauthorized occupation of a public office by an incumbent of that office and he is not required to undergo the stringent criteria to establish his locus standi. In the light of the aforesaid legal position, the objection on the maintainability of the captioned Constitution Petition is not sustainable in law and is accordingly rejected.

8. To address the prime issue involved in the present proceedings as discussed supra, prima- facie, the basic intention of the petitioner is to seek order from this Court for removal of the Respondent No.3 who is holding look after charge for the post of Director General, Plant Protection Advisor till the regular incumbent is appointed.

9. Learned counsel for the Petitioner has drawn our attention that this Court vide Judgment dated 19.3.2018 passed in C.P No.D-3555 of 2016, disposed of the petition by directing the Secretary Ministry of National Food to complete the process of selecting best suitable candidate for the post of Plant Protection Advisor from all over Pakistan basis, keeping in view Rule 14 of Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 as

well as the proviso added vide Notification dated 28th March 2017 within two months in accordance with law. He next argued that the Respondent No.1 and 2 is lingering on the selection process just to accommodate the Respondent No.3 so that he may continue to enjoy the aforesaid post without lawful authority. Learned counsel for the Petitioner has informed this Court that the judgment passed by this Court in the aforesaid case has been maintained by the Hon'ble Supreme Court of Pakistan passed in Civil Petition No. 1247 of 2018 vide order dated 09.05.2018 and has held as under:-

***“9. We have heard the learned counsel for the petitioner. the main thrust of his argument against the impugned judgment is that a right had come to vest in the petitioner by reason of a recommendation for his appointment made by the Federal Public Service Commission ( FPSC) to the Secretary, Minister of National Food Security and Research, Government of Pakistan. Such vested right could not have been taken away pursuant to the notification. Relies on Farzana Qadir v. Province of Sindh (2000 PLC (CS) 225). He has further argued that the notification could not have been given retrospective effect.***

***10. We have carefully gone through the record. It is clear and obvious to us that the recommendation of the petitioner was issued vide letter dated 12.05.2017, while the first notification which was impugned before the learned High court was dated 28.03.2017. therefore, we are afraid, the argument of the leaned counsel is ex facie misconceived and unsupported by the record. On the contrary, the record shows that the letter of recommendation, relied upon by the petitioner, was issued on 12.05.2017 while the notification challenged before the High Court was dated 28.03.2017, even otherwise, we are in agreement with the finding of the High Court that the impugned notification was in nature of a clarification and could be given retrospective effect. The learned High Court was therefore quite justified in holding that the impugned advertisement for the post of Plant Protection Advisor and Director General being violative of the relevant SRO was liable to be***

**struck down. The learned High Court has assigned valid and legally sustainable reasons for its conclusions which do not suffer from perversity. These are duly supported by the record. We have not found any illegality, irregularity or flaw in the exercise of its jurisdiction by the High Court. The judgment (Farzana Qadir's case (ibid) relied upon by the learned counsel for the petitioner is not attracted to the facts and circumstance of the instant case. It is clearly distinguishable on facts as well as the principles of law. No other ground was urged by the learned counsel for the petitioner. We are therefore not inclined to interfere in the impugned judgment of the High Court.**

**11. We may however, observe that the process of fresh recruitment shall be conducted strictly in accordance with the letter and spirit of the impugned judgment of the High Court dated 28.03.2018 and the law.**

**12. This petition is accordingly dismissed and leave to appeal is refused.”**

10. In the light of order dated 09.05.2018 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid case, we are of the considered view that the Respondent No.3 is holding only look after charge of the post of D.G, Department of Plant Protection till the availability of a regular incumbent and we have to see the matter, whether he is holding the aforesaid post in accordance with law and observation made by the Hon'ble Supreme Court of Pakistan in the case of Dr. Waqas Wakil as discussed supra or otherwise.

11. Learned AAG has also supported the instance taken by the learned counsel for the Respondent No.3 and argued that the Respondent No.3 is competent to hold the look after charge for the

post of Director General, Department of Plant Protection Karachi till the availability of a regular incumbent.

12. Record reflects that the post of Advisor / Director General, Department of Plant Protection, Karachi is of BS-20 for which the appointing authority is the Prime Minister in terms of Rule 6 of Civil Servants (Appointment Promotion & Transfer) Rules, 1973. Thus any kind of charge of the said post can only be assigned with the approval of the competent authority.

13. We are cognizant of the fact that as per S.R.O 49 (1) /86 dated 16.1.1986 amended vide S.R.O.No.286 (1)/2000 dated 23rd May, 2000 issued by Respondent No.1 shows that the post of Plant Protection Adviser and Director General (BS-20) is a promotion post and in case of non-availability of a suitable person the post is required to be filled by way of initial appointment in accordance with Recruitment Rules. The person eligible for the aforesaid post should possess 2<sup>nd</sup> class Master degree in Agriculture Science with specialization in Entomology or MSc in Entomology and preference will be given to holder of Doctorate Degree.

14. Bare perusal of Rule 14 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 as amended vide Notification dated 28th March 2017 issued by Respondent No.1 shows that the appointment on the subject post is to be made through open merit on contract basis. For ready reference said amendment is reproduced as follows:



**“S.R.P No.208 (I)/207. In exercise of powers conferred by sub section (1) of Section 25 of the Civil Servants Act, 1973, (LXXI of 1973) read with Notification No.S.R.O.120(1)/98, dated the 27th February, 1998, the Prime Minister is pleased to direct that the following amendment shall be made in the Civil Servants, (Appointment, Promotion and Transfer) Rules 1973, namely:**

**In the aforesaid Rules, in Rule 14, after proviso the following new proviso shall be inserted:-**

**Provided further that where the post of Head of an Organization is reserved for promotion and in the absence of suitable person, the post is required to be filled by initial appointment in accordance with the provisions of Recruitment Rules, the appointing authority may fill up the vacancy on open merit on contract basis and where such post is reserved for initial appointment, it may be filled on regular basis on open merit”**

15. In view of the foregoing, we are of the considered view that the judgment passed by this Court in the case of Muhammad Tariq Khan supra has already directed the Respondent Secretary Ministry of NFS&R to make regular appointment to the post of Director General, Plant Protection Advisor BPS-20 in accordance with Rule 14 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 as amended vide Notification dated 28.3.2017 issued by the Respondent No.1. The Hon’ble Supreme Court has also observed that the process of fresh recruitment for the post of Department of Plant Protection Advisor and Director General (BS-20) shall be conducted strictly in accordance with letter and spirit of the Judgment dated 28.03.2018 passed by this Court.

16. To address the plea taken by the learned AAG and learned Counsel for the Respondent No. 3 that Respondent No.3 is competent to hold the look after charge for the post of Director

General, Department of Plant Protection Karachi till the availability of the regular incumbent. We think it would be appropriate to have a glance on the term look after /Acting/current /additional charge of the post. Looking at the Rule 8-B of Civil Servants (Appointment, promotion & Transfers) Rules, 1973 empowers the Competent Authority to appoint a civil servant on acting charge and current charge basis, it further provides that if a post is required to be filled through promotion and the most senior civil servant eligible for promotion does not possess the specific length of service/appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub Rule 4 of the afore referred Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than six months and for vacancies likely to last for six months. This acting charge appointment can neither be construed to be an appointment by way of promotion on regular basis for any purpose including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or a stop-gap arrangement, which remains operative for a short duration until regular appointment is made against the post. Looking at the scheme of Civil Servants Act 1973 and the Rules framed thereunder, it is crystal clear that there is no scope of appointment of a civil servant to a higher grade post, except resorting to the provisions of Rule 8-B, which provides that in exigencies, appointment on current charge basis can be made, subject to conditions contained in the Rules.

17. Since the very appointment of the Respondent No. 3 is under challenge in the present proceedings, we deem it appropriate that the assignment of look after charge of the post of Director General, Department of Plant Protection, Karachi be given to a person, who qualifies for the said post as per law as discussed in the preceding paragraph.

18. In the light of above facts and circumstances of the case, the Respondents No.1 & 2 are directed to assign the look after charge for the post of Director General, Department of Plant Protection, Karachi to any senior officer, with the approval of competent authority, strictly in accordance with Rules and Regulations forth with, till the availability of a Regular incumbent as per the directions given by the Hon'ble Supreme Court of Pakistan vide order dated 09.05.2018 in the case of Dr. Waqas Wakil Vs. Muhammad Tariq Khan & others in Civil Petition No. 1247 of 2018, the same shall be complied with in letter and spirit.

19. So far as the other issues are concerned, the matter is adjourned to a date to be fixed by the office. Parties are directed to come prepared on the issues involved in the matter on the next date of hearing.

Karachi  
Dated: 30.5.2018

JUDGE

JUDGE