

# IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D-2393 of 2019**

Manzar Hussain ..... Petitioner

Versus

Federation of Pakistan & 03 others ..... Respondents

-----  
**Date of hearing: 17.05.2019**

**Date of Decision: 23.05.2019**

Mr. Sarmad Hani, Advocate for the Petitioner.  
Dr. Amjad Hussain Bokhari along with  
Dr. Shah Nawaz Advocates for the Respondent No.4  
Mr. Muhammad Nishat Warsi, DAG.

-----  
**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** - The instant Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed by the Petitioner, seeking declaration to the effect that the Impugned Notification dated 10<sup>th</sup> February 2015 issued by the Respondents is ultra vires to the Civil Servants Act, 1973 and the Rules framed thereunder, on the premise that the Respondent No.4 does not qualify to hold the office in BPS-20 on Own Pay and Scale (OPS) basis.

2. Basically, through the instant Petition, the Petitioner has prayed for issuance of writ of quo warranto against the Respondent No.4, a BS-19 officer, to vacate the post of Director in BS-20 which he is holding on OPS basis in the Directorate General of Intellectual Property Rights Enforcement (South) Karachi, on the

grounds that the said post is for an officers in BS-20; whereas, the Respondent No.4 is a BS-19 officer and in disregard of service laws and rules, has been unlawfully posted against a BS-20 post by way of transfer on OPS vide Notification No.0353-C-1.2015 dated 10<sup>th</sup> February, 2015 issued by the Revenue Division, which is in violation of the Judgment passed by the Honorable Supreme Court of Pakistan in the case of Province of Sindh and others V. Ghulam Fareed & others (2014 SCMR 1189) . The Petitioner has further submitted that besides the fact that the Respondent No.4 does not possess qualification required for BS-20 post and does not enjoy good reputation also as a civil servant and is facing NAB Reference on charges of corruption and corrupt practices. The Petitioner being aggrieved by and dissatisfied with the aforesaid appointment and posting of the Respondent No.4 has filed the instant petition on 09.4.2019.

3. Upon notice, the Respondent No.4 has filed counter affidavit and controverted the allegations leveled against him and took the plea that the Petitioner has no *locus standi* to assail his posting against the post of Director BS-20 in the Directorate General of Intellectual Property Rights Enforcement (South) Karachi and is acting to support counterfeit Mafia, besides the instant Petition is suffering from serious laches and prayed for action against the Petitioner. He in support of his assertion has relied upon various documents attached with his pleadings.

4. Mr. Sarmad Hani, learned Counsel for the Petitioner argued that the Respondent No.4 is holding a public office in violation of Article 199(1) (b) (ii) of the Constitution; that the Respondent No.4, a BS-19 officer, is not qualified and eligible to hold the post of Director (BS 20) in the Directorate General IPR Enforcement (South) Karachi; that the Respondent No.4 cannot be appointed on

OPS basis in a BPS-20, which could be made through Central Selection Board only in accordance with the relevant laws and rules and not otherwise. In support of his contentions, the learned Counsel referred to the Chapter 2, Part II of the Estacode to show that the appointment of Respondent No.4 on OPS basis is illegal and unlawful. He lastly prayed for issuance of writ of quo-warranto against the Respondent No.4 to meet the ends of justice. In support of his contentions, the learned Counsel for the Petitioner placed reliance upon an un-reported order dated 03.05.2019 passed by this Court in Constitution Petition No.D-1159/2019, (Re-Allah Dino vs. Province of Sindh and others).

5. On the contrary, Dr. Amjad Hussain Bokhari, learned Counsel for Respondent No.4 raised the question of maintainability of the captioned Petition. The learned Counsel referred to Section 24 of the Civil Servants Act, and contended that the Respondent No.4 was highly qualified and talented and there is always an exception available in the Rules; that the burden of proof was upon the Petitioner to demonstrate as to which of his fundamental rights had been infringed upon but he failed to point out an infraction of any of his fundamental rights to claim issuance of Writ of Quo warranto; that the entire case of the Petitioner is based on fraudulent and misleading facts. He next argued that the Petitioner has no *locus standi* to file this Petition, because he is not an aggrieved person; that the interim order dated 06.5.2019 passed by this court is against the basic spirit of law; that the titled Petition cannot be allowed as per applicable service laws and Constitution of Pakistan; that the Petitioner has played fraud upon this Court and has obtained ex-parte interim order; that the Petition is based on disputed question of facts; that the Petitioner has not arrayed other 10 Civil Servants in Composite Transfer

order dated 09.2.2015; that the Petitioner has not come before this Court with clean hands, as the Respondent No.4 has lawfully destroyed the goods of counterfeit Mafia; that Petitioner is a front-man of the importers of counterfeit toiletries, medicines, skin-care products, etc., in Pakistan, who were financially hurt by the stoppage of their illicit and illegal trade; that the Destruction Certificate of the goods of importers of counterfeit toiletries, medicines, skin-care products etc. in Pakistan was obtained by the Respondent No.4 in accordance with law; that the *pro-bono* and public interest litigation had always been interpreted as inquisitorial proceedings and not adversarial proceedings and this cannot be used by the Petitioner as a tool to mutilate the dignity and constitutionalism promoted by this Court since its inception; that Respondent No.4 is serving as a member of Central Superior Services of Pakistan for last 25 years without any stigma on his career; that Pakistan was de-classified in its Special Report No.301 in the year 2017 by the office of US Trade Representative, therefore, is struggling hard to protect its local, as well as, international IPR and that being a signatory to Trade-Related Aspects of Intellectual Property Rights [TRIPS] and World Trade Organization [WTO], Pakistan is bound to legislate, coordinate and enforce its IPR laws in letter and spirit; that the subject matter of the writ petition pertains to the terms and conditions of service; therefore, the jurisdiction of this Court is barred under Article 212 of Constitution, read with section 4 of Service Tribunal Act. By filing a writ of quo-warranto, a question relating to terms and conditions of service can only be determined by the concerned Tribunal; that the Respondent No.4, did not suffer from any inherent disqualification to hold a public office or to warrant removal from such office. The Counsel contended that a writ of quo warranto is not available to one set of Civil Servants against

another set of Civil Servants. He submitted that if a colleague is allowed to challenge another colleague's appointment, there would be no end to this; there will be an anarchy in the Civil Service structure. He placed reliance on the case of Dr. Azeem ur Rehman v. Government of Sindh (2004 SCMR 1299) and contended that if an appointment has been made and there is something wrong with such appointment, the concerned Tribunal is the appropriate forum to challenge it; that the Petitioner has approached this Court with ulterior motives and with mala fide intention and the relief is being sought through the instant Petition may be declined; that the Petitioner if claiming issuance of a writ of quo warranto must satisfy this Court, inter alia, that the office in question is Public office and is held by an usurper without legal authority, which leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not, which he has failed to demonstrate before this court; that relief is not to be denied to the litigants on technical consideration, however, insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches as the instant Petition is hit by laches by almost 3 years; that Writ of quo warranto would not be a remedy for a person to air his private vengeance; that Petitioner has not been able to show himself as an 'aggrieved person' in terms of Article 199 of the Constitution of Islamic Republic of Pakistan to agitate any bona fide grievance as pro bono public, therefore he has no case at all to invoke the Constitutional Jurisdiction of this Court, through the instant writ petition; that the decision of the Honorable Supreme Court in the case of Court Ghulam Fareed & others supra is per incuriam, thus not applicable to the case of the Respondent No.4; that the Respondent No.4 had discharged full duties and responsibilities of the higher post and in absence of some plausible reason, he

cannot be deprived of the benefits connected with that post. He lastly prayed for dismissal of the instant petition with heavy cost. In support of his contention, he placed reliance on the cases of] Pakistan Tobacco Board and another vs. Tahir Raza and others [2007 SCMR 97], Muhammad Iqbal vs. National Database Registration Authority through Chairman and 3 others [2011 MLD 541], Sajid Hussain vs. Shah Abdul Latif University, Khairpur through Registrar and 4 others [PLD 2012 Sindh 232], Iqbal Ahmad Dhudhi vs. Federation of Pakistan and 5 others [2014 CLC 1348], Asghar Khan and 5 others vs. Province of Sindh through Home Secretary, Government of Sindh and 3 others [2014 CLC 1534], Prof. Muhammad Wali Khan vs. Secretary, Government of Sindh and others [2003 MLD 719], Province of Sindh and others vs. Ghulam Fareed and others [2014 SCMR 1189], Sarwar Ali Khan vs. Chief Secretary to Government of Sindh [PLD 1994 SC 233]. He lastly relied upon the case of Syed Noorul Hasan vs. The Secretary, Ministry of Industries Government of Pakistan, Islamabad and others [1987 SCMR 598].

6. Mr. Muhammad Nishat Warsi, learned DAG, without filling comments, has supported the stance of the learned counsel representing the Respondent No.4 and raised the question of the maintainability of the instant Petition. We asked him a question as to whether a civil servant against whom a case of corruption has been registered by the NAB, which is under adjudication before the competent Court of law, can be posted to a higher rank on OPS basis, during pendency of such criminal proceedings against him, the learned DAG replied that he is not aware of the pendency of NAB proceedings against the Respondent No.4; that the Respondent No.4 has been posted as Director [BPS-20] on OPS basis, in the light of Rule 8-B of Civil Servants (Appointment,

Promotions & Transfer) Rules, 1973. He lastly prayed for dismissal of the instant petition.

7. We are not satisfied with the assertion of the learned DAG on the aforesaid questions for the simple reason that where a civil servant is accused of subversion, corruption or misconduct, the authorized officer should require him to proceed on leave or suspend him with the approval of the competent authority, in accordance with law and rules made thereunder and if no action is taken against the delinquent officer for the aforesaid charges, the Department has to account for such departmental negligence, which is of serious nature and cannot be ignored or condoned. We observe here that the competent authority is/was not under obligation to post a civil servant against a higher grade post, when prima facie evidence was available showing his involvement in serious charges of misconduct and corruption. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of *Mst. Iffat Nazir vs. Government of Punjab and others* [2009 SCMR 703].

8. Mr. Sarmad Hani, learned Counsel for the Petitioner, in exercising his right of rebuttal has argued that merely for the reason that the Petitioner is an Advocate, cannot be considered as his disqualification to file Writ Petition in the nature of Quo Warranto, before this court for the reason that the main averments are about the ineligibility of the Respondent No.4, violation of law, and appointment of an ineligible person on the post of Director [BPS-20] on OPS basis, in the Directorate General IPR Enforcement (South) Karachi; that he has just placed an information before this Court and once an action is brought before this Court, which indicates that the Respondent No.4 is holding the public office against the law, then writ of quo warranto would be maintainable.

He further explained the legal aspect of his case and asserted that in the writ of quo warranto no special kind of interest in the relator is needed nor is it necessary to explain what of his specific legal right is infringed. It is enough for its issue that the relator is a member of the public and acts bona fide. This writ is more in the nature of public interest litigation where undoing of a wrong or vindication of a right is sought by an individual for himself but for the good of the society or as a matter of principle. He added that there is no requirement of law that he should be an aggrieved person, but a whistle blower need not to be personally aggrieved in the strict sense may lay the information to the court to enquire from the person holding public office. He averred that the conditions necessary for issuance of writ of a quo warranto are that the office must be public and created by a Statute or Constitution itself; the office must be substantive one not merely the function of an employment of a servant at the will during the pleasure of others; there has been contravention of the constitution or a statute or statutory instrument and appointing such person to that office, while essential grounds for issuing writ of quo warranto are that a holder of the post does not possess the prescribed qualification; the appointing authority is not competent authority to make appointment and that the procedure prescribed by law has not been followed and the burden of proof is upon the appointee who has to demonstrate that his appointment is in accordance with law and rules. Having explained his case he further contended that this court should not throw out the instant petition merely on the prospect of the Petitioner gaining some benefit at the end, which even is not true. He refuted the claim of the Respondent No.4 with regard to the point of laches and argued that laches does not apply to such writs and that he does not have to be an aggrieved party to file such a writ as the cause of action is



a recurring one as the public office is being held by a particular person, then the unlawful holding of public office is continuing wrong and the said wrong may be called in question by anyone at any time, even, otherwise no limitation runs against the fraud or benefits gained through illegal means. He emphasized that Constitutional petition in the nature of a writ of quo warranto is maintainable under Article 199 of the Constitution against a holder of a public office, if he is/was disqualified or did not possess or had lost his qualification, in such behalf; that a writ of quo warranto or a proceeding in the nature of an information for a quo warranto, unless expressly barred by some statute, is available with this Court. He lastly prayed for allowing the instant petition.

9. We have heard learned Counsel for the parties on the issue of maintainability of the instant petition under Article 199 of the Constitution.

10. The post of Director IPR BPS-20 is a Public Office post which falls within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority, he can hold that office. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, 1973 the High Court, if satisfied, could declare that holder of such Public Office is not entitled to such office. The aforesaid Office, being a Public Office and for that reason is amenable to a writ jurisdiction of this Court under Article 199 of the Constitution. We are fortified in our contention by observations of the Honorable Supreme Court of Pakistan in the case of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others [PLD 1975 SC 244]. It is well settled law

that a person invoking the jurisdiction of the Court under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself within the meaning of an “aggrieved person”. But, any person can move this Court and challenge usurpation or unauthorized occupation of a Public Office by any person on the ground that he is not qualified to hold that public office. As such, the issue of *locus standi* is insignificant and immaterial. Besides, the proceedings in the instant petition are in the nature of quo warranto, which are not strictly adversarial in nature, but it does not mean that a premium can be given to a civil servant to continue with such post, for which he is not qualified to hold.

11. The only question is as to whether the Respondent No.4, being a junior officer in BPS-19 can hold the charge for the post of Director IPR in BPS-20 on OPS basis and whether it is within the parameters of relevant law?

12. It would be advantageous to first examine the relevant law governing the subject. For this purpose, we advert to Chapter 2 Part II of the ESTACODE, 2010 Edition at Sl. No.117 (at P.190) pertaining to "Appointment" which reads as under:-

**“Sl. No. 117  
‘Current/Additional Charge and Acting  
Charge Appointments’**

13. According to the existing instructions set out in ESTACODE, all appointments by promotion against higher posts are to be made through regular selection process i.e. with the approval of the Central Selection Board/Departmental Promotion Committee and the authority competent to make appointment to the grade in which the vacancy exists. However, in those cases where a vacancy in a higher post occurs for less than two months and it is considered impossible for good reasons to make arrangements for

day to day work of that post to be carried on otherwise, the current charge of the duties of that post may be given temporarily with approval of the competent authority to the most senior officer in the cadre present at the place or in the organization where the vacancy occurs if he is otherwise fit and eligible for promotion.

14. To appreciate further the issue of OPS, we inquired from the learned DAG to show us any provision of law and or rule under which a Civil Servant can be appointed on OPS basis. He conceded that there is no specific provision in Civil Servants Act, 1973 or rule made thereunder to permit appointment on OPS basis. He, however, submitted that in exigencies, the Government makes such appointments as a stopgap arrangement.

15. This practice of appointment on OPS basis, being not permissible in law, has always been deprecated by this Court, besides it impinges the self-respect and dignity of the Civil Servants who are forced to work under officers junior to them; besides, promotion of senior officers are blocked. The Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 empowers the Competent Authority to appoint a civil servant on acting charge or current charge basis as a stopgap arrangement if a post falls vacant and is required to be filled through promotion, the senior most civil servant otherwise eligible for promotion, but does not possess the required length of service, subject to compliance of all the codal formalities as provided in relevant law and rules. As such, there is no provision for appointment by transfer to a higher grade on OPS basis. Guidance in this respect can be sought from the cases of MUHAMMAD ASIF CHATHA and others versus CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and others” (2015 SCMR 165). And TARIQ AZIZ-UD-DIN and others: in re Human Rights Nos.8340, 9504-G, 13936-G, 13635-

P & 14306-G to 143309-G of 2009” (2010 SCMR 1301) wherein

Hon’ble Supreme Court of Pakistan has held as under:-

“26. Learned Attorney General and learned counsel for the Federation also emphasized that majority of officers of BS-21 who now have been promoted to BS-22 were holding acting charge of different divisions as Secretaries, etc. and competent authority had an opportunity to watch their performance, therefore, it had rightly considered them for promotion as against the left out officers whose performance, though not said to be blemished, could not be watched. We are not impressed with these arguments for, legally speaking, appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 reproduced below:

"8-B (1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(2) \*[Omitted].

(3) In the case of a post in basic pay scales 17 to 22 and equivalent, reserved under the rules to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer drawing pay in basic pay scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Central Selection Board, as the case may be, save in the case of post in basic pay scale 22 and equivalent.

(6) Acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(7) Acting charge Appointment shall not confer any vested right for regular promotion to the post held on acting charge basis."

A careful perusal of the above rule reflects that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. In the instant case, the officers who were holding the post on acting charge basis were not all senior to those of affectee officers and moreover it is quite evident that even in their cases, holding the acting charge under whatever circumstances, shall not confer any vested right for regular promotion.

27. It was further contended by the learned Attorney General that Chief Executive/competent authority was to select his team with the object in view to ensure the good governance in the country. Suffice to observe as is pointed out hereinabove, as well, that posting a junior officer to hold the charge of a senior post, ignoring seniors who are eligible for promotion, does not advance the object of achieving good governance because the rules framed on the subject, noted hereinabove, are not redundant in any manner, therefore, same- need to be respected and followed accordingly.....”

Our view point is further strengthened by the decisions rendered by the Honorable Supreme Court of Pakistan in the cases of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411). The Honorable

Supreme Court in the case of Khan Muhammad supra has reiterated its view as set forth in the case of Glulam Fareed & others (above) and held as under;-

**‘The impugned notification stipulates that the Petitioner and the respondent No.3 were posted/transferred in their "own pay and scale". In the case of Province of Sindh v. Ghulam Fareed (above) it was held, that posting/transferring a civil servant on his own pay and scale (OPS) is not legally permissible:**

**"11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which could authorize the Government or Competent Authority to appointment [of] any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has also always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in the Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers."**

21. Therefore, for the reasons mentioned above, this petition is converted into an appeal and allowed in the following terms:

**(a) Serial No. 12 of the notification of February 3, 2014 which grants to the Minister the power to post/transfer a civil servant is declared to be contrary to the Rules and the scheme of governance envisaged by the Constitution and is therefore struck down;**

**(b) As a consequence of the above, the notification dated March 9, 2018, which was issued pursuant to the Minister exercising his powers under the notification of February 3, 2014 is also struck down;**

**(c) Notification dated April 25, 2018 with regard to the posting/transfer of the Petitioner and respondent No.3, for the reasons mentioned above, is struck down; and**

**(d) If there is any other notification/s, order/s and/or instruction/s empowering a minister to transfer a civil servant those are also declared to be contrary to the Rules and the scheme of governance envisaged by the Constitution and are therefore also struck down; and**

**(e) The Chief Secretary and the secretaries of the departments of the Government are directed not to act pursuant to any notification, order and/or instruction whereby a minister orders the posting/transfer of a civil servant.**

**We had converted this petition into an appeal and allowed it by order dated May 3, 2018 and these are the detailed reasons for doing so.’ (Emphasis Added).**

16. We have also examined the stance of the Respondent No.4. Besides, in our view, the reasoning as put forwarded by the Respondent No. 04 is not tenable in law for the

simple reason that if the officer does not possess requisite qualifications, experience and length of service to qualify for regular appointment/promotion in a department, then Rule 8-B as discussed supra empowers the competent authority to appoint the civil servant on acting charge basis and current charge basis if a post is required to be filled through promotion, then only the most senior civil servant eligible for promotion, but does not possess the required length of service, appointment of eligible officer may be made on acting charge basis after observing all the codal and procedural formalities.

17. In the present case, we have noticed that the Respondent No.4 has admitted in his pleadings that he is facing criminal proceedings before the competent court of law arising out of NAB reference; on the accusations of connivance with directors of M/s Al-Shamsher Engineering (Pvt) Ltd, caused a loss of Rs.185 million to the national exchequer through evading duty by misusing and violating conditions of concessionary SROs from 1997 to 2003. If this being the position of his case the competent authority of Respondent-department has to look into the matter seriously and take appropriate measures in accordance with law.

18. A careful perusal of the above factual, as well as, rules explicitly show that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting or current charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be but not on OPS basis.

19. Adverting to various points raised by the learned Counsel for the Respondent No. 4, more particularly that the decision of the Honorable Supreme Court rendered in the case of Ghulam Fareed

supra whereby he has stated at the Bar that this decision is per incuriam, we do not agree with the aforesaid assertion of the learned counsel for the Petitioner for the simple reason that the binding effect of the judgment of Honorable Supreme Court is well known. Under Article 189 of the Constitution, any decision of the Supreme Court to the extent that it decides question of law or enunciates a principle of law is binding on all other courts in Pakistan. We are fortified, on the aforesaid proposition of law with the decision rendered by the Honorable Supreme Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan [**PLD 2010 SC 483**]. The Honorable Supreme Court has held as under:-

"Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of this Article and is binding on all courts in Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court due to high place which the court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle or the meaning of law".

So far as the plea of per incuriam articulated by the respondent's counsel, we would like to take the aid and assistance from Black's Law Dictionary, Ninth Edition to get the drift of true connotation of the expression and terminology "per incuriam":--A judgment per incuriam is one which has been rendered inadvertently, therefore in all fairness, we cannot revisit, explicate or expound the law on the issue decided by the Honorable Supreme Court which has binding effect on us.

20. The case laws cited by the learned Counsel for the Respondent No.4 are distinguishable from the facts obtaining in the Petition in hand.

21. The above discussions lead us to an irresistible conclusion that the appointment/posting of Respondent No.4 as Director IPR in BS-20, on OPS basis is clearly violative of law; thus the instant petition is allowed and the posting of Respondent No.4 on the

aforesaid post is declared as without lawful authority. Consequently, Notification dated 10<sup>th</sup> February 2015 issued by the Respondent-Department is set aside. The post of Director BS-20 in the Directorate General IPR Enforcement (South) Karachi is hereby declared as vacant, which shall be filled by the Competent Authority in accordance with law, within a period two weeks, from the date of receipt of this Judgment. Resultantly, all pending applications[s] are disposed of. Let a copy of this Judgment be communicated to the Respondent No.1 for compliance.

**JUDGE**

**JUDGE**

Nadir/-