

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -6313 of 2020

Asadullah Lashari

Versus

The Province of Sindh and 06 others

Date of hearing &
Decision : 11.02.2021

Mr. Qaim Ali Memon, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, the petitioner has prayed for issuance of the writ of quo warranto against respondents 4 to 7 to vacate the office presently they are holding, inter-alia, on the ground that they are not qualified to hold the office and their appointments are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

2. We asked learned counsel for the petitioner to satisfy this Court about the maintainability of this petition on the ground that private respondents were appointed in the year 2013 in Lyari Development Authority. He has submitted that the private respondents are holding public office posts and fall within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution, 1973. He added that they were appointed during the ban imposed by the Election Commission of Pakistan vide its Press Release dated 21.01.2013. He next argued that the direct appointment in the higher grades by way of walk-in-interview, bypassing the proper procedure of appointment through the competitive process was/is patently discriminatory and in gross violation of Articles, 4,8 and 25 of the Constitution of Islamic Republic of Pakistan, 1973, thus their appointments were/are liable to be canceled. He prays for allowing the instant petition.

3. We are not satisfied with the assertion of learned counsel for the petitioner on the aforesaid question of maintainability of the instant petition for the simple reason that alleged cause of action accrued to the petitioner in the year 2013 when the aforesaid appointments were made by the Lyari

Development Authority and now he has approached this Court on 09.12.2020 after a delay of approximately 07 years from the date of the alleged cause of action. Thus his case falls within the ambit of the doctrine of laches.

4. It is well-settled law that if a civil/public servant is appointed in violation of any provision of law, the competent authority can look into the matter and this Court, at this juncture, cannot dilate upon the allegations of the petitioner on the aforesaid analogy.

5. Before parting with this order, we may observe that the appointments are to be made by the Government in statutory bodies, autonomous bodies, semi-autonomous bodies, regulatory authorities, etc. through the competitive process and not otherwise. So far as the functions and powers of the caretaker Government are concerned; and, ban imposed by the Election commission of Pakistan at the relevant point in time, that issue has already been set at naught by the Hon'ble Supreme Court of Pakistan in the case of *Khowaja Muhammad Asif v. Federation of Pakistan and others*, 2013 SCMR 1205, as such no further deliberation on our part is required.

6. The above discussions lead us to an irresistible conclusion that the instant petition being incompetent is dismissed in limine along with the pending application(s) with no orders as to cost. However, the petitioner is at liberty to approach the competent authority for redressal of his grievances if he feels that his cause of action still subsists against the private respondents.

7. These are the reasons for our short order dated 11.02.2021 whereby we have dismissed the instant petition.