

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 3816 of 2011

Niaz Hussain Abro & 02 othersPetitioners

Versus

Province of Sindh & othersRespondents

C.P. No. D- 713 of 2013

Syed Zafar Ali ShahPetitioner

Versus

Province of Sindh & othersRespondents

Date of hearing: 28.08.2019

Date of Judgment: 06.09.2019

Mr. Ali Asadullah Bullo, advocate for petitioners in C.P No.D-3816 of 2011.

Syed Mureed Ali Shah, advocate for petitioner in C.P No.D-713 of 2013.

Mr. M.M Aqil Awan, advocate for respondents No.5, 13, 18, 24 & 50.

Mr. Mohammad Ashraf Kazi, advocate for respondent No.6 in C.P No.D-3816 of 2011.

Mr. Pervaiz Ahmed Memon, advocate for respondents No.25 & 26.

Mr. Samiullah Soomro, advocate for respondents No.8, 27, 30, 31, 34, 35, 36, 38, 39, 40, 44, 49 & 55.

Mr. Ashok Kumar, advocate holds brief for Mr. Jamil Ahmed Rajpar for respondents No.41 to 45.

Respondent No.16 is present in person.

Mr. Sheheryar Mehar, Assistant Advocate General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Both the above referred Constitutional Petitions are being disposed of by this common Judgment as the issues raised are similar in nature.

2. Through these Petitions , the Petitioners have prayed for issuance of writ of quo warranto against the private Respondents 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. Per petitioners, initial appointment of the Respondents No. 04 to 23 in BPS 17 and their subsequent promotion to BPS-18 & 19 is/was against the land mark judgment

passed by the Hon'ble Supreme Court of Pakistan in Criminal Original Petition No.89 of 2011 reported in 2013 SCMR 1752, whereby those who were granted exemption from qualifying Departmental Examination Part- I & II prescribed for the post of Assistant Collector/Assistant Commissioner (Revenue) and given out of turn promotions, were reverted and vide order dated 27.9.2016 the Government of Sindh was specifically directed to formulate mechanism for nomination for appointments for the Assistant Collector/Assistant Commissioner (BS 17) in Ex. PCS cadre. Per Petitioners, the aforesaid directions have not been implemented by the official Respondents; hence, the petitioners have approached this Court by filing the captioned petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. We inquired from the learned Counsel for the petitioners to point out any order or judgment of the Honorable Supreme Court which has not been implemented yet.

3. Mr. Ali Asadullah Bullo, Advocate assisted by Sayed Mureed Ali Shah, learned Counsel for the Petitioners, contended that except those who have passed away or retired from service during pendency of the instant petitions, are occupying respective posts in violation of the judgment rendered by the Hon'ble Supreme Court of Pakistan in case of contempt proceedings against the Chief Secretary Sindh in Criminal Original Petition No.89 of 2011 reported in 2013 SCMR 1752, Ali Azhar Khan Balouch vs. the Province of Sindh reported in 2015 SCMR 456 and various other orders passed by the Supreme Court of Pakistan in different proceedings. He next contended that the Hon'ble Supreme Court has declared appointments by way of nomination and out-of-turn promotions by exempting the private respondents from qualifying the prescribed Departmental Examination Part I and II for Assistant Collectors (BPS-17) as illegal and directed the Respondent No.1/the Chief Secretary Government of Sindh to repatriate them to their original positions or terminate their services as the case may be. But, the private respondents being in league with the concerned Government functionaries and to enjoy personal benefits managed their illegal retention in the Government of Sindh; thus, succeeded to defeat the basic spirit of the judgments passed by the Honorable Supreme Court of Pakistan as discussed (supra). He next contended that the

petitioners are aggrieved of illegal appointments by way of nominations and their promotions by granting them exemption from the prescribed Departmental Examination Part I and II.

4. Conversely, Mr. M.M Aqil Awan, the learned Counsel for the Respondents 5,13,18,24 & 50 raised the question of maintainability of the instant petitions and argued that the Petitioners have no locus standi to file the Petitions; that Respondent No.5 & 13 were appointed as Assistant Commissioner under Rule 5(iv) (b) and 5(c) of West Pakistan Civil Service (Executive Branch) Rules 1964 by way of nomination. The date of appointment of Respondent No.5 is 16.03.1993, whereas date of appointment of Respondent No.13 is 18.10.1993; that the Chief Minister Sindh is competent to grant exemption to the private respondents from passing the Departmental Examination Part I and II; that right from the date of grant of exemption till date none of the colleagues of answering respondents felt aggrieved in seniority or promotion caused to them by grant of the said exemptions. Moreover, non-passing of Departmental Examination is not a ground for quo-warranto, as it deals with the legality of appointment, keeping in view three factors viz. whether authority was competent to make such appointment? Whether incumbent respondents possess minimum prescribed qualifications for such appointment? Whether appointment is made in accordance with procedure laid down by Law? Whereas grant of exemption in qualifying in passing departmental examination is only relevant for seniority or promotion; that the exact grievance of the petitioners appears to be violation of statutory quota prescribed in the West Pakistan Civil Service (Executive Branch) Rules, 1964; that the petitioners have failed to highlight as to what was the percentage of quota in the year 1993 and how many vacancies were available in that year and as to how many vacancies were meant for in accordance with that prescribed quota and unless that numerical exercise is done, they cannot succeed in establishing that appointment of answering respondents in early 90s was beyond their quota. He continued and stated that in the above referred cases, the Honorable Supreme Court of Pakistan, with the assistance of administrative department, marshaled the posts in accordance with quota and determined the number of officers, who were appointed beyond quota

for nomination. The learned Counsel referred the position of some of the Private respondents in the following tabulated form:

Respondent No.	Name of Respondent	Date of Appointment	Mode of Appointment	Grant of exemption	Present grade & place of Posting
5	Samiuddin	16.03.1993	By way of nomination	Qualified exam	BS-20 awaiting posting
13	Nasir Abbas	18.10.1993	By way of nomination	Qualified exam	BS-20 DG Gorakh Hill Development Authority
18	Ali Ahmed	18.4.1996	By way of nomination	Qualified exam	BS-19 posted as Add Sec (Law)
24	Shakeel-uz-Zaman	22.01.1992	Post taken out of purview of PSC	Granted exemption under Rule 13 by CM	BS-20 posted as Member Registration STAMP & Evacue Property BOR Karachi
50	Mehdi Ali Shah	14.11.1995	By taking out of purview of PSC	Qualified exam	BS-19 posted as Deputy Commissioner Mirpur Khas
52	Agha Abdul Rahim	14.11.1995	By taking out of purview of PSC	Qualified exam	M.D. (Water & Sewerage Agency) WASA Hyderabad.

Having explained his case, he prays for dismissal of the instant petitions.

5. Mr. Mohammad Ashraf Kazi, the learned Counsel for respondent No.6 in C.P No.D-3816 of 2011 has referred to the Counter Affidavit filed on behalf of the respondent No.06 and adopted the arguments by Mr. M.M Aqil Awan. However he added that these petitions are not maintainable; that respondent No.06 has qualified the requisite examination; 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 Petitions are hit by laches; that Writ of quo warranto would not be a remedy for a person to air his private vengeance; that Petitioners have not been able to show as an 'aggrieved person' in terms of Article 199 of the Constitution of Islamic Republic of Pakistan to agitate any bona fide grievance, therefore, they have no case at all to invoke the Constitutional Jurisdiction of this Court, through the instant writ petitions.

6. Mr. Pervaiz Ahmed Memon, learned Counsel for respondents No.25 & 26 has adopted the arguments advanced by Mr. M.M Aqil Awan.

7. Mr. Samiullah Soomro, learned Counsel for respondents No.8, 27, 30, 31, 34, 35, 36, 38, 39, 40, 44, 49 & 55 has adopted the arguments advanced by Mr. M.M Aqil Awan.

8. Mr. Jamil Ahmed Rajpar learned Counsel for respondents No.41 to 45 has also adopted the arguments by Mr. M.M Aqil Awan.

9. Respondent No.16 namely Noor Muhammad Shah, who is present in person, has referred his statement dated 13.11.2018 and submitted that he was

appointed as Assistant Commissioner on 05.11.1995 under Rule 5 (4) (b) & (5) (c) of the West Pakistan Civil Service (Executive Branch) Rules, 1964; that before his appointment as Assistant Commissioner he was Deputy Director (BS-17) in Board of Revenue Sindh wherefrom he passed Revenue Qualifying Examination conducted by the Sindh Public Service Commissioner in year 1992 and successfully completed mandatory One year Revenue and Magisterial Training at Mukhtiarkar / Tahsildar Office; that his name was placed on the Select List B maintained by Board of Revenue Sindh; that in 1994, he was transferred and posted as Private Secretary to Chief Minister Sindh and by virtue of holding the post of Private Secretary to Chief Minister Sindh he became eligible for the Select List C under Rule 5(5)(C). After fulfilling all the prerequisites/codal formalities as mentioned above he was appointed as Assistant Commissioner by transfer vide Notification No.SO-V (S&GAD) X-15/95 dated 05.11.1995; that after promulgation of Rule 5(5)(C) of West Pakistan Civil Service (Executive Branch) Rules, 1964 and introduction of Select List C in 1987, he was appointed Assistant Commissioner after passing Revenue Qualifying Examination and fulfilling all the pre-requisites of Select List C; that the question of appointment in excess of quota in his case does not arise at all; that he has also qualified the Departmental Examination of Assistant Collector Part-I & II conducted by the Sindh Public Service Commission in 1996 and secured First Position. He prayed for dismissal of the instant Petitions.

10. Mr. Shahriyar Mahar, learned AAG has briefed us on the factual aspect of the case and submitted that the Respondents No.17, 20, 23 and Mr. Attaullah, they have already been repatriated to their parent Departments/Organizations; that the Respondents No.14, 15, 28 and 51 have retired from Government service; that the Respondents No.32 and 46 have passed away and the Respondent No.53 had resigned from Government service. Learned AAG added that the Respondents No.4 to 14, 16,18 to 23, 25, 26,41 to 45 and 56 were appointed under clause (b) of sub-rule (4) and clause (c) of sub-rule (5) of Rule-5 of the West Pakistan Civil Service (Executive Branch) Rules, 1964, with the approval of the Competent Authority i.e. Chief Minister, Sindh. Further, the Respondents No.15, 17, 24, 27 to 40 and 46 to 55 were appointed under Rule-5 of the Sindh Public Service

Commission (Function) Rules, 1990 by taking the post from the purview of Sindh Public Service Commission with the approval of the Competent Authority i.e. Chief Minister, Sindh; that Rule-5 of the Sindh Public Service Commission (Function) Rules, 1990 had been omitted in the year 1997 vide Notification dated 18.02.1997. Besides, Rule-13 of the West Pakistan Civil Service (Executive Branch) Rules, 1964, providing relaxation of rules by the Chief Minister, Sindh from passing the Departmental Examination of Assistant Collector Part-I and II had also been deleted vide Notification dated 30.06.2009. Further, the Government of Sindh has repealed the West Pakistan Civil Service (Executive Branch) Rules, 1964 vide Notification dated 20.3.2018; that the Honourable Supreme Court of Pakistan in its order dated 27.3.2018 has disposed of the Criminal Original Petition No.231/2016 and dismissed the Criminal Miscellaneous Application No.1055/2017 (non-compliance of Court order given in Civil Review Petition No.193/2013). Besides, the Honourable Supreme Court of Pakistan in its another order dated 27.3.2018 passed in Suo Moto Case No.14/2016 that the rules, vires whereof have been considered in this suo moto case, action stands repealed, therefore, these suo moto proceedings are dropped and disposed of; that the Honourable Supreme Court of Pakistan also disposed of the CMAs No.6396/2016, 281-K/2015, 1411/2016 and 1412/2016, as the main matters stands decided/disposed of. Learned AAG also referred to the statement dated 16.3.2014, whereby a copy of the updated list of the Respondents No.4 to 56 was placed on record which explicitly shows that the Respondents No.4 to 21 and 46 to 45 passed Departmental Examination, the Respondent No.2 and 53 to 56 have not yet passed the Departmental Examination and the respondents No.23 to 45 were exempted from passing the Departmental Examination. In view of his arguments, he prayed for dismissal of the captioned petitions.

11. Mr. Ali Asadullah Bullo, learned Counsel for the petitioners in exercising the right of rebuttal argued that the private Respondents No. 4 to 23 are not qualified to hold the office; that they were inducted into the service on permanent basis without qualifying the competitive examination and they also failed to pass/qualify the Departmental Examination Part I & II prescribed for Assistant

Collector pre-requisite for their confirmation in their service on regular basis; that the Respondents No.4, 8, 11 & 14 were granted exemption under Rule 13 of West Pakistan Civil Service (Executive Branch) Rule, 1964 by the Chief Minister, Sindh; that they were subsequently promoted to BPS-18 and some of them are promoted to BPS-19, in violation of Rule 8(5) of West Pakistan Civil Service (Executive Branch) Rules, 1964; that the private respondents were not only illegally nominated beyond the prescribed quota, but have also violated the prescribed strength of officers; that the respondents from Serial No.24 to 45 are those officers who were conferred upon illegal benefit of exemption from Departmental Examination at the cost of eligible and suitable officers and the official respondents have also violated the mandatory/statutory provisions of Section 6(1) & (3) of the Sindh Civil Servants Act, 1973; that the Respondents No.46 to 56, including Respondents No.27, 28, 29, 32, 35, 14 & 40 were deferred/superseded by the recommendation of the Provincial Selection Board, but they have been given promotion by the official respondents prejudicing the cause of the suitable and fit officials; that the official respondents have committed gross violation of rules and regulations as set forth by the legislature and have been illegally exercising the authority and powers; that the impugned notifications, through which the aforesaid orders for appointment by promotion were acquired in a questionable manner, are neither here nor there as the way those notifications were not issued as they should have been and no prescribed method of appointment by promotion or, nomination quota, etc.; that there was absolutely no provision in the relevant statute or rules and regulations to grant exemption to any civil servant/private respondents; that some of the private respondents having repeatedly failed in the required examination for their confirmation in service were required to be sent back to their parent departments if any or their services terminated, as the case may be. He contended that the exemption granted to them by the official respondents was and is ab initio void, malafide and without jurisdiction and of no legal effect and nullity in the eyes of law; that the private respondents are going to be further conferred with additional benefits by way of giving them yet another promotions through the Provincial Selection Board, which body is, unfortunately, not performing its duties

independently and in a transparent manner; that the rights of other civil servants are also violated under Articles 4, 9,14,18,25(1) & 38 of the Constitution of Islamic Republic of Pakistan. He also refuted the claim of the Respondents with regard to the point of laches on the ground that when there is continuing wrong and the said wrong can be called in question by anyone at any time.

12. Syed Mureed Ali Shah learned Counsel for the petitioner in C.P. No.D- 715 of 2013, contended that appointment of the private Respondents as Assistant Commissioners in BPS-17 by way of nomination is illegal in violation of Rule 10 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 and Rule 19 of Rule, 1974; that entry into Ex-PCS service is regulated by Rule 5 of the West Pakistan Civil Services (Executive Branch) Rules, 1964, which has been ignored, while inducting/nominating the private Respondents; that the private Respondents have failed to complete the training and pass the Departmental Examination Part I & II prescribed in the law, thus the initial appointment of the private Respondents is nullity in the eyes of law.

13. We have noticed that this Court vide order dated 13.11.2018 recorded statement of the learned Counsel for the Petitioners that he does not press this Petition against the Respondents No.14, 15, 28 and 51, who have retired from Government service, whereas Respondents No. 32 and 46 have passed away and Respondent No.53 had resigned. So far as Respondents No.17, 20 & 23 are concerned, they have already been repatriated to their parent organizations as well as Respondent No. 29. It is further noted that despite the publication of the notice made in the newspapers, the Respondents No.12, 15, 16, 33, 37 & 48 remained absent; hence service upon these respondents has been held good by the aforesaid order, whereas the respondents No.10 & 22 were ordered to be served through Inspector General Prison, Karachi. As per record, the Respondents No.4, 7, 9, 22, 24 to 27, 30, 39, 40, 47, 49 & 52 were also served. Record further reflects that some of the private Respondents have passed away, but no amended title has been filed.

14. We heard learned Counsel for the parties on the issue of maintainability of the instant petitions under Article 199 of the Constitution, 1973.

15. The legal position with regard to maintainability of these petitions is 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, 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 that 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 hold such office. The aforesaid office, being a Public Office and for that reason is that the serving private respondents being holder of public office are amenable to writ jurisdiction of this Court under Article 199 of the Constitution, 1973. 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]. In our view, a person invoking the jurisdiction of this Court under Article 199 of the Constitution of Pakistan for “Writ of Quo Warranto” 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 on the ground that he is not qualified to hold that public office. The Constitution does not mandate aggrieved person to invoke the jurisdiction of this court for the subject. As such, the issue of locus standi is insignificant and immaterial. Besides, the proceedings in the instant petitions 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 otherwise.

16. Taking up the issue of laches, in our view, laches does not apply to such writs and that a person 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 can be called in question by anyone at any time.

The 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. In view of these observations, we hold that the petitions are maintainable and can be heard and decided on merit.

17. The moot questions involved in the present proceedings are as to whether the private Respondents who are holding the present postings qualify to continue the office? Whether the Chief Minister, Sindh is/was competent under the Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964 to nominate person as Assistant Commissioner? Whether the Chief Minister is competent to grant exemption to the private respondents from qualifying in passing the Departmental Examination prescribed for the posts under reference for regularization and promotion of the private respondents?

18. To elaborate on the aforesaid issues, let us have a glance on the Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964 which provides as under:-

5. Method of Recruitment-(I) Recruitment to the Service shall be made in the following manner:-
 - (4) Vacancies to be filled by promotion shall be filled as follows:-
 - (b) The remaining 12 ½ percent of such vacancies shall be filled from among persons whose names appear in Select List 'B' & 'C' to be maintained in accordance with clause (b) and clause (c) of sub rule (5) of this rule.

19. We have noticed that latest position of Rule 5(4)(b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, essentially provided that 12 ½ percent posts of such vacancies shall be filled from amongst persons, possessing graduation degree, who hold posts of Assistants, Superintendents working in Secretariat and attached departments, Private Secretaries, Public Relations Officers to the Governor, Chief Minister and Ministers and Chief Secretary, considered fit, could be appointed by way of nomination against the post of Assistant Commissioner/Assistant Collector (BS-17) in Ex-PCS Cadre. The Select List "B" and "C" are maintained in accordance with clause (b) quota and clause (c) of Sub-Rule (5) of this Rule. The Honorable Supreme Court in the case of Criminal Original Petition No.89 of 2011 (2013 SCMR 1752) directed that the nominations

made by the Chief Minister in excess of the quota given by Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, are without lawful authority and directed Sindh Government to formulate mechanism for such appointments in future. An excerpt of paragraph No.110 of the judgment supra is reproduced as under:-

“110. We may observe that nominations of Assistant Commissioners by the Chief Minister after exhausting his quota shall affect the seniority of the incumbents who will pass the P.C.S. exams on merits and appointed as Assistant Commissioners till 2017. Therefore, all the aforesaid officers inducted in excess of the quota shall be relegated to their original positions. In future, the Sindh Government shall formulate mechanism for nomination of such appointments by transfer to the post of Assistant Commissioner (BS 17) in Ex. PCS cadre.”

20. Adverting to the second proposition that the private respondents were inducted in the service on permanent basis without qualifying the competitive examination and they also failed to pass/qualify the Departmental Examination for Assistant Collector Part-1 and II for their confirmation in service on regular basis, it appears from the record that by virtue of section 3 of the Sindh Public Service Commission (Functions) Rules, 1990, initial appointments in BPS-17 are to be made through the Sindh Public Service Commission. However, thereafter Rule 5 was added, which reads as follows:-

"(5) The Chief Minister may, in the public interest, specify posts which may be filled, without reference to the Commission."

21. The said Rule was enforced at the relevant point of time having been subsequently omitted vide Notification No. SOR-I (S&GAD) 5/1-97 dated 18-2-1997. The said Rule 5 of the Sindh Public Service Commission (Functions) Rules, 1990 empowers the Chief Minister, Sindh to take the post out of the purview of the Commission. In the instant cases, such powers appear to have been exercised, especially as the learned Counsel for the petitioners have been unable to show any law or judgment of the Honorable Supreme Court of Pakistan, whereby the appointments under Rule 5 of the Sindh Public Service Commission (Functions) Rules, 1990 have been held to be in any manner other than the regular appointments. Therefore, the private respondents having been initially appointed on their respective posts under the aforesaid law, no exception can be taken to that effect, subject to all just exceptions.

22. The learned Counsel for the petitioners pointed out that the Honorable Supreme Court vide order dated 24.2.2015 in the case of Chief Secretary, Sindh

versus Riaz Ahmed Massan and another (2016 SCMR 1784) observed that after the Constitutional dispensation in 1973, the Chief Minister has no power to nominate and promote any Civil Servant by relaxing Executive Branch Rules, 1964. It was further observed by the Honorable Supreme Court that the rules are in conflict with various provisions of the Constitution of Islamic Republic of Pakistan, 1973 and to examine vires of the rules, notice was issued to the Additional Advocate General, Sindh with direction to place on record the list of such persons who were promoted by the competent authority without qualifying the required examination and the same was done so.

23. We asked the learned Counsel whether the Honorable Supreme Court has declared the vires of West Pakistan Civil Service (Executive Branch) Rules, 1964 in conflict with the provision of the Constitution. He replied that the issue to examine vires of West Pakistan Civil Service (Executive Branch) Rules, 1964, is yet to be taken care by the Honorable Supreme Court. We further asked whether the proceedings on the aforesaid issue are pending before this Court or Honorable Supreme Court, he answered in negative. However, he asserted that there is no concept of exemption from qualifying the Departmental Examination of Assistant Collector Part-1 and II.

24. We have gone through the judgment passed by the Honorable Supreme Court in the case of Chief Secretary, Sindh versus Riaz Ahmed Massan and another (2016 SCMR 1784), an excerpt of relevant portion of paragraph No. 17 is reproduced below:-

“The issue to examine vires of West Pakistan Civil Service (Executive Branch) Rules, 1964, will be taken up separately, lest it may not prejudice the case of those serving officers who may be the beneficiary of such exemption.”

25. Learned Counsel for the petitioners emphasized that consequence for not qualifying required examination as per Rule 8(4) of Executive Branch Rules, 1964 is that the Civil Servant, so appointed shall not be confirmed in the post unless he qualifies prescribed departmental examination.

26. To rebut the aforesaid contention, the learned Counsel representing the private respondents argued that the Chief Minister Sindh is competent to grant exemption from qualifying/passing the departmental examination. Right from the date of grant of exemption till date, none of the colleagues of answering respondents felt

aggrieved in seniority or promotion on grant of such exemption. Moreover, passing of or exemption from passing departmental examination is not a ground of issuance of writ of quo-warranto. However, the Counsel conceded that the grievance of Petitioners appears to be violation of statutory quota prescribed in the Rules of 1964 and nothing else.

27. The learned Counsel for the Petitioners further argued that it is also a matter of record that some of the private Respondents were granted exemption from appearing in qualifying examination by the Chief Minister Sindh, some of them were later on promoted in BS-18 and 19; that the very act of official respondents, allowing the exemption from qualifying the Departmental Examination is called in question before this Court and this Court can take cognizance of the matter in line with the order dated 26.5.2016 passed by the Hon'ble Supreme Court in Civil Petition No.76-K & 77-K of 2015.

28. The Honorable Supreme Court in the case of Ali Azhar Khan Baloch vs. Province of Sindh and others (2015 SCMR 456) has settled the aforesaid proposition of appointment by way of nomination and held at paragraphs No. 211 and 212, which read as under:-

“211. The petitioners claim to have been nominated by the Chief Minister as Assistant Commissioners under Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964. The grievance of the petitioners is that on account of paras 102 to 111 of the judgment under review, their nominations were withdrawn and they were reverted back to their parent Departments. We have already dealt with this issue in the aforesaid paras. During the hearing of the Review Petition, we have noticed that no mechanism has been provided for nomination of the officers. It is the sole discretion of the Chief Minister to recruit/nominate an employee to the post of Assistant Commissioner in exercise of powers under Rule 5(4) (b) of the Rules of 1964. The discretion to exercise the powers needs to be structured by framing policy, which should encourage merit. On query from the learned Additional Advocate General, Sindh as to how the employees are chosen from different Departments for nomination as Assistant Commissioners; he, on instructions, informed the Bench that no policy has been framed and it is the sole discretion of the Chief Minister. These Rules are not meant to ignore transparency in nomination as such appointments are made by bypassing the regular procedure provided for appointment of a Civil Servant in BS-17. We have noticed that most of these appointments were made amongst the employees, who have been excluded from the purview of the Public Service Commission. Therefore, in absence of policy for nomination to the post of Assistant Commissioner, blue eyed of the high ups will get these jobs. We, therefore, direct the Sindh Government to frame a transparent policy for nomination of these officials, which could ensure that meritorious employees of the Departments mentioned in the Rules of 1964, could be nominated on merits, after proper scrutiny.

212. The petitioners were found in excess of the quota as per the list provided to us by the Sindh Government and, therefore, for the reasons already recorded by us in the judgment under review, they were not entitled to continue in their Offices. These Review Petitions having no merit are, accordingly, dismissed.”

29. We have noticed that the Honorable Supreme Court in the aforesaid matter has already directed the Sindh Government to frame a transparent policy for nomination of the officials, which could ensure that meritorious employees of the Departments mentioned in the Rules of 1964, could be nominated on merits, after proper scrutiny. In our view, since the direction of the Honorable Supreme Court in

the aforesaid matters is still in the field, we cannot take contrary view; as such if the petitioners are aggrieved at all by the initial appointment and nomination of the private respondents against the aforesaid posts, the only remedy available to the Petitioners is to approach the Hon'ble Apex Court in Review and not this Court under Article 199 of the Constitution.

30. Let us take second proposition/issue agitated by the learned Counsel for the petitioners with regard to grant of exemption from departmental examination. In this regard, the Rule 13 of West Pakistan Civil Service (Executive Branch) Rules, 1964 clearly spell out the following legal position. An excerpt of the aforesaid rule is reproduced as under:-

“13. Relaxation—any of these rules may, for reasons to be recorded in writing, be relaxed in individual cases if Government is satisfied that a strict application of the rule would cause undue hardship to the individual concerned.”

During the course of arguments, we have been informed that the aforesaid rule has been deleted vide Notification dated 30.06.2009. Be that as it may, in our view, in law there is no concept of exemption from departmental examinations, which are meant to make the Revenue Officers conversant with the relevant rules to accomplish assignment which they have to undertake in field. No blanket cover can be given by the Competent Authority which breeds incompetence in the Revenue Offices. The exemption granted by the Chief Minister, Sindh tantamount to undue favour, as a result of which, the Government business is bound to suffer. In the similar circumstances while dealing the matters of Revenue Officers, the Hon'ble Supreme Court of Pakistan vide order dated 26.5.2016 in Civil Petitions No.76-K and 77-K of 2015 observed at paragraph 6 with direction to the Senior Member Board of Revenue Sindh to ensure not to assign field postings to any Mukhtiarkar who has been granted exemption from passing the Examinations of RQ-1 and RQ-II.

31. Before parting with this judgment, we observe that on the aforesaid principles, direction of the Honorable Supreme Court is in field and applies to the serving private respondents if they have not already undergone such Departmental Examination of Assistant Collector Part-I & II.

32. Now taking up the issue of hardship in granting exemptions to individual cases under Section 24 of the Sindh Civil Servants Act, 1973 as pleaded by the

respondents. The Honorable Supreme Court has settled the aforesaid proposition on the premise that the Competent Authority under Section 24 of the Sindh Civil Servants Act, 1973 can grant benefit to an individual if it considers it just and equitable, without offending and impairing the statutory rights of other Civil Servants/Employees. The exercise of powers under Section 24 of the Act, 1973 by the Competent Authority in cases of the private respondents travelled beyond the scheme of the Act, 1973, framed under the mandate of Articles 240 read with Article 242 of the Constitution, 1973. However, the Competent Authority can exercise powers under Section 24 of the Act, 1973 by relaxing rules, if there is a vacuum in law, but such powers cannot be exercised under the garb of the term “Relaxation of Rules” with the intent to bypass the mandate of law for extending favour to a person or an individual, offending and impairing the statutory rights of other Civil Servants. The authority conferred under Section 24 of the Act, 1973 is confined to hardship cases, without negating the vested rights of the other Civil Servants and/or causing prejudice to their interests. In our view, qualification, experience for the subject post cannot be waived under the law.

33. We have noticed that the Rule 8(4) of Executive Branch Rules, 1964 explicitly provide that no person shall be confirmed in the service unless he successfully completes such training and passes such departmental examinations as may be prescribed by Government from time to time and Rule-5 (supra) further provides that if a member of the service failed to complete successfully any training or pass any departmental examinations prescribed under Sub-rule (4) within such period or in such number of attempt as may be prescribed by Government, the appointing authority may. (a) in case he has been appointed by initial recruitment dispense with his service and (b) in case he has been appointed otherwise revert him to his post and if there be no such post dispense with. The aforesaid legal position clarifies that in absence of the qualification of serving private respondents for the aforesaid posts, who have not qualified the departmental examination earlier as required under the law, this court cannot waive the qualification and experience for the subject post and endorse their point of view as agitated by them in the present proceedings. However, the competent authority can grant exemption in hardship

case, but exemption from appearing in the qualifying examination can be categorized in hardship case.

34. We, for the aforesaid reasons direct the Respondent No. 1/Chief Secretary, Sindh to scrutinize the service record of the serving private Respondents, who have not qualified earlier the Departmental Examination of Assistant Collector Part-1 and II and determine whether or not they have been legally promoted, and whether or not in their promotion, the directions of the Hon'ble Supreme Court in its judgment rendered in the cases of Criminal Original Petition No.89/2011 and Ali Azhar Khan Baloch (supra) and principle settled with regard to exemption in qualifying departmental examination vide order dated 26.5.2016 in Civil Petition No.76-K and 77-K of 2015, at paragraph No.6 (supra) have been adhered to or not and submit compliance report through MIT-II of this Court within a period of two months, which shall commence from the date of communication of this judgment to the Respondent No. 1/Chief Secretary/Sindh, who is further directed to implement the aforesaid judgments and order passed by the Hon'ble Supreme Court on the subject issue in letter and spirit.

35. Before parting with this judgment, we may observe that if the serving private respondents, who have not qualified the Departmental Examination of Collector Part-I and II, they are required to undergo the said examination process, if the said exercise is not undertaken earlier, as required under the law, within a period of six months from the date of receipt of the Judgment of this court and after announcement of their respective results, the same be placed before the competent authority for appropriate order, however if they fail to appear in the said examination or if earlier failed, the competent authority shall take prompt action in accordance with law.

36. The petitions stand disposed of in the above terms.

JUDGE

JUDGE