

ORDER SHEET  
**HIGH COURT OF SINDH AT KARACHI**

***Before:-***

**Mr. Justice Aftab Ahmed Gorar**

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

**CP No. D- 2795 of 2018**

(Ary Communications Limited v. Federation of Pakistan & 11 others)

**CP No. D- 2796 of 2018**

(Ary Communications Limited v. Federation of Pakistan & 11 others)

**CP No. D- 2797 of 2018**

(M/s. Recorder Television Network (Pvt.) Ltd. v. Federation of Pakistan & 11 others)

**CP No. D- 3308 of 2018**

(M/s. Apna TV Channel (Pvt.) Ltd. v. Federation of Pakistan & 14 others)

**CP No. D- 3312 of 2018**

(Ary Communications Limited v. Federation of Pakistan & 11 others)

**CP No. D- 3313 of 2018**

(Ary Communications Limited v. Federation of Pakistan & 11 others)

**CP No. D- 3314 of 2018**

(Ary Communications Limited v. Federation of Pakistan & 14 others)

**CP No. D- 6644 of 2017**

(Ary Communications Limited and another v. Federation of Pakistan & 08 others)

**CP No. D- 6645 of 2017**

(Matloob Tahir v. Federation of Pakistan & 08 others)

Mr. Ayan Mustafa Memon, advocate along with Ms. Sana Valika, advocate for the petitioners in CP Nos. D-6644/2017, 6645/2017, 2795/2018, 2796/2018, 2797/2018, 3312/2018, 3313/2018 and 3314/2018

Mr. Ali Asadullah Bullo, advocate for respondents No.2 to 9 in CP No. D-6644/2017

Mr. Kashif Hanif, advocate.

Mr. Usama Tariq, advocate holding brief for Mr. Muhammad Haseeb Jamali, advocate for the petitioner in CP No. D-3308/2018

Ms. Hania, advocate

Mr. Khaleeq Ahmed, DAG

**Date of hearing & Order:**

**08.02.2022**

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**ORDER**

The above-referred Constitutional Petitions are being disposed of by this common order as the questions raised therein are similar in nature.

2. Through these petitions, the petitioners have prayed for issuance of the writ of quo warranto under Article 199 (1) (b) (ii) of the Constitution, 1973 against the private respondents 2 to 7, inter-alia, on the ground that they are not fit, eligible and qualified to hold the offices of Chairperson, Members of the Council of Complaints (COC) Sindh, Pakistan Electronic Media Regulatory Authority (PEMRA).

3. We asked learned counsel for the petitioners to satisfy this Court about the maintainability of these petitions on the ground that private respondents have already completed their tenure of service and are no more Chairperson, Members of the Council of Complaints of PEMRA.

4. Mr. Ayan Mustafa Memon, learned Counsel for the petitioners, has submitted that though the private respondents have completed their tenure of service as Chairperson, Members of COC Sindh, PEMRA, however their appointment and subsequent taking cognizance of the matter under Section 26 of the PEMRA Ordinance, 2002, through the impugned Show Cause Notices issued to the petitioner-Media Houses still could be called into question under Article 199 (1) (b) (ii) of the Constitution, 1973, inter-alia on the ground that respondent No(s) 2-7 have been appointed / re-appointed on the basis of favoritism, nepotism and without inviting the public at large to apply for these coveted public posts; that these appointments have been made in flagrant violation of the fundamental rights of citizens, principles of natural justice and judgments of the Honorable Superior Courts whereby it is established that public offices can only be filled by eligible candidates after issuance of proper advertisement; that the respondent No 2-7 have been appointed with the sole purpose of harassing the Petitioners and to curb their fundamental rights of free speech and information as enshrined under Article (s) 19 & 19-A of the Constitution, 1973; that the respondent No 2-7 are under directions to issue discriminatory and adverse recommendations against the Petitioner in order to silence the Petitioners which is not only in violation of Article 19 & 19-A but also Article 18 of the Constitution, 1973. That this Honorable Court is empowered under Article 199 of the Constitution, 1973 to issue a writ of quo warranto against holders of public offices who are holding such office in violation of law, procedure, or judgments of this Honorable Court and the Honorable Apex Court. The Respondent

No(s) 2 to 09 are holding public offices and deal with matters wherein some sovereign power of the Government is being exercised under the authority of a Statute hence their appointments could only be made on open merit after issuance of advertisement and not based on favoritism and nepotism. That till date, Respondent No 1 and/or have failed to notify any procedure for appointment of chairperson and/or members of COC to ensure that they appoint persons to these important positions arbitrarily without issuing any advertisement. It is submitted that since these are public positions Respondent No 1 & 8 are bound to issue rules/regulations which prescribe the appointment procedure with the advertisement being an integral part of such rules/regulations. It is interesting to note that whilst COC Rules have been issued they do not deal with the appointment of members. Respondents No 1 & 8 cannot hide behind their failures and cannot be allowed to appoint persons arbitrarily in violation of well-settled principles of law and natural justice. That the appointments of members i.e. Respondent No(s) 2-7 in the Regional COC, Sindh have been made in a colorful exercise of power by the Respondent No. 1, and meritorious citizens have been deprived of the opportunity of competing for the post of a member of the COC which is a public office of great public importance. Such an unlawful exercise of power has resulted in infringement of fundamental rights of citizens to enter upon a lawful profession or occupation under Article 18 read with Article 4 which provides that every citizen be dealt with under the law. Moreover, an appointment to the COC is made by the Federal government and it is settled law that all Government appointments must be made after the proper advertisement. Hence the appointments of Respondent No 2 to 7 are illegal and liable to be set aside. The appointments and/or re-appointments of the Respondent No(s) 2-7 are illegal, arbitrary and in violation of Article(s) 2-A, 9, 10-A, 18, 19, 19A, 25 r/w 4 of the Constitution, 1973 and the same are a nullity in the eyes of law and liable to be set aside. That even otherwise the Respondent No 2 to 7 does not fulfill the eligibility criteria prescribed by the PEMRA Ordinance, 2002 since they are not citizens of eminence from the general public and as such, they cannot hold the posts of chairperson and/or members of the COC. In support of his contentions, he relied upon the decisions of the Honorable Supreme Court rendered in the cases of Muhammad Ashfaq Ahmed v. Ali Arshad Hakeem and others, **2013 PLC (CS) 1463**, Sohail Baig Noori v. High Court of Sindh through Registrar and 2 others, **2017 PLC (CS) 1142**, Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd. Tokht Bhai and 10 others, **PLD 1975 SC 244**, Muhammad Ali and 11 others v. Province of KPK through Secretary, Elementary and Secondary Education,

*Peshawar and others, 2012 §CMR 673, Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others, 1997 §CMR 1043.* He lastly prayed for allowing the instant petitions as prayed.

5. Mr. Ali Asadullah Bullo, learned Counsel for respondents No.2 to 9 in CP No. D-6644/2017 has raised the question of maintainability of the instant petitions inter-alia on the ground that the Petitioners have no locus standi to assail the appointments and postings in PEMRA; and, 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 Constitutional Petition; that the issues raised by the learned counsel for the Petitioner involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked; that the Petitioners have raised multiple frivolous grounds to harass private respondents ; that the Petitioners have not come with clean hands and not disclosed the true facts before this Court; that the respondents have sufficient experience and expertise in the relevant field to hold the post of Chairperson and Members of the COC PEMRA; that respondents are validly appointed by the Competent Authority under the law and fulfills all the codal formalities for the posts of Chairperson and Members of the COC PEMRA under the law; that the allegations of the Petitioners regarding violation of Rules and Regulations of respondent- PEMRA and infringement of their rights and other ancillary matters are baseless and Petitioners are put to strict proof thereof; therefore the same factual controversy cannot be resolved in the Constitutional Petition. Per learned counsel, anybody, who qualifies and has sufficient experience in the relevant field, can be appointed as Chairperson and Member of the COC PEMRA. Per learned counsel, the Competent Authority approved the appointments of private respondents.

6. Mr. Kashif Hanif, learned counsel for PEMRA, has supported the stance of the learned counsel representing the private respondents and raised the question of the maintainability of the instant Petition. However, he added that respondent- PEMRA is a Statutory Body and the appointment of the private Respondents is made by the competent authority under the law. He further added that respondents are well experienced and validly appointed by the Competent Authority for the posts of Chairperson and Members of the COC PEMRA, thus does not suffer from any inherent defect or disqualification, under the law, therefore the

instant Petitions are misconceived. He concluded by saying that the instant Petition is not maintainable under Article 199 of the Constitution.

7. Mr. Khaleeq Ahmed, learned DAG has adopted the arguments of the learned counsel representing PEMRA and raised the question of the maintainability of the instant Petitions.

8. We have heard learned counsel for the parties and perused the material available on record and case-law cited at the bar.

9. The pivotal questions involved in the present petitions are whether the appointment of the Chairperson and Members of the COC, Sindh PEMRA was unlawful since the said positions were never advertised and did not go through the competitive process; And whether the Chairperson and Members of the COC, Sindh PEMRA are the holder of public office; And whether they are amenable to the jurisdiction of this Court under Article 199 of the Constitution.

10. To go ahead with the aforesaid propositions, firstly, the appointment in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as a trustee with complete transparency as per the requirement of law so that no person who is eligible to hold such post, is excluded from the process of selection and is deprived of his right of appointment in service. In principle, the Constitutional requirement, inter alia, enshrined in Article 18 of the Constitution which enjoins that subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business includes the right of a citizen to compete and participate for appointment to a post in any Federal or a Provincial Government department or an attached department or autonomous bodies/corporations, etc. based on open competition, which right he cannot exercise unless the process of appointment is transparent, fair, just and free from any complaint as to its transparency and fairness. The above objective as enshrined in our Constitution cannot be achieved unless due publicity is made through a public notice for inviting applications with the aid of the leading newspapers having wide circulation; and if a person appointed to any office under the State without any advertisement is appointed in violation of the rights of other citizens to equality of opportunity in matters relating to appointment to any office under the State guaranteed to them under Article 27(1) of the Constitution, which provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the

ground only of race, religion, caste, sex, residence, or place of birth. The spirit of the said Article applies with equal force to appointments made in statutory bodies, autonomous bodies, and corporations owned and controlled by the Government. The Full Bench of the Hon'ble Supreme Court in the case of Munawar Khan v. Niaz Muhammad, **1993 §CMR 1287**, raised a voice of concern in such a situation and held that in future, all appointments shall be made after due publicity in the area from which the recruitments had to take place. Law to the said effect was also laid down by the Hon'ble Supreme Court in the case of Obaidullah v. Habibullah, **PLD 1997 §C 835**. The Honorable Supreme Court in the case of Lt. Col. (R) Muhammad Arif Zahid v. Azad Government of the State of Jammu and Kashmir, **2018 PLC (C.S.) Note 136**, a writ of quo warranto seeking the quashing of the appointment against the post of Director Armed Services Board for one year was allowed on the ground inter alia that the said post was not advertised before making the appointment. The Honorable Supreme Court in the case of Muhammad Muneer Malik v. Allama Iqbal Open University, **2016 PLC (C.S.) 896**, has held that the object of inviting applications from candidates through advertisements was to make certain that all eligible interested candidates might have an opportunity to compete for appointment through a fair and transparent selection process. On the aforesaid proposition, we are supported by the decisions of the Honorable Supreme Court in the cases of Watan Party & others v. Federation of Pakistan and others, **PLD 2012 §C 292**, Suo Moto Case No.24 of 2010, **2014 §CMR 484**, Suo Moto Case No.16 of 2011, Contempt proceedings against Chief Secretary, Sindh, and others, **2013 §CMR 1752** and Muhammad Bachal Memon and others v. Syed Tanveer Hussain Shah and others, **2015 PLC (C.S.) 767**.

11. It is well-settled law that if a public servant is appointed in violation of any provision of law, this Court under Article 199 (1) (b) (ii) of the Constitution, 1973 can look into the matter. Besides that the appointments are to be made by the Government in statutory bodies, autonomous bodies, semiautonomous bodies, regulatory authorities, etc. through the competitive process and not otherwise.

12. Adverting to the contentions of the respondents, the posts of Chairperson and Members of the COC PEMRA, are Public Office/Public Sector Posts, therefore, fall 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 its territorial jurisdiction holding or purporting to hold a Public Office to show under what authority of law he claims to hold that office. It is also clear that, while acting

under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of Public Office is not entitled and has no authority to hold the same.

13. With regard to the term public office, the Hon'ble Supreme Court in the case of *Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd. Takht Bhai and 10 others*, **PLD 1975 SC 244** has already defined this term with the observation that 'public office' is defined in Article 290 of the Interim Constitution as including any office in the Service of Pakistan and membership of an Assembly. The phrase 'Service of Pakistan' is defined, in the same Article, as meaning any service, post, or office in connection with the affairs of the Federation or of a Province and includes an All-Pakistan Service, any defense service and any other service declared to be a Service of Pakistan by or under Act of the Federal Legislature or of a Provincial Legislature but does not include service as a Speaker, Deputy Speaker or other members of an Assembly. The Hon'ble Supreme Court of Pakistan further held that performance of public duties which are of the greatest importance to the public interest.

14. To proceed further on the subject issue, it is essential to have a glance over the Council of Complaints as defined in Section 26 of The Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 which reads as under:

26. Council of Complaints.- (1) The Federal Government shall, by notification in the Official Gazette, establish Councils of Complaints at Islamabad, the Provincial capitals, and also at such other places as the Federal Government may determine.

(2) Each Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station established through a license issued by the Authority and render opinions on such complaints.

(3) Each Council shall consist of a Chairperson and five members being citizens of eminence from the general public at least two of whom shall be women.

(3 A) The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation.

(4) The Authority shall formulate rules for the functions and operation of the Councils within two hundred days of the establishment of the Authority.

(5) The Councils may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee for violation of the codes of programme content and advertisements as approved by the Authority as may be prescribed.

15. According to The Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010, (Rules-2010) Chairperson means the Chairperson of the respective Council; member means a member of the Council; and, Council means the Council of Complaints established under section 26 of the Ordinance.

16. The composition of the Council of Complaints has been provided in Rules 3, 8 & 10 which read as under:

**“3. Establishment of the Councils of Complaints:-** (1) There shall be established Councils of Complaints at Islamabad, the Provincial Capitals and at such places as the Federal Government may determine, for carrying out the functions under the Ordinance.

(2) The Councils shall work independently under facilitation by the Authority and their functions shall be coordinated by the Secretary to the Authority.

(3) The Councils shall take action on the complaints received against broadcast media or distribution service operators, as provided in the Ordinance and these rules.

**8. Filing of complaint and functions of the Councils:-** (1) any person aggrieved by any aspect of a program or advertisement may lodge a complaint before the Council or the authorized officer, in whose jurisdiction that programme of advertisement is viewed.

Provided that where a complaint is received by an authorized officer, the authorized officer shall place the same before the Council for consideration and further proceedings.

(2) A council or the authorized officer may issue summons to the operator against whom complaint has been lodged and to such other persons as may be deemed necessary for disposal of the complaint, and record their statements.

(3) Where summons are served to the operator or a person under sub-rule (2), and such operator or person fails to appear or provide his explanation on the date fixed in the summons the Council may proceed with the matter on the basis of the record available and make appropriate recommendation to the Authority.

(4) A Council shall also take cognizance of such matters as referred to it by the Chairman or the Authority and render its opinion thereon.

(5) A Council may recommend to the Authority appropriate action of censure, fine upto the limit prescribed in section 29 of the Ordinance, seizure, suspension or revocation of license against a broadcast media or distribution service operator or licensee for violation of the Ordinance, rules regulation, code of conduct for programmes and advertisements or terms and conditions of licence.



(6) A Council shall keep the Authority informed on the feedback and public response to the contents quality and impact of the programmes and advertisements broadcast or distributed.

10. Procedure upon recommendation by a Council:- The Authority shall take into consideration the recommendations made by a Council in each matter and may approve the recommendations or disagree with the recommendations, while recording the reasons in writing for the same, and pass such order as deemed appropriate, or refer the matter back to the Council for re-consideration if so considered necessary in the opinion of the Authority.”

17. In principle, the Office of the Chairperson and Members of the COC, Sindh PEMRA are Public Offices for the reason that Council of Complaint is being established by the Federal Government through an official gazette and its tenure is fixed for two years and shall be eligible for reappointment for a similar term as provided under rule 5 of Rules-2010. Besides that, they are also empowered to take cognizance of such matters as referred to it by the Chairman of the Authority; they are also empowered to summon to the operator or a person under sub-rule (2) of rule 8 of Rules-2010; they are also authorized to make appropriate recommendation to the Authority, for that reason, they are amenable to the jurisdiction of this Court under Article 199 of the Constitution. So the arguments of the learned counsel for the private respondents that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the private respondents is not sustainable in law and the Petitions are maintainable under Article 199 of the Constitution.

18. From the foregoing position and the material placed on record by the parties, we have noticed that when the statute does not lay down the method of appointment or term of appointment and when the Act specifies that the appointment is one of sure tenure, the Appointing Authority who has the power to appoint, has absolute discretion in the matter; and it cannot be said that discretion to appoint does not include the power to appoint on fix tenure basis.

19. The assertion made by the learned counsel for the petitioners that the appointment of the private respondents is bad for the reason that they were not appointed in a transparent process. Be that as it may, since the tenure of the private respondents has already been completed as informed by the respondent-Counsel, therefore, at this juncture no further action is required in terms of their appointment as Chairman and Members of COC. In addition to the above, prima-facie, their appointment as Chairperson and Members of the COC PEMRA is not a post in Government service but of an Autonomous Statutory body governed under the

PEMRA Statute 2007 and rules framed thereunder in 2010 as discussed supra. Primarily, a temporary/tenure assignment remains temporary and does not become permanent by efflux of time, therefore at this juncture; we are not inclined to hold that the private respondents are facing inherent disqualification to hold the subject posts in violation of law; and, as nothing has been brought on record opposing to that position to take the contrary view as discussed supra. However, in the future, the appointment of Chairperson and Members of the COC PEMRA is required to be made after advertising the positions and observing all the codal formalities as provided under the law.

20. To dilate upon the issuance of the writ of Quo-Warranto, the law on the subject is well settled that the High Court in the exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a Writ of Quo Warranto. The jurisdiction of the High Court to issue a Writ of Quo Warranto is a limited one that can only be issued when the appointment is contrary to the statutory rules of service. It is settled law by a catena of decisions that the Court cannot sit in judgment over the wisdom of the competent authority of Government in the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. In our view in such a situation, issuing a Writ of Quo Warranto would not be feasible, when nothing has been brought on record that there is a violation of law in the appointment of the private respondents. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of *Muhammad Liaquat Munir Rao v. Shams-Ud-Din and others* (2004 PLC (C.S.)1328, *Dr. Khalil ur Rehman v. Government of Punjab through Chief Secretary, Punjab and 5 others* (2015 PLC (C.S.)793).

21. Even, prima-facie the appointment of private respondents has not caused any prejudice or damage to the petitioners. Since they performed their duty assigned to them under PEMRA law. Merely putting allegations and counter-allegations would not serve the purpose, as this court lacks the jurisdiction to entertain such disputed questions of facts in Constitution Petition, however, the competent authority has to take care of the genuine grievances of the petitioners under the law within a reasonable time. Even it is well-settled law that if a 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 petitioners on the aforesaid analogy for the reasons discussed in the preceding paragraphs.

22. In the light of facts and law discussed above, the appointment of private respondents does not seem to suffer from any inherent defect under the law, warranting interference by this Court in Constitutional Jurisdiction.

23. The above discussions lead us to the conclusion that the instant petitions are entirely misconceived and are dismissed along with the pending application(s) with no orders as to cost. However, the petitioners are at liberty to approach the competent authority for redressal of their grievances if they feel that their cause of action still subsists against the show cause notices; and/or against the private respondents.

JUDGE

JUDGE

Nadir\*