

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 6218 of 2020

Dr. Faraz Ahmed Wajidi

Petitioner

through : Ms. Fareeda Mangrio, advocate.

Respondent No.1

through : Mr. Ali Safdar Depar, AAG

Respondents 2, 3 &4

Through : Mr. Abdul Sattar Pirzada, advocate.

Date of hearing : **07.09.2021**

Date of judgment : **13.09.2021**

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner has prayed for issuance of the writ of quo warranto against respondents 3, 4, and 5 to vacate the offices of Director, Assistant Professor, and Associate Professor, respectively, of the Institute of Business and Health Management (**IBHM**), Dow University of Health Sciences, Karachi, (**DUHS**) on the ground that they are not qualified to hold the aforesaid offices, either due to lack of experience and they have crossed the age of superannuation; hence, their appointments are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

2. Ms. Fareeda Mangrio, learned counsel for the petitioner, has submitted that the private respondents are holding public office posts which fall within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution, 1973. She added that they were appointed 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 annulled. Learned counsel has

further argued that the petitioner has been appointed as Associate Professor lawfully after qualifying the criteria for that post in accordance with the Higher Education Commission of Pakistan (HEC) Rules and was also appointed as Chairperson Marketing and Management vide Memorandum dated 31.7.2019 for three years or till retirement, as such is entitled to hold the position of Chairperson Marketing & Management Department and could not be removed from the said position arbitrarily and illegally by the orders of respondent No.3; that the act of respondent No.3 removing the petitioner from the position of Chairperson Marketing IBHM thereby appointing respondent No.4 as Head of Department Marketing was/is arbitrary, unlawful and illegal. Learned counsel also attacked the basic appointment of respondent No.3 and argued that respondent No.3 is not qualified to hold a public office of Director of IBHM of DUHS for multiple reasons; that as per Public Notice available as *Annexure-`E`* along with Counter affidavit filed on behalf of respondents 2, 3 & 4, for the appointment of Director IBHM, the qualification and age is provided as maximum age 60 years, whereas the respondent No. 3 is above 68 years of age. Per learned counsel, respondent No.3 does not belong to the faculty of the respondent-university and has no Ph.D. degree in Health Management/Administration, Health Economic, or any health-related specialization with an MBA in the core discipline of Business Administration, therefore, he could not hold the said post; that his appointment is called in question under Article 199 (1) (b) (ii) of the Constitution of Islamic Republic of Pakistan 1973, being a holder of Public Office without lawful authority; that Honorable Supreme Court has held in its various pronouncements that no retired Government/Public Officer is to be appointed on contract basis and those who have been posted on contract basis should be de-notified immediately in all the Government

Departments or even working in any Authority. She further argued that respondent No.3 attained the age of superannuation long ago as such he could not be allowed to continue in DUHS as Director. She further contended that there are specific directions of Hon'ble Supreme Court (supra) in respect of re-employment of retired employees on a contract basis; and, the said practice has been deprecated by the Hon'ble Apex Court. Therefore, respondent No.3 has no vested right to continue as Director of IBHM of DUHS. She lastly prays for the issuance of Writ like quo-warranto against private respondents to meet the ends of justice. In support of her contentions, she relied upon the directives contained in the judgments of the Honorable Supreme Court reported as *Contempt Proceedings against Chief Secretary Sindh* (2013 SCMR 1752) and *Ali Azhar Khan Baloch vs Province of Sindh* (2015 SCMR 456).

3. Mr. Abdul Sattar Pirzada, learned counsel for the private respondents, has filed counter-affidavit and controverted the allegations leveled against them and took the plea that the Petitioner has no *locus standi* to assail their appointments and postings in DUHS; and, 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 as an 'aggrieved person' in terms of Article 199 of the Constitution of Islamic Republic of Pakistan to agitate any bona fide grievance, which even otherwise is suffered from laches for long period as the Petitioner has remained silent for 2 years to approach this Court, therefore he has no case at all to invoke the Constitutional Jurisdiction of this Court, through the instant Constitutional Petition; that a writ of quo warranto is not available to one set of Civil/Public Servants against another set of Civil/Public Servants and if a colleague is allowed to challenge another colleague's appointment, there would be no end to this;

there will be anarchy in the Service structure; 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 Petitioner is employee of respondent-university and is governed by Master and Servant relationship; therefore Writ Petition is not maintainable against the private respondents; that the Petitioner has raised multiple frivolous grounds to harass private respondents ; that the Petitioner has not come with clean hands and not disclosed the true facts before this Court; that the respondent No.3 has sufficient experience and expertise in the relevant field to hold the post of Director; that respondent No.3 is validly appointed by the Competent Authority under the law and fulfills all the codal formalities for the post of Director under the law; that the allegations of the Petitioner regarding violation of Rules and Regulations of respondent-university and infringement of his rights and other ancillary matters are baseless and Petitioner is put to strict proof thereof; therefore the same factual controversy cannot be resolved in the Constitutional Petition. Per learned counsel, anybody, who qualifies and having sufficient experience in the relevant field, can be appointed as Director, and there is no cap of upper age limit in the Rules and Guidelines issued by the Competent Authority. However, he further added that a summary for the appointment of Director was floated for and the Competent Authority approved the same. Consequently, Office Order dated 6.4.2019 was issued by the competent authority which is issued under the law. In support of his contentions, he relied upon the cases of Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and others (2008 SCMR 960), Allauddin Abbasey v. Province of Sindh through Chief Secretary, New Sindh Secretariat, Karachi and 3 others (2010 PLC (C.S.) 1415), and Abdul Sami Memon and 8

others v. Federation of Pakistan, through Secretary Establishment Government of Pakistan and 5 others (2020 PLC 125). He lastly prayed for the dismissal of the instant petition.

4. Mr. Ali Safdar Deeper, learned AAG, 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-university is a Statutory Body and the appointment of the private Respondents is made by the competent authority under the law. He further added that respondent No 3 is well experienced and validly appointed by the Competent Authority for the post of Director of IBHM of DUHS, thus does not suffer from any inherent defect or disqualification, under the law, therefore the instant Petition is misconceived. He concluded by saying that the instant Petition is not maintainable under Article 199 of the Constitution.

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

6. In the first place, we would like to examine the issue of the maintainability of the instant Petition under Article 199 of the Constitution.

7. The post of Director of IBHM of DUHS, as well as the posts of Assistant/Associate Professor, are Public Office/Public Sector Posts, therefore, fall within the Purview of Sub-Clause (1)(b)(ii) of the Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within its territorial jurisdiction 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. The Office of the Director of IBHM of DUHS is a Public Office and for that reason, he is 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 Petition is maintainable under Article 199 of the Constitution and could be heard and decided on merits.

8. The caption petition has raised substantial questions of law involving interpretation of the certain provisions of *The DOW University of Health Sciences Act, 2004* (**Act-2004**) and the Dow Employees (Service) Statute, 2007, and the principles governing the Writ of *Quo Warranto* as well as the power of the syndicate/competent authority of respondent-University to make a contractual appointment under the Act-2004 as amended up-to-date and Service Statute 2007.

9. While keeping in view of above principle, we have examined this case minutely as to whether the private respondent No.3 meets the qualification for the post of Director IBHM or otherwise. For convenience sake, an excerpt of public notice concerning the appointment of Director IBHM is as under:

*“The applicant must possess a relevant Ph.D. in Health Management/Administration, Health Economics or any health-related specialization with an **MBA in the core discipline of business administration from an international or HEC recognized institution, with a minimum of 15 years relevant work experience in a recognized/accredited institution, 8 years of which should be at the senior management level.***

The applicant must exhibit teaching and administrative experience in an accredited institution and have demonstrated the capability to engage in research with current publications of relevance to healthcare practitioners. The applicant must be

experienced in forming educational collaborations with the institute's objectives with the overall University's Mission and Vision. The ideal candidate must be thoroughly familiar with the process for implementing activities to fully meet the requirements of accreditation.

Age: *Not less than 35 years up to **60 years of age** (Age relaxation can be given upon selection by the Board)*

Appointment Type: BPS 21 or Contract, as per the discretion of the Selection Board.

10. In the instant case, the power to appoint the Director of IBHM of DUHS is vested with the Syndicate of respondent-university under section 22 of the Act. Neither the Act nor the Service Statute 2007 prescribed any mode of appointment on a contract basis. However, Clauses 12 & 13 of Service Statute 2007 provides the appointment on contract basis/re-employment as under:

“12. The appointing authority may engage, on a contract basis, technical or professionals as consultants or advisors or persons possessing any specialized skill or experience or retired or superannuated employees on such terms and conditions as may be determined.

13. A retired employee shall not ordinarily be re-employed unless such re-employment is in the interest of the university and is made with the prior approval of the authority next above the appointing authority.”

11. We have also noticed that relaxation of age of upper age limit is also provided in Service Statute 2007 for the post, candidates for the post in BPS-17 and above which may be relaxed up to the extent of 05 years by the Syndicate. We have also noticed that the Dean of Faculty is required to be appointed by the Chief Minister on the recommendation of the Vice-Chancellor from amongst the three senior-most Professors in the Faculty for three years under the Statute as discussed supra. At this stage, learned counsel for the private respondents has pointed out that the Syndicate of DUHS in its 80th meeting held on 30.11.2019 validated/approved the recommendation made by the Selection Board of the DUHS in

respect of the appointment of respondent No.3 as the Director of IBHM of DUHS and his appointment is duly approved by the Competent Authority on merit after fulfillment of all requisite formalities.

12. However, we have examined this controversy, whereby such allegations as put forward by the petitioner are denied by learned counsel for the private respondents about personal bias with the petitioner on the disciplinary matters. The record reflects that respondent No.3 has Master Degree in Pharmacy and Business Administration and he was also awarded Doctorate in Philosophy (Ph.D.) from a Centre of Excellence, having a professional career and served as Senior Managerial and Executive positions at multinational pharmaceutical companies, the hospitals and WHO UNICEF run projects and he also served as the Director Centre for Executive Education at Institute of Business Administration. The record further reflects that after the interview and evaluation based on consensus, respondent No.3 was selected for the post of Director of IBHM of DUHS for three years contract basis.

13. At this juncture, we have been informed that respondents No.4 & 5 are also qualified and experienced people to hold the subject posts of Assistant and Associate Professors having the requisite Degree and experience in the relevant field. In this regard, learned counsel referred to paragraphs 11 & 12 of the counter-affidavit and relied upon the CVs of the private respondents and submitted that the instant petition is based on personal vengeance as depicted from the memo of the petition, as such he wants to settle his score, thus is liable to be dismissed. Be that as it may, when the mode of appointment on the contract basis has been left to the discretion of the competent/appointing authority/Selection Board by the Act-2004; and, Service Statutes 2007 make it clear

that the Director of IBHM of DUHS shall hold office for a certain period and the public notice for the subject post explicitly provides that appointment in BPS-21 or contract as per the discretion of the Selection Board. In our view, the evaluation made by an Expert Committee of respondent-university ought not to be easily interfered with by this Court which does not have the necessary expertise to undertake the exercise that is necessary for such purpose. It is a settled proposition that the competent authority, within its power to make its assessment, has to assess the candidature of a candidate for regular appointment or on contract basis, on case to case basis. On the aforesaid proposition, we are fortified with the decision of the Honourable Supreme Court in the case of Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 SCMR 157). In the instant case, prima-facie, the competent authority has assessed the candidature of the private respondents and appointed them in the respondent-university, which does not require interference at our end.

14. Besides above, the minutes of the meeting of the Selection Board of DUHS held on 02.3.2019 explicitly show that detailed deliberation took place for the appointment of the private respondents for the subject posts on a contract basis for a certain period which is going to end after its expiry.

15. 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 contract basis.

16. The assertion made by the learned counsel for the petitioner that the appointment of the private respondents is bad for the reason because they lack the qualification prescribed for the subject posts is wholly contrary to law particularly when the Act and the statutes do stipulate the tenure of appointment on contract. Prima-facie, their appointment as Director of IBHM, Assistant Professor, and Associate Professor of DUHS is not a post in Government service but of an Autonomous Statutory body governed under the Statute 2007 as discussed supra. Primarily, a temporary/contract appointment remains temporary/contractual 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.

17. Coming to the subject issue, primarily, Clause 1(3) of Service Statutes 2007 provides that these statutes shall not apply to casual work-charged staff with less than three years' service and persons employed on contract with the University who will be governed by the terms and conditions of their appointments. There was not even a pleading that the private respondent No.3 does not have experience in administration and capacity in management matters. Prima-facie, the appointment of the private respondents has been made by the competent authority in the exercise of powers conferred on it by the service statute 2007.

18. 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. Basically, the jurisdiction of the High Court to issue a Writ of Quo Warranto is a limited one which 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).

19. Even, prima-facie the appointment of private respondents has not caused any prejudice or damage to the promotion prospects of the petitioner. If the petitioner has been removed from the position of chairperson that is to be looked into by the competent authority of the respondent university. 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 petitioner in accordance with law within a reasonable time. Even 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.

20. In the light of facts and law discussed above, the appointment of private respondents do not seem to suffer from any inherent defect under the law, besides the Petitioner has also failed to point out any legal flaw in the process relating to the appointment of the private respondents, warranting interference by this Court in Constitutional Jurisdiction.

21. The above discussions lead us to the conclusion that the instant petition is entirely misconceived and is dismissed 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.

JUDGE

JUDGE

Nadir*