

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-1288 of 2022**

Abdul Shakoor Khan  
Petitioner through : Nemo

Respondents 1 to 6  
Through : Mr. Ali Safdar Depar, AAG

Respondent No.7  
Syed Mohammad Azeem Shah  
Through : Mr. Sajjad Ahmed, advocate

Date of hearing  
& order : **16.05.2022**

**ORDER**

Through this petition, the petitioner has prayed for issuance of the writ of quo warranto against respondent No.7 to vacate the office presently he is holding, on the ground that he is involved in mega corruption and corrupt practices in the Information Department, Government of Sindh, thus not qualified to hold the public office.

2. The case of the petitioner, as per his pleadings is that he is interested in public interest litigation to secure the rights of the public at large and has called in question the vires of the notification dated 15.06.2021 about the posting of respondent No.7 as Director Information (BPS-19) Advertisement, Information Department Government of Sindh, *inter alia*, on the ground that he is facing NAB inquiry vide call up notice dated 20.10.2020, thus he is not entitled to hold the public office against whom there are charges of corruption and corrupt practices. Further, the private respondent in connivance with the Government officials is causing colossal loss to the public exchequer being a holder of public office, thus immediate indulgence of this court is required to stop such loss to the government kitty. Petitioner has averred that the official respondents are reluctant to take disciplinary action against the private respondent under Rule 5 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 as they are hand in glove with each other.

3. We asked the learned AAG whether a civil servant who is facing NAB inquiries / criminal cases is entitled to undertake financial matters.

4. Mr. Ali Safdar Depar, learned AAG pointed out that the petitioner has attempted to withdraw the instant petition vide his statement dated 20.04.2022, *inter-alia*, on the ground that due to some bonafide technical mistake in the memo of the petition, however, his request was declined by this court vide order dated 21.04.2022 on the analogy that this is a writ of quo warranto and it is in between the informer and the Court and this court, in principle, has to see the legality and propriety of the posting

order of respondent No.7 in Information Department, Government of Sindh and the matter needs to be decided on merits.

5. Learned counsel for respondent No.7 has raised the question of maintainability of the instant petition on the premise that no documentary proof has been placed on record to substantiate the allegations leveled against respondent No.7 by the petitioner. Learned counsel further submitted that no investigation or inquiry is pending against the respondent No.7 before NAB authorities or Provincial Anti-Corruption Department; that the petitioner has filed the instant petition with greed to extort *Bhatta* from respondent No.7; that the allegations require evidence to be produced by the petitioner; that the instant petition is filed to harm the reputation and mental peace of the answering respondent. He further submitted that the malice of the petitioner is prima facie appearing in the matter; that the petitioner being a cheater/blackmailer does not deserve any relief whatsoever from this court. He prayed for dismissal of the instant petition with cost.

6. Learned AAG while referring to the para-wise comments of respondent No.5, submitted that respondent No.7 is not facing inquiries in NAB or Anti-Corruption and the petitioner has wrongly mentioned "*Sindh Government Digital Advertisement Policy, 2021*" which does not exist; that there are no complaints of corruption and corrupt practices against the respondent No.7 on the basis action can be taken against him at departmental level; that respondents 1 to 6 are working fairly, impartially and strictly in accordance with Rules of Business 1986; that respondent No.7 is Senior Director of BPS-19 having 32 years of service at his credit and he is qualified /entitled to hold the post / office as per rules, therefore, his posting was made by the competent authority vide notification dated 15.06.2021; that allocation, distribution and utilization of funds is being made in accordance with law, financial rules and under the provisions of Advertisement Policy 2015, duly approved by Government of Sindh and Standard Operating Procedure as per the guidelines of Finance Department, Government of Sindh; that all payments are being made after proper verification of the claims of media as per provisions of approved Advertisement Policy 2015 and recommendations made by the Scrutiny Committee headed by Director General (Public Relations); that no officer has been posted in Information Department on OPS basis; that petitioner has failed to provide any concrete evidence on the allegations levelled by him. Finally, he submitted that only call-up notice from the NAB has been served upon the private respondents, which cannot be construed as NAB Reference to non-suit him from the present postings. He prayed for dismissal of the instant petition. For convenience sake, an excerpt of the call up notice dated 29.10.2020 is reproduced as under:

"Subject: **Call up Notice u/s 19 read with 27 of NAO, 1999- Inquiry against Officers/Officials of Information Department, Govt of Sindh & others**

1. Whereas the competent authority has taken the cognizance of an offense committed by Officers/Officials of information Department, Govt of Sindh and Others under the provisions of NAO, 1999.

2. Whereas, the subject Inquiry has revealed that your office in possession of Information/evidence whatsoever, which relates to the commission of said offence.

3. In view thereof, you are requested to direct the following officers of your department to appear on **04<sup>th</sup> November 2020 at 1100 Hours at NAB Karachi, PRC§ Building 197/5, Dr Daudpota Road, Karachi Cantonment** before the Combined Investigation Team (CIT) headed by Asif Raza (CO-B) IW-1 along with record/information in support of their statement regarding awareness campaigns carried out by Sindh Information Department In electronic media (TV/Radio) during the period from 1<sup>st</sup> July 2015 to 30<sup>th</sup> June 2018.

Sr#	Name of Officer	Designation
1.	Syed Wajahat	The then Director General
2.	Yasmeen Memon	The then Director
3.	Nazeer Ahmed Shaikh	Section Officer (G)
4.	Altaf Hussain Memon	Section Officer (G)
5.	Moez-ud-Din Pirzada	The then Deputy Director, Building
6.	Imtiaz Jyo	The then Deputy Director, Advt
<b>7.</b>	<b>Azeem Shah</b>	<b>The then Deputy Director, Billing</b>
8.	Yousuf Kaboro	The then Deputy Director, Advt
9.	Aziz Ahmed Hakro	The then Deputy Director, Billing
10.	Sarwar Samejo	The then Deputy Director, Billing
11.	Sarang Latif Chandio	The then Deputy Director, Advt
12.	Danish Memon	The then Deputy Director, Advt
13.	Farhat Janvri	The then Deputy Director, Advt
14.	Zafar Mallah	The then Deputy Director, Advt

4. Officers concerned may be advised that failing to comply with this notice, may entail penal consequences as provided in S.2 of the schedule of NAO, 1999.”

7. We have heard the learned counsel representing the respondents and perused the pleadings of the petitioner and other material placed on record by the respondents.

8. About the maintainability of the public interest litigation in service matters except for a writ of quo warranto, there are a series of decisions of the Honorable Supreme Court laying down the principles to be followed.

9. Primarily, the writ of quo warranto is not a substitute for writ of Mandamus or injunction nor an appeal or writ of error and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. Principally, information like quo warranto does not command performance of official functions by any officer to whom it may run, since it is not directed to the officer as such, but to the person holding office or exercising the franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed.

10. There is no dispute regarding the legal proposition that the rights under Article 199 of the Constitution can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in the public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with

the development of constitutional law and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to have the source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi. Besides that the jurisdiction of this Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by a usurper without any legal authority.

11. In principle the person who approached the Court by way of public interest litigation is not a competitor for the subject post, he is a social worker and there is a difference between personal interest or individual interest on the one hand and interest on a citizen as a realtor to the Court on the other. The principle of the doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept of good governance are not thrown to the winds. However, we may observe that if a writ of quo warranto is filed for the purposes discussed supra, the petition can be heard and decided on merit and the matter cannot be left at the wish and will of the petitioner/informer to file and subsequently withdraw the same for the extraneous reasons and it is for the Court to take cognizance of the matter and take the decision under the law if the appointment of any civil/public servant is against the parameters set forth under the law and the Constitution.

12. Primarily, the Government was/is under a constitutional obligation to protect the fundamental rights of the public at large as per the judgment of the Hon'ble Supreme Court in the case of Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others, (PLD 2012 SC 132). The Superior courts are bound to protect the fundamental rights of citizens in the exercise of the jurisdiction conferred via Article 199 of the Constitution. The Honorable Supreme Court in the case of Action against the Distribution of Development Funds by the Ex-Prime Minister (PLD 2014 Supreme Court 131), has settled the aforesaid proposition, after a detailed consideration of the different Articles of the Constitution of the Islamic Republic of Pakistan and the applicable rules.

13. In the present case, the record reflects that the NAB authority is inquiring about allegations concerning awareness campaigns carried out by the Sindh Information Department in Electronic Media (TV/Radio) during the period from 1<sup>st</sup> July 2015 to 30<sup>th</sup> June 2018 and the respondent department has been releasing certain public money for the purpose discussed supra, however, that is required to be released under justiciable reasons under the law.

14. Respondent No.7 being an officer of Admin and Accounts Information Department has been transferred and posted in Information Department (Advertisement) vide notification dated 15.6.2021 for that NAB has already taken cognizance of the offense committed by officers/officials of Information Department, Government of Sindh and others under the provisions of NAO, 1999 and it is for them to decide under the law if the cognizable offense is committed by the delinquent officials.

15. In view of the above, we find it necessary to clarify that the credibility of every single official (public /civil servant) is of equal importance regardless of his/her grade because every government department is like a '**machine**' where every single part has to work *honestly* and *diligently* thereby making '**smooth functioning of the machine**'. Only this shall ensure ease and help in achieving the object of establishment of such department(s) which, *normally*, was/is believed for the public at large or a particular class of the public. We, in the circumstances of the case, direct the Government of Sindh to ensure that a civil/public servant who is facing NAB proceedings/reference based on moral turpitude before the learned Accountability Courts shall not be allowed to carry out financial undertakings in any manner of whatsoever nature.

16. In the present case, the petitioner has not placed any material or highlighted in what way the private respondent is indulged in massive corruption and corrupt practices and if public interest litigations at the instance of strangers are allowed to be entertained by this Court, the very object of speedy disposal of service matters would get defeated. In our view, except for a writ of quo warranto, public interest litigation is not maintainable in service matters.

17. For the reasons mentioned hereinabove as also because of the law laid down by the Hon'ble Supreme Court in a catena of decisions on the subject issue, we dispose of the instant petition along with the pending application(s) in terms of observations made hereinabove. Let a copy of this order be transmitted to the Chief Secretary, Sindh, and Secretary, Information Department, Government of Sindh, for compliance.

**J U D G E**

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