

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-857 of 2021

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

- Petitioner : Shah Muhammad Zaman,
Advocate in person.
- Respondent No.1 : Muhammad Sajid Jokhio MPA
PS-87 Malir/Member Provincial
Assembly Sindh, Vice
Chairman, Water & Sewerage
Board, Karachi through
Shahryar Ibrahim Soho and
Ms. Farzana, Advocates.
- Respondents No.2 : Election Commission of
Pakistan through Provincial
Election Commissioner Sindh.
- Respondents No.3 : Province of Sindh through
Chief Secretary.
- Respondents No.4 : Secretary Law & Parliamentary
Affairs Department,
Government of Sindh.

Through Ms. Leela Kalpana
Devi, Additional Advocate
General, Sindh alongwith
Sarmad Sarwar, Law Officer.
- Respondent No.5. : Managing Director, Karachi
Water & Sewerage Board
through Waleed Khanzada,
Advocate.
- Date of hearing : 08.12.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner seeks that the Respondent No.1 be disqualified as a member of the Provincial Assembly of Sindh on the touchtone of Article 63(1)(e) of the Constitution, in view of his appointment as Vice Chairman of the Karachi Water & Sewerage Board ("**KWSB**").

2. The backdrop to the matter is that the Respondent No.1 contested the General Election in year 2018 and was elected as a member of the Provincial Assembly from the constituency of PS-87 (Malir) Karachi. Subsequently, he was appointed as Vice-Chairman of the KWSB vide a Notification dated 14.05.2019 issued by the Local Government & Housing Town Planning Department of the Government of Sindh, which reads as follows:

"GOVERNMENT OF SINDH
LOCAL GOVERNMENT & HOUSING TOWN
PLANNING DEPARTMENT

Karachi Dated the, 23rd September, 2021

NOTIFICATION

No.LG/SO-VII/7-9/KW&SB/1996:- In pursuance of the decision taken in the Cabinet meeting held on 30.04.2019 under the Chairmanship of Chief Minister Sindh Mr. Muhammad Sajid Jakhio, Member, Provincial Assembly Sindh, PS-87, Malir-1, Karachi is hereby appointed as Vice Chairman Karachi Water & Sewerage Board with immediate effect.

(KHALID HYDER SHAH)
SECRETARY TO GOVT. OF SINDH

3. Proceeding with his submissions, the Petitioner, appearing in person, submitted that such appointment of the Respondent No.1 attracted the disqualification envisaged under Article 113 read with Article 63(1)(e), of the Constitution, which provide that:

“113. Qualifications and disqualifications for membership of Provincial Assembly.

The qualifications and disqualifications for membership of the National Assembly set out in Articles 62 and 63 shall also apply for membership of a Provincial Assembly as if reference there into "National Assembly" were a reference to "Provincial Assembly.”

“63. Disqualifications for membership of Majlis-e-Shoora (Parliament):

(1) A person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (Parliament), if-

...

(e) He is in service of any statutory body which is owned or controlled by the Government or in which the Government has a controlling share or interest;”

4. He submitted that the KWSB is a statutory body established through the Karachi Water & Sewerage Board Act, 1996 (the “**Act**”), hence the appointment of the Respondent No.1 as its Vice Chairman rendered him liable to disqualification as a member of the Provincial Assembly. As such, with reference to the prayers advanced he sought that directions be issued to the Respondent No.2, being the Election Commission of Pakistan, to issue a Notification for disqualification of the Respondent No.1 from membership of the Provincial Assembly and for a bye-election to then be held in respect of PS-87 Malir in accordance with the electoral laws. Furthermore, it was also sought that directions be issued for initiation of an enquiry as to the pay, allowances and benefits received by Respondent No.1 as an incidence of his holding the particular post and for action to be taken against the officials of the Sindh Government responsible for making the appointment.

5. On the other hand, learned counsel appearing on behalf of the Respondent No.1 and on behalf of the Respondent No. 5, being the Managing Director of the KWSB, submitted that the appointment of the Respondent No.1 was statutory and had been made by the Provincial Government in terms of Section 4(1) of the Act, without him having sought or applied for the post as a means of employment. They submitted that such appointment had been honorary, without any remuneration or perks/privileges, and had even otherwise been brought to an end on 23.09.2021 through a subsequent Notification of that date whereby another person was appointed to the post. On that basis, they argued that the appointment of the Respondent No.1 to the post of Vice Chairman did not place him “in service of” the KWSB.

6. In view of such a stance as to the honorary nature of the post having earlier been raised by the Respondents Nos. 1 and 5, they had been directed to submit their personal affidavits in that regard vide an Order dated 26.10.2022, which reads as follows:

“The case sought to be advanced by the petitioner gravitate, around Article 113 read with Article 63(1)(e) of the Constitution of the Islamic Republic of Pakistan, 1973, with it being alleged that the Respondent No.1, who is an elected member of the Provincial Assembly, ought to stand disqualified by virtue of having accepted an office in the service of the KW&SB. While no counter affidavit has been filed as yet on behalf of either Respondent No.1 or the KW&SB / Respondent No.5. Learned counsel appearing on behalf of said respondents jointly contend that notwithstanding the notification dated 14.5.2019 whereby the Respondent No.1 was appointed as Vice Chairman of the Respondent No.5, such appointment would not amount to his being in “service” as according to them no remuneration was payable or received and no perks and benefits were to be provided or availed. Before we examine the contention further, let a categorical affidavit in this regard firstly be filed by the Respondent No.1 as well as by the M.D. of KW&SB / Respondent No.5 on or before the next date.”

7. The requisite Affidavits were then duly submitted, whereby it was categorically stated by the Respondent No.1 that he had not drawn any salary from the KWSB or received any perks/privileges by virtue of his appointment as its Vice-Chairman, and by the Respondent No.5, stating inter alia:

“1. ...

2. That I say that Vice Chairman, Karachi Water & Sewerage board (KW&SB) is appointed by the Government under Section 4 of the KW&SB Act, 1996 and is a member of the board along with other members & power of the vice chairman of the KW&SB Board is limited to as defined under Section 6 (2) of the KW&SB ACT 1996.

3. I say after verification from the record that the post of Vice Chairman is honorary in nature and neither KW&SB has ever paid any salary to the Respondent No.1 nor the Respondent No.1 was employee of the KW&SB.

4. ...”

8. On examination of the matter, it falls to be considered that as per Section 4 (1) of the Act, the post of Vice Chairman is filled by way of an appointment made by the Provincial Government, with Section 4(3) clarifying that the appointee “shall hold office at pleasure of Government”. The statutory scheme thus reflects and reinforces the honourary nature of the appointment, and that the same is not tantamount to being “in service” *per se*. Indeed, if such an appointment were to automatically trigger Article 63(1)(e), it would arm the Government with a means to orchestrate the disqualification of any legislator, simply by notifying him against the post.

9. As such, the Petition is found to be misconceived, and stands dismissed accordingly.

JUDGE

CHIEF JUSTICE