

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-7523 of 2022

Atif Ghias

Petitioner: Through Mr. G.M Bhutto, advocate

Respondent No.1&2: Through Mr. Abdul Jalil Zubedi, AAG

Respondent No.3: Through Mr. Sadar-u-ddin Buriro, advocate

Respondent No.4: Through Mr. Abdul Rauf Malik, advocate

Date of hearing
& Decision: 25.01.2023.

ORDER

This is a petition for the issuance of the writ of quo warranto under Article 199 (1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, filed by Atif Ghias against Abdul Nadeem Qureshi, respondent No.4, challenging therein his re-assignment of duties as Director (Civil) Engineering Cell vide order dated 06.12.2022, inter-alia on the ground that he does not possess the criteria/qualification as required for the post of Director (Civil) Engineering Cell, with the prayer to declare his posting on the aforesaid post as illegal, violative of law laid down by the Honorable Supreme Court in the case of Maula Bux Shaikh and others Vs. Chief Minister Sindh and others (2018 SCMR 2098). Petitioner has prayed as under:-

- i. Declare that the act of the official respondents through impugned Order dated 06.12.2022 for transferring Abdul Nadeem Qureshi in Engineering Cell is illegal, unlawful, unfair, unconstitutional, mala fide arbitrary, and violative of dictum rendered in judgment reported as 20196 PLC (CS) 282.
- ii. A prohibitory writ be issued against the official Respondents, their agents, employees, Directors or anybody acting under their control or on their behalf from implementing the Impugned Order dated 06.12.2022.”

2. Mr. G.M Bhutto learned counsel for the petitioner has submitted that the impugned order 06.12.2022 is against the clear violation of the judgment of the Hon'ble Supreme Court as discussed supra, hence liable to be set aside by this Court. Learned counsel alleged that respondent-Abdul Nadeem Qureshi is neither a qualified person nor fit and proper person to perform Engineer work/nature and as per the provision of the PEC Act, 1976 and as per Byelaws of Pakistan Engineering Council he does not possess the required qualification. Per counsel, he also does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act, therefore, the posting of the Abdul Nadeem Qureshi through impugned order in Engineering Cell is unlawful, illegal, void abinitio and liable to be set aside out rightly. Learned counsel submitted that the Apex Court in the plethora of case laws went on to hold that when the law requires doing anything in a particular manner, then it must be done in that manner only and any other manners of doing such act could not be permitted; that the official respondents have not acted in just, fair and objective manner as they have transferred him in Engineering Cell which is unwarranted under the law. Learned counsel contended that the impugned actions of the respondents are violative of section 24A of the General clauses Act, 1897 in as much as the respondents failed to advance any cogent reasons for transferring the private respondent to Engineering Cell.

3. Learned counsel for the respondents has sought time to file comments, however, the request so made has been strongly objected to by the petitioner who insisted upon hearing this case prematurely without the filing of comments. Prima-facie, the conduct of the petitioner is uncalled for. However, we have heard the learned counsel for the petitioner on the maintainability of the instant petition and perused the record with his assistance.

4. In the instant case, without hearing the other side on the subject issue is against the principle of natural justice which is firmly established and deeply rooted in the judicial conscience to be entrenched and embedded in every decision-making function either judicial, quasi-judicial, or administrative which is a fundamental rule of law that no decision must be taken affecting the right of any person without first being informed of the case and afforded an ample opportunity of defense. In the likewise context and perception, due process is also a prerequisite that needs to be respected at all levels. In

our Constitution, the right to a fair trial is a fundamental right under Article 10-A which constitutional reassurance envisaged the standards that courts must uphold to protect people's fundamental rights of fair trial and due process of law. The Honorable supreme court in the case of Warid Telecom (Pvt.) Limited vs. Pakistan Telecommunication Authority, (2015 SCMR 338) has held that whenever adverse action was being contemplated against a person a notice and/or opportunity of hearing was to be given to such person. Said principle is a fundamental right under Article 10-A in the Constitution. However, both the requirements of notice and providing an opportunity for a hearing may also be dispensed with in certain type of cases e.g. where such a requirement would cause "more injustice than justice" and it was not in the "public interest".

5. Though the learned counsel for the petitioner also articulated that the posting of the private respondent is liable to be withdrawn in view of the judgment of Maula Bux Shaikh and others vs. Chief Minister Sindh and others (ibid). In the above case, the petitioner Maula Bux Shaikh in Service Appeal challenged a Notification to be ultra vires to the Pakistan Engineering Council Act, 1976 (PEC Act) on the ground that his chance for promotion as Executive Engineer BS-18 was diminished for the reason that said notification provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) Degree holders for the post of Executive Engineer BS-18. The Honorable Supreme Court held that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. Though the petition was dismissed with a note of caution that Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and whose name is not registered as a registered engineer or professional engineer under the PEC Act.

6. Before parting with the order, we deem it proper to observe that the Chief Secretary Sindh is required to comply with the ratio of the judgment passed by the Honorable Supreme Court in the case of Maula Bux Shaikh and others Vs. Chief Minister Sindh and others (2018 SCMR 2098), in its letter and spirit, and hear the parties on the subject issue. Additionally, the Government of Sindh shall not allow or permit any person to perform professional engineering work unless he possesses accredited engineering qualifications and is registered as an engineer or professional engineer under the PEC Act.

7. In view of what has been discussed above, we are not persuaded to take a view different from the one taken by the Honorable Supreme Court. Accordingly, this Petition is dismissed along with the pending application(s).

JUDGE

JUDGE

Nadir*