

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 647 of 2023
(Muhammad Shahid Habib advocate v. Federal Urdu University of Arts, Science and Technology (FUUAST))

Date _____ Order with Signature(s) of Judge(s) _____

Direction

1. For order on Misc No.2936/2023 (u/a)
2. For order on Misc No.2937/2023 (exp.)
3. For order on Misc No.2938/2023 (stay)
4. For hearing of main case

31.01.2023

Petitioner present in person

ORDER

This is the 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 Muhammad Shahid Habib with the following prayer:

- 1) That, Members of Search Committee, Committee, including Respondent No.2, may be restrained permanently from being appointed as Acting / Permanent Vice Chancellor of Federal Urdu University of Arts, Science & Technology.
- 2) Respondent No.1 to Respondent No.6 & 8, may be directed to maintain status quo till the fate of Respondent No. 8 is decided after review of acting arrangements after FOUR MONTHS (by the SENATE after it is re-formed / re-elected) or till the appointment of a regular VC, FUUAST, whichever is earlier, in accordance with later and sprit of Notification Dated: 30/9/2022.
- 3) Respondent No. 2 to Respondent No. 6 may be directed to follow the guidelines / principles laid down by the Honorable Supreme Court as well as by this Honorable Court for appointment of Acting / permanent Vice Chancellor of Federal Urdu University of Arts, Science & Technology, Karachi and in accordance with provisions of Federal Urdu University of Arts, Science & Technology, Islamabad, Ordinance, 2002.
- 4) Proceedings of / and decision taken in special meeting of Senate, FUUAST / Respondent No.6, may be recalled being illegal, null and void, ab-anitio.
- 5) Respondent No.8 may also be restrained permanently to from any complying directives and recommendations made in Letter Dated: 30/12/2022, issued by the Executive Director, HEC, (Copy annexed as annexure 'H') being illegal, null and void, ab-anitio.
- 6) That, Respondent No. 2 to Respondent No. 6 may further be restrained from exercising their discretion arbitrarily, in an unstructured, unregulated, and biased manner and the principle of merit was not being followed.”

2. At the outset, we asked the petitioner, how this petition is maintainable against the appointment of Vice-Chancellor of the respondent- Federal Urdu University of Arts, Science & Technology (‘FUUAST’); and, what inherent disqualification is available in the candidature of newly appointed Professor.

3. Petitioner who is present in person has submitted that under Article 199(2)(b)(ii) of the Constitution of the Islamic Republic of Pakistan this Court in the exercise of its Constitutional jurisdiction is competent to enquire from any person, holder of a public office to call upon him to show that under what authority he is holding the said office. In such-like cases where a writ like quo warranto is instituted and the petitioner must lay information before this Court that such officer has no legal authority to retain such office. He further submitted that a petitioner who acts as an informer is not required to establish his locus standi to invoke the jurisdiction of the Court for the reason that writ of quo warranto in its nature is an information laying against persons who claimed or usurped an office, franchise or liberty and was intended to inquire by what authority he supported his claim so that right to the office may be determined. He added that writ of quo warranto could be moved by "any person who- even may not be an aggrieved party but a person who is holding a public office created through statute and /or by the State". He asserted that any person can move to this Court to challenge the unauthorized occupation of a public office on any such application Court is not only to see that the incumbent is holding the office under the order of a competent Authority but it is to go beyond that and see as to whether he is legally qualified to hold the office or to remain in the office, the Court has: also to see if statutory provisions have been violated in making the appointment. Further on the maintainability, he finally submitted that the invalidity of the appointment may arise not only from one of the qualifications but also from violation of legal provisions for the appointment, therefore this petition is maintainable and could be heard and decided on merits. He further submitted that the right to education is a fundamental right as it ultimately affects the quality of life which has nexus with other Fundamental Rights guaranteed by the Constitution under Articles 4 and 9 of the Constitution of the Islamic Republic of Pakistan, 1973. He emphasized that awareness of rights and duties, growth of civic consciousness in society, enjoyment of Fundamental Rights guaranteed under the Constitution, and legal empowerment of people depend to a great extent on the quality of education. He elaborated on the subject issue and submitted that people cannot be free in the real sense unless they are properly educated; in this regard establishment of quality, institutions are must with highly qualified teachers to provide quality education to the students without discrimination. He asserted that the appointment of the Vice-Chancellor of the respondent university is a pivotal decision on the part of the competent authority, thus extra care should be made and outsiders more particularly respondent No.2 should not be allowed to be appointed and /or posted rather the senior amongst

ten professors of the respondent-university shall be chosen to head the respondent-University, as respondent No 8 was appointed as acting Vice Chancellor of the respondent-university vide notification dated 30.9.2022 subsequently, the respondent No.2 has taken over the charge which is illegal and without lawful justification, therefore this petition has been filed to call in question his appointment as Vice Chancellor of the respondent-university.

4. The nature of relief that the petitioner intends to seek under Article 199(1)(b)(ii) of the Constitution, prima facie, is not available to him for the reason that the petitioner failed to point out any legal flaw in the appointment process for the subject position and inherent disqualification in the candidature of the appointee. The reasons assigned by the petitioner in his memo of the petition are not sufficient to dislodge the aforesaid appointment process as this court is not in a position to substitute the view taken by the Expert Committee i.e. Syndicate of the respondent university as well as the appointing/ competent authority in terms of FUUAST Ordinance, 2002. Additionally, the petitioner has failed to point out any violation of his fundamental rights and his indulgence in the affairs of the respondent university.

5. In the present case petitioner failed to point out any malice on the part of competent authority to persuade us to hold a contrary view, therefore, this petition is found to be misconceived and is dismissed in limine.

JUDGE

JUDGE