

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-7385 of 2022

Faheem Ali

Petitioner: In person.

Respondents: Nemo

Date of hearing
& Decision: 28.02.2023.

ORDER

Through this writ of quo warranto, the petitioner- Faheem Ali is seeking the declaration to the effect that the retrospective transfer from one cadre to another cadre and subsequent benefits of upgradation of post in favour of respondent-Munawar Ali Larik, presently working as Reader Sindh Services Tribunal, is illegal, discriminatory, and in violation of principles of natural justice, therefore, liable to be struck down in terms of the dicta laid down by the Hon'ble Supreme Court of Pakistan in cases reported as **2013 SCMR 1752** and **2015 SCMR 456**.

2. We asked the petitioner to satisfy this court about the maintainability of this petition under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioner who is present in person has submitted that the basic purpose of issuance of the writ of quo warranto is to settle the legality of the holder of a statutory or constitutional office and this court has to decide whether respondent No.6 was/is holding such public office in accordance with law or against the law, therefore, the writ of quo warranto can be instituted by the petitioner though he may not be a directly aggrieved person. He further submitted that to maintain a writ of quo warranto there is no requirement of an aggrieved person and a whistleblower can come forward to appraise the factual position to this court and this court has to take cognizance if the holder of public office is illegally occupying the public office as such this petition is maintainable.

3. On merits, he submitted that the initial appointment of respondent No.6 as Junior Clerk (BPS-5) in 1986, his subsequent appointment as Assistant (BPS-11) with effect from 2nd October 1986, regularization of the aforesaid service with effect from 01.05.2001 and upgradation to the post of Reader in BPS-17/18

was/is illegal and violative of the dictum laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid cases.

4. We have heard the petitioner who is present in person on the maintainability of the instant petition and perused the record with his assistance.

5. Since the issue relates to the initial appointment of the private respondent based on the alleged inherent disqualification to hold the aforesaid posts and the petitioner has to substantiate through cogent material to invoke the jurisdiction of this court under Article 199 (1)(b)(ii) of the Constitution, besides there is the issue of upgradation of the post of the private respondent which has already been set at naught by the learned Sindh Service Tribunal (SST) Karachi vide judgment dated 12.04.2013 in Service Appeal No.192/2012; and, the application on the subject issue has already been filed by the petitioner to the learned Chairman SST Karachi on 24.10.2022. Petitioner has also raised ancillary issues which could only be threshed out by the competent authority of the respondents; and, we at this juncture are not in a position to say for and against the initial appointment of the private respondent, therefore, without touching the merits of the case, leave the petitioner to approach the competent authority of the respondents, for redressal of his grievances for the simple reason that the issue of eligibility of the private respondent to hold the posts is to be looked by the competent authority first and if the decision goes against the petitioner he is at liberty to call in question vires of the order before the appropriate forum. On the aforesaid proposition, we are guided by the decision rendered by the Hon'ble Supreme Court of Pakistan in the cases of Jawad Ahmed Mir v. Professor Dr. Imtiaz Ali Khan and others, **2023 SCMR 162** and Attaullah Khan v. Ali Azam Afridi and others, **2021 SCMR 1979**.

6. This petition stands dismissed in *limine* together with the listed applications, in the above terms.

JUDGE

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