

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No.D-769 of 2023

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

Direction

1. For orders on Misc. No.3532/2023
2. For orders on Misc. No.3533/2023
3. For orders on Misc. No.3534/2023
4. For hearing of main case

06.02.2023

Mr. Muhammad Arshad Khan Tanoli, advocate for the petitioner

1. Granted.
2. Granted subject to all just exceptions.
- 3-4. Through this petition, the petitioner has questioned the legality of occupying the public offices by the private respondents 6 to 11 in the National Institute of Cardiovascular Diseases (NICVD) and asking for issuance of the writ of quo warranto under Article 199 (1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer:

- A. To call for the record and proceedings of Selection/ appointments of Respondents No. 06 to 11 and to inquire under what authority of law they are holding their respective posts being ineligible their candidate and if they failed to show the same, Selection/appointments may be declared unlawful and without authority of law.
- B. Direct the Respondents No 2, 3 & 4 to consider and act upon the recommendations of Annual Audit Inspection report of 2020-21 forwarded by the Respondent No.5, with regards to appointments of Respondents No. 06 to 11 and pass the order in accordance with law.
- C. Direct to DG NAB Karachi to enquire the matter for illegal appointments of NICVD Officers and submit report within 30 days and as well as fix the responsibility and against the Authority whosoever are responsible for unlawful appointments.
- D. Recovered paid salaries from Respondents No.06 to 11 worth of millions of rupees, month wise from date of their respective joining.
- E. To restrain the official Respondents from releasing salaries of Respondents No.06 to 11 in terms of recommendations of Annual Audit Inspection report of 2020-21 forwarded by the Respondent No.5, during pendency of this Petition.”

The case of the petitioner is that NICVD being a state-controlled statutory body is under the constitutional obligations to fill its vacant posts fairly and transparently as prescribed under the law, consequently had advertised its vacant posts in "Daily Dawn" dated 8.06.2016 to fill the vacant positions of Head of Internal Audit (BPS-18), Head of Human Recourses (BPS-18), Head of Stores

(BPS-18), Manager OPD Services (BPS-17), Assistant Manager Procurement (BPS-17), Manager Corporate Services (BPS-17) and invited the candidature of most suitable and eligible candidates from the public for appointments through open competition. As per the petitioner, all the posts were required to be filled in on “MERIT”, but the respondent management of NICVD had appointed their blue-eyed persons. It is contended, *inter alia*, that respondent No.2, was/is under the legal and constitutional obligations to act in accordance with law and to fill the vacant posts falling within its administration through fair and transparent process of selection and appoint amongst the qualified and experience candidates; that in view of the findings of Annual Audit Inspection report of 2020-21, the impugned selection process was made by the respondents No.3 & 4, in violation of relevant rules and appointed unqualified and unexperienced persons against the higher posts with the higher remuneration than the normal pay scale, which caused colossal loss to the public exchequer which is classic example of miss-use of public powers and allegedly promoting favoritism, nepotism by appointing blue eyed persons in departure of merit and prescribed criteria; that since it is matter of record that the Top management including Respondent No.4, of NICVD involved in mega scams of embezzlement of funds and corrupt practices of Public money and NAB has also investigated and filed references against them and Respondent No.4, is presently on bail granted by this Court; that the scandals of favoritism, nepotism in public appointments and mega corruption and plundering public funds in NICVD has been flashed in leading National electronic and print media almost every day, whereas the Transparency International has also highlighted the issue of unlawful appointment on the basis of Audit Inspection report.

To appreciate whether the appointments in the NICVD have been made under the law or otherwise, let notice be issued to the respondents as well as learned AAG with directions to file comments on or before the next date of hearing. In the meanwhile, Secretary Health Department, government of Sindh, shall submit a comprehensive report on the subject issue positively.

To come up after two weeks.

JUDGE

JUDGE

Nadir*