

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-839 of 2023
(Sarfraz Hussain v. Province of Sindh and 4 others)

Syed Shafqat Hussain Shah, advocate for the petitioner

Date of hearing
& Decision: 14.02.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – 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 Sarfraz Hussain against the Dawood University of Engineering and Technology Karachi. The petitioner has prayed as under:

“a) To direct the respondent No.3 to 5 to not issue appointment letters further in future

b) To pass order by directing respondent No.3 to produce the complete record of illegal appointment during his tenure and thereafter pass an order for cancellation of the illegal appointment.”

2. Through the captioned Constitutional Petition, the petitioner has sought directions to respondents No.3 to 5 to annul the process of recruitment initiated by the Dawood University of Engineering and Technology Karachi, inter-alia, on the ground that the whole process of recruitment was/is fraught with grave illegalities, and corrupt practices, which were/are violative of the principles of transparency as well as equity. Petitioner has averred that the invalidity of subject appointments arose not only for want of qualification of candidates but also from violation of legal provision for the appointment; that after the process of advertisement, the next logical step for a valid and lawful appointment is the short-listing process which is to be conducted by the selection committee, which factum was/is missing in the present case. Petitioner further averred that the subject recruitment process is a nullity in the eyes of law and liable to be canceled. He averred that the illegal appointment is being bestowed over the friends and relatives of respondent No.3 with the collusion of respondent No.5 and depriving the rights of the general public.

3. Syed Shafqat Hussain Shah, learned counsel for the petitioner, submitted that on 01-09-2022 the Section officer (U) of the Universities Board Department Government

of Sindh issued the letter, whereby all universities were advised not to initiate the regular /contract appointment from BS-01 to BS-022 in Universities till the prior approval of Competent Authority viz the Chief Minister; that the respondent No.3 with the collusion of the respondent No.5 continuously appointing their relatives and friends in the University without due process of law and in violation of the aforesaid letter.

4. We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the material available on record.

5. The petitioner seems to be aggrieved by the alleged appointments made in the respondent university, he has not placed any material to substantiate his point of view, prima-facie, and the petitioner appears to be a surrogate of anonymous sources that he came to know about the illegal appointments in the respondent-university thus, his conduct so to speak appears to be doubtful. This conduct of the petitioner manifests the motivation to file the petition challenging the alleged appointments in the respondent university.

6. In the case of *Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary M/o Law, Islamabad and others* (PLD 2013 SC 413), the Hon'ble Supreme Court has inter alia held as follows:-

“Citizen who invoked the jurisdiction of the Supreme Court was bound to satisfy the Court that he had come before the Court with bona fide intentions and therefore, he had locus standi to seek enforcement of the Fundamental Rights in question---For a person to invoke the jurisdiction of Supreme Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he was acting bona fide--- Court had to decide, on the given facts, whether petitioner was acting bona fide or not.”

“16. It is abundantly clear that for a person to activate the jurisdiction of this Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he is acting bona fide. However, it would be for this Court to decide, on the given facts whether he is acting bona fide or not and whether the petition is suffering from laches or not.”

7. Law to the said effect has also been laid down in the cases of "Dr. Shazia Khawaja vs. Chairman and Dean of Sheikh Zayed Post Graduate Medical Institute and

Hospital, Lahore and 7 others (2012 PLC (C.S.) 1057), Tariq Mehmood A. Khan and 3 others Vs. Sindh Bar Council through Secretary and others (2011 YLR 2899), "Allauddin Abbasey Vs. Province of Sindh through Chief Secretary, New Sindh Secretariat, Karachi, and 3 others" (2010 PLC (CS) 1415), Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526).

8. Similarly, in the case of Muhammad Arif vs. Uzma Afzal (2011 SCMR 374), it has been held as under:-

“5. There is no cavil to the proposition that the “conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on the maxim “he who seeks equity must do equity”. Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands.”

9. The Hon’ble Supreme Court in the case of Dr. Azim-urRehman Khan MeoVs. The government of Sindh (2004 SCMR 1299), has held as follows:-

“It is well-settled by now that under Article 199 all the reliefs obtainable under it are purely discretionary and on the principles governing writs of quo warranto the relief under Art. 199 (2)(ii) is particularly so. Quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the relator. No precise rule can be laid down for the exercise of discretion by the Court in granting or refusing information in the nature of quo warranto. All the circumstances of the case taken together must govern the discretion of the Court. The discretion has to be exercised in accordance with judicial principles. The writ is not to issue as a matter of course on sheer 5 W.P. No.2490/2021 technicalities on a doctrinaire approach.” ‘

10. For what has been observed and discussed above, we do not find any merits in this case, which is accordingly dismissed in limini with no order as to costs.

JUDGE

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