

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 2214 of 2023

Date

Order with signature of Judge(s)

1. For orders on CMA No.10713/2023.
2. For orders on office objections No.3 & 4.
3. For orders on CMA No.10714/2023.
4. For orders on CMA No.10715/2023.
5. For hearing of main case.

10.05.2023

Mr. Mohammad Azam Memon, advocate for the petitioner.

1. Granted. 3. Granted; subject to all just exceptions. 2,4&5. The petitioner, claiming to be an ex-contract employee of the respondent no. 3, has filed this petition seeking a declaration that the appointment / subsistence of the respondent no. 5 is predicated on fake documents. It is further sought that the said respondent be removed from office and directions be given for lodging an FIR there against for corruption.

At the very onset, the petitioner was queried *inter alia* as to how he had gained access to the personnel file of the concerned respondent; what documents / credentials had been adjudged to be fake and by what authority; and how could determination of factual issues could be undertaken in exercise of writ jurisdiction. The learned counsel remained unable to satisfy the Court on either count.

Admittedly, there is nothing on the record to demonstrate that any document / credential of the concerned respondent has been adjudged to be fake. No corroboration of any claim of corruption was demonstrated before us and even otherwise that would be a case for the appropriate forum. A determination in either regard is unmerited in the exercise of writ jurisdiction, as it is not amenable for factual determinations, requiring inquiry and / or evidence¹.

While the learned counsel candidly stated that since the petitioner was no longer employed, therefore, the same fate ought to befall the concerned respondent, however, he sought to couch his claim in the garb of a *quo warranto* petition. It is settled law that such proceedings are inquisitorial in nature, as opposed to adversarial, hence, it is imperative to consider the *bona fides* of the petitioner. In the present case the entire case of the petitioner is that since he is no longer an employee, therefore, the concerned respondent should be removed from office as well. Notwithstanding the fact that such a plea is untenable from the record demonstrated, the same could also not be sustained on the anvil of the *bona fide* requirement².

¹ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

² Per *Mian Saqib Nisar CJ* in *Muhammad Hanif Abbassi vs. Jahangir Khan Tareen* reported as *PLD 2018 Supreme Court 118* - Relief in the nature of *quo warranto* should not be allowed as a matter of course, rather the conduct and the *bona fides* of the petitioner, the cause and the object of filing such petition was of considerable importance and should be examined. It should be ascertained if the petition had been filed with some *mala fide* intent or ulterior motive and to serve the purpose of someone else as the remedy should not be allowed to be a tool in the hands of the petitioners, who approached the Court with *mala fide* intentions and either had their own personal

Therefore, the present petition is found to be misconceived, hence the same, along with pending application, is hereby dismissed in *limine*.

JUDGE

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grudges and scores to settle with the holder of a public office or were a proxy for someone else who had a similar object or motive.