

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 2162 of 2023

Date	Order with signature of Judge(s)
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1. For orders on CMA No.10462/2023.
2. For orders on office objection No.4.
3. For orders on CMA No.10463/2023.
4. For orders on CMA No.10464/2023.
5. For hearing of main case.

05.05.2023

Mr. Muhammad Riaz, advocate for the petitioners.

The petitioners, represented to be civil servants, have impugned an office order dated 13.04.2023 issued by the Government of Pakistan Collectorate of Customs ("Impugned Order"), whereby 33 persons, also represented to be civil servants, were promoted from in the light of recommendations of the relevant DPC. The petitioners essentially seek for the Impugned Order to be set aside and the petitioners themselves to be promoted instead.

At the very onset, the learned counsel was confronted with respect to the maintainability hereof; *inter alia*, with regard to the office objection highlighting the bar of Article 212 of the Constitution and the glaring fact that none of the 33 persons, the promotions whereof were sought to be annulled, had been made party in the petition. Learned counsel remained unable to satisfy the Court on either count.

Promotion is predicated upon fitness coupled with eligibility and the said decision is best vested in the authority, to be exercised per the settled principles of law. Even otherwise, promotion, or the absence thereof, is an integral constituent of the terms and conditions of service, hence, proceedings in such regard attract the bar contained in Article 212 of the Constitution.

It is imperative to denote that the petitioners do not seek a writ of *quo warranto*¹. However, even if that were the case even then 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 petitioners is that they ought to have been promoted, to the exclusion of others. 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 This observation is bolstered by the fact that none of the 33 persons promoted have been cited as respondents herein.

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 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.

In view hereof, this petition is found to be misconceived, hence, while granting the application for urgency, the petition and the listed applications are hereby dismissed in *limine*.

JUDGE

JUDGE