

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan ul Karim Memon

C.P.No.D-7434 of 2022

Muhamamd Sami Qureshi,
Petitioner through

M/s. Mohsin Qadir Shahwani and Aznain
Nadeem advocates

Respondents No.2 to 4
through

M/s. Samiullah Soomro, Hafeezullah and
Tauqeer Ahmed advocates

Respondent No. 5&6
through

Mr. Ahmed Ali Ghumro advocate

Respondent No.1
through

Mr. Soulat Hussain Rizvi, Additional
Advocate General Sindh

Dates of hearing : **14.02.2024** and **28.02.2024**.
Date of announcement : **11.03.2024**

J U D G M E N T

Adnan-ul-Karim Memon, J. In this Constitutional Petition under Article 199 (b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner Muhammad Sami Qureshi seeks annulment of Office Order dated 04.07.2022, issued by Secretary Sindh Industrial Trading Estate Limited (SITE), whereby the promotion of respondent No.5 & 6 has been restored for the post of Estate Engineer (BS-18) with all consequential back benefits i.e., salary and seniority in BE (Civil) Cadre. For convenience's sake, the Office Order dated 04.07.2022 is reproduced as under:

“Consequent upon dismissal/withdrawal of Suit No. 2483/2016 (Murad Ali Jatoi Vs. SITE Limited & others) vide order dated 08.06.2022 passed by Honourable High Court of Sindh, the Office Order No. 5992 dated 20.07.2017 is hereby withdrawn/cancelled.

Accordingly, Mr Imran Khan Sahito and Mr Ahmed Mian Soomro, earlier Notifications dated 31.10.2016 issued, on the recommendations of Committee Constituted vide Notification No. SITE/PS/21, dated 28.10.2016, on the directions of the Honourable Supreme Court of Pakistan in Criminal Original Petition No. 106 to 111 of 2016 dated 24.10.2016 are hereby restored as Estate Engineer (BS-18), with all consequential back benefits i.e. salary & seniority in BE (Civil) cadre, with immediate effect.

This issue with the approval of Competent Authority/Managing Director, SITE Limited.”

2. At the outset, Mr. Ahmed Ali Ghumro, learned counsel for the private respondents has filed a statement dated 28.02.2024, disclosing the factum that during the pendency of this Petition respondent, No.5 has been dismissed from service vide office order dated 03.08.2023, however, he has been lucky to obtain ad-interim order in Civil Suit No. 1386 of 2023 vide order dated 23.08.2023, whereby the operation of the office order dated 03.08.2023 has been suspended and the matter is pending adjudication before the learned single Judge (OS) of this Court. Be that as it may, we have reservations and are not inclined to record our findings as to whether an employee of the SITE can seek redressal of relief in service matter by approaching a Civil Court as we have not been provided with any assistance by the Counsel for the parties. However, findings recorded in this petition shall have no bearing upon the pendency of aforesaid Suit as it is for the learned single Judge (OS) of this Court to decide on the subject issue on merits.

3. Mr. Mohsin Qadir Shehwani, learned counsel for the petitioner, has opened the arguments and contended that the petitioner has filed this petition for issuance of Writ of Quo Warranto calling upon respondents No. 5 and 6 to show the lawful authority under which they hold their respective offices as Estate Engineer BS-18. Learned counsel submitted that restoring the promotion of respondents No. 5 and 6 in BS-18 was/is illegal, and a violation of the recruitment rules and orders dated 27.09.2016 and 24.10.2026 passed by the Supreme Court. learned counsel referred to the findings of the learned single judge of this Court (OS) in Civil Suit No. 2483 of 2016 filed by one Murad Ali Jatoi against respondent SITE and argued that the promotion of the private respondents in Grade-17 was/is illegal as they did not possess the requisite experience, however, they managed their promotion in Grade-17, this illegal act on the part of respondent-SITE is evident from the fact that both of them were demoted to Grade-17, in compliance of the Supreme Court Judgment but they again managed and got their demotion orders reversed by exerting political pressure upon the management of SITE. He added that having achieved their designs, once again they succeeded in getting higher promotion in Grade 18 in utter violation of the applicable recruitment rules. Per learned counsel, the case of private respondents is built up with material illegalities. It is the case of the petitioner that once the Supreme Court passed an order against the respondents the same can only be undone by the Supreme Court and not by the respondent department, therefore restoration of the promotion of the private respondents to the post of Estate Engineer BS-18 is contemptuous and liable to be set aside and they are reverted to their original position. Per learned counsel, the post of

Estate Engineer BS-18 can only be filled by promotion from amongst the Assistant Engineer BS-17 having at least 8 years' experience and possessing a Degree in Civil Engineering or equivalent qualification whereas the private respondents do not have the requisite experience for the post of Assistant Engineer or Estate Engineer as such their promotion from the post of Assistant Engineer to the post of Estate Engineer is unlawful for the reason that they were initially appointed by direct recruitment as Sub-Engineers in grade 14 in the year 2005, where after they were promoted out of turn to the post of Assistant Engineer in BS-17 in the year 2009 and they again were promoted to the post of Estate Engineer BS-18 in the year 2010, however, due to intervention of Supreme Court they were reverted to their original position in grade 17 but the respondent-SITE circumvented the orders of the Supreme Court and restored the promotion of the private respondents to the post of Estate Engineer BS-18 without lawful justification. Learned counsel emphasized that the propriety demands that this Court must follow the orders of the Supreme Court without any hesitation unless the orders so passed are altered or overruled by the Supreme Court itself, which is not the case in hand, this Court has no option but to follow it. He prayed for allowing the instant petition.

4. Mr. Ahmed Ali Ghumro, advocate for respondents No.5 and 6, has filed a Counter Affidavit to the main petition and refuted the claim of the petitioner by referring to various documents attached with the memo of Counter Affidavit, with the narration that the law is well settled that this Court in the exercise of its writ jurisdiction under Article 199 of the Constitution, in a matter of this nature, is required to determine, at the outset, as to whether a case has been made out against the private respondents for issuance of a Writ of Quo Warranto to upset the promotion; that the jurisdiction of this Court to issue a Writ of Quo Warranto is a limited one which can only be issued when the appointment by promotion; posting is contrary to the statutory rules, whereas the respondent SITE has no statutory rules of service as such there is no violation of statutory rules to attract Article 199 of the Constitution. Per learned Counsel, respondents No.5 and 6 had been promoted under the law and they have the requisite academic qualifications and experience to be promoted to the post of Estate Engineer (BS-18). He further submitted that the respondent SITE has not violated the orders of the Supreme Court as portrayed by the petitioner. As per the learned counsel since it was through the Supreme Court order passed in the Review application therefore appropriate remedy for the petitioner is to approach the Supreme Court and file a Review application if he feels so aggrieved against the promotion of the private respondents as this Court lacks the jurisdiction to

change the findings of the Supreme Court in writ jurisdiction. Learned counsel emphasized that Civil Suit No. 2483 of 2016 filed by one Murad Ali Jatoi against respondent SITE was dismissed as withdrawn vide order dated 08.06.2022 and thereafter the promotion of the private respondents was restored as Estate Engineer BS-18 vide office order dated 04.07.2022. In support of his contention, he relied upon the cases of Jawad Ahmed Mir v. Prof. Dr. Imtiaz Ali Khan and others, **2023 SCMR 162**, Msudal Hussain v. Khadim Hussain and another **PLD 1963 SC 203**, Ayaz Ahmed Khan v. Federation of Pakistan and others **2021 PLC (CS) 1394**, Nisar Khan Khattak v. Haji Adam and another **2021 PLC (CS) 140**, Dr Azim-ur-Rehman Khan Meo v. Government of Sindh and another **2004 SCMR 1299**, Muhammad Hanif Abbasi v. Janangir Khan Tareen **PLD 2018 SC 114**, Muhammad Tahir v. Chairman Board of Governors and others **2022 MLD 1294**, Qazi Hussain Ahmed v. Pervez Musharraf and others **PLD 2002 SC 853**, Muhammad Yasin Saqib v. Chairman Pakistan Telecommunication and others **2003 PLC (CS) 1105**, Syed Ali Raza Asad Abidi v. Ghulam Ishaq Khan and another **PLD 1991 Lahore 420** Muhammad Shahid Akram v. Government of Punjab and others **2016 PLC (CS) 1335**, Fahad Khan v. President Cecos University of IT and others **2011 CLC 1** and Salahuddin & others **PLD 1975 SC 244**. He lastly prayed for the dismissal of the petition.

5. Mr. Samiullah Soomro, learned counsel for respondents No.2 to 4, has referred to the para-wise comments filed on behalf of respondents No.2 to 4 and supported the stance of respondents No.5 and 6 and prayed for the dismissal of the instant petition filed by the petitioner. Learned Additional Advocate General is of the same view.

6. We have heard the learned counsel for the parties and have perused the entire material available on record and the case law cited at the bar.

7. The pivotal question is whether a Writ of Quo Warranto lies in challenging the promotion and posting of the private respondents as Estate Engineer BPS-18 in SITE regularly as per Recruitment Rules, 1972 as amended up to 2013; and, whether a Writ of Quo Warranto can be issued if there is a clear violation of the statutory law.

8. The maintainability of this petition against the restoration of promotion of the private respondents as Assistant Engineer BS-17/ Estate Engineer BS-18 in SITE is to be determined first.

9. Primarily Writ of quo warranto under Article 199 (b)(ii) of the Constitution can only be issued if it is established to the satisfaction of this Court that private respondents were not legally qualified to hold the promotion post or some of the statutory provisions had been violated in making the promotion and retaining the promotion post was without any legal warrant or authority. However, the Writ of quo warranto would not be issued unless a clear violation of law or any other rule, having the force of law, was/is shown to have been committed in the appointment by promotion. As per the dicta laid down by the Supreme Court in its various pronouncements, the conditions necessary for issuance of writ of quo warranto are that the office must be public and created by a statute or constitution itself. Whereas the Sindh Industrial Trading Estate Limited [SITE] was established by virtue of policy decisions through the Sindh Government. SITE is a public limited company fully owned by the Sindh Government, which is under the administrative control of the Ministry of Commerce and Industry, Government of Sindh. As per the material placed before us SITE is a Company limited by Guarantee, which was incorporated under the Companies Act, 1913 (now the Companies Ordinance, 1984) and is being managed by the Board of Directors, appointed by the Government of Sindh. Their employees are not civil servants. The SITE does have service Rules called SITE Employees (Service Structure) Articles, 2013] published in the Sindh Government Gazette on 26th September 2013, which are not statutory Rules.

10. It is emphasized that this Court cannot sit in judgment over the wisdom of the competent authority in the choice of the person to be appointed by way of promotion so long as the person chosen possesses prescribed qualifications and is otherwise eligible for appointment by promotion and subsequent posting; besides that, the evaluation of the comparative merits of the candidate would not be gone into public interest like litigation under service jurisprudence; and only in a proceeding initiated by an aggrieved person, it may be open to being considered and it is for the aggrieved person to assail the legality or correctness of the action and that third party has no locus standi to canvass the legality or correctness of the action of the competent authority. Further, only public law declaration would be made at the behest of the interested person coming before this Court under constitutional jurisdiction as the petitioner lacks all the ingredients as discussed supra, however, therefore, this Court could not go beyond the limits of Quo Warranto, so very well delineated by a catena of decisions of the Supreme Court and applied the test which could not be applied even in certiorari proceedings brought before this Court by an aggrieved party.

11. Having said so about the maintainability of this petition, during arguments, the question is whether the respondent-SITE has violated the orders dated 27.09.2016 and 24.10.2026 passed by the Supreme Court and this Court is required to reverse the promotion of the private respondents to the post of Assistant Engineer (BS-17) or the aggrieved party has to approach the Supreme Court to obtain appropriate orders on the subject issue.

12. It appears from the record that the Supreme Court of Pakistan in Criminal Original Petitions No.106 to 111 & 174 of 2016 2016 (re-Imran Khan Sahito & others v Muhammad Siddique Memon and others) issued a direction to the Respondent-SITE to issue Notification de-notifying the employees, who were granted out of turn promotions, for convenience sake the orders dated 27.09.2016 and 24.10.2016 are reproduced as under:

27.09.2016

“once the employees were denotified in compliance with the judgment of this Court the employees aggrieved have to approach this Court in review instead of obtaining interim order from Sindh High Court, We, therefore, direct Managing Director SITE or any other competent authority to give effect to the Notifications and or office orders issued earlier by them be notifying the employees on the ground of out of turn promotion irrespective of the interim orders obtained by them from Sindh High Court either in Suit or in High Court Appeal or in any petition whatsoever.

3. The notifications shall be issued forthwith and the aggrieved, if any shall be at liberty to approach this Court in review, if so advised, as the proceedings before us confirm the fact that many of the employees have obtained orders from the Sindh High Court in different suits and or on the recommendations of the H.R Committee. Neither the H.R Committee nor the High Court was competent to sit in appeal against eh findings of this Court by granting relief of this nature, as the aforesaid judgments of this Court can only be interpreted by this Court and not any other forum as mandated by the Constitution.

5. The Additional Secretary, Services, requests to file the concise statement in the interim period. The M.D SITE is also required to file a compliance report.

6. Adjourned to 24th October 2016.”

24.10.2016

“We have heard Mr. M. Sarwar Khan, the learned Additional Advocate General Sindh, Managing Director (SITE) and the petitioners present in person. The M.D SITE is directed to streamline the service structure of the Sindh Industrial Trading Estate Ltd. by conforming to the principles enunciated in the cases reported as Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), in letter and spirit, within 15 days from today.

2. The petitioner's counsel further complains that in spite of the directions contained in the aforesaid judgments, Ahmed Nawaz Jagirani has not been denotified to his original position and is serving in BS-19 even today. Ahmed Nawaz Jagirani shall appear in person on the next date of hearing to justify how after being appointed as P.R.O (BS-16) he could be promoted to BS-19, under the garb of up-gradation. The M.D, SITE and the Additional Secretary, Services, shall issue the requisite notification in the intervening period in compliance with the aforesaid judgments of this court and report compliance, failing which this county shall initiate contempt proceedings against the M.D, SITE and or any other official who is found guilty of willful defiance of the order of this court.

Adjourned to 08.11.2016.”

13. We have been appraised that the Supreme Court in its order dated 27.9.2016 had noticed that after denotifying, the employees, who were given out-of-turn promotions, approached this Court through Civil Suits and obtained interim orders to defeat the judgment and orders of the Supreme Court. In our view, the beneficiaries cannot, through any proceedings initiated after the aforesaid orders obtain a finding with the motive to defeat the findings/observation of the Supreme Court.

14. Coming to the core issue whether the private respondents have the requisite qualifications and experience to hold the subject post. In this regard, the parties have filed documents showing details of the service record of Respondents No. 5 and 6. As per their service profile, they were issued an offer of appointment as Sub-Engineer (BS-14), SITE Limited, in the year 2005; and, they succeeded to obtain promotion as Assistant Engineer (BS-17) in the year 2008, luckily they were again promoted to the post of Estate Engineer (BS-18) in the year 2010 and 2013. In the intervening period, the Supreme Court took cognizance of out-of-turn promotions granted to various officers of the Sindh government, by initiating proceedings against the Chief Secretary, Sindh (**2013 SCMR 1752**). The respondent department, in compliance with the orders regarding out-of-turn promotions, withdrew the promotion of private respondents from BS-17 to BS-18 vide office order dated 01-10-2013 and their seniority was fixed in the rank of Assistant Engineer (BS-17) accordingly. Subsequently, in partial modification of the office order dated 01-10-2013 regarding withdrawal of out-of-turns promotions, another office order dated 13-06-2014 was issued treating private respondents as Estate Engineer (BS-18) w.e.f. 13-02-2012, later on the respondent-SITE issued office orders dated 25-02-2015, and 01.04.2015, whereby demoted the private respondents to the post of sub-Engineer BS-14 subsequently withdrew the aforesaid orders vide order dated 29-07-2015 treating them as Assistant Engineer (BS-17) w.e.f 12-02-2007. Thereafter the private respondents were promoted to the post of Assistant Engineer (BS-17) w.e.f 17-11-2015 vide order dated 15-04-2016, however, the same order was kept in abeyance till the approval of the Board of Directors, SITE Limited. Finally, the private respondents convinced the respondent department to restore their promotion to the post of Estate Engineer (BS-18) vide impugned office Order dated 04.07.2022. In this regard, the Recruitment Rules notified on 26.06.1972 mandate that the incumbent of the posts possess the qualification and experience in these words:

S.No.	Nomenclature of the post	Pay Scale	Minimum qualification prescribed for appointment by initial recruitment or by promotion	Method of recruitment
3	Estate Engineer	BS-18	BE- Civil or equivalent qualification having at least 8 years' service in Junior Class-I or Diploma in civil, having a minimum 14 years' service in Junior Class-I post	By promotion 80% from Assistant Engineers possessing Graduate or equivalent qualifications 20% from Assistant Engineers holding Diploma
5	Assistant Engineer	BS-17	A Degree in Civil Engineering with 4 years of experience or a Diploma with 10 years of experience or in equivalent qualification	50% by promotion 50% by initial recruitment
7	Sub-Engineer	BS-11	Degree in Civil Engineering from a recognized University or an equivalent qualification	80% by initial recruitment 20% by promotion

15. It appears from the record that in pursuance of the judgment dated 12.06.2013 passed by the Supreme Court in the case of the contempt proceeding against the Chief Secretary Sindh as discussed supra, the SITE framed the Service Structure for the employees of the SITE vide Notification dated 14.06.2013, whereby the position of the subject posts is given as follows:

S.No.	Post	Pay Scale	Qualification for initial recruitment	Method of recruitment
21	Estate Engineer	BS-18	-----	By promotion from amongst the Assistant Engineers (BS-17), having at least eight years experience as such and possessing a degree in Civil Engineering or equivalent qualification, on seniority cum fitness basis or Diploma in civil having minimum fourteen years experience in Junior Class-I post.
22	Assistant Engineer	BS-17	A Degree in Civil Engineering with 4 years of experience or a Diploma with 10 years of experience or in equivalent qualification	(i) Fifty per cent by promotion from amongst the Sub-Engineers in (civil/Mech/Elec) (BS-14), with at least ten years experience as such on seniority cum fitness basis and; (ii) Fifty per cent by initial recruitment with at least five years experience in the field of accounts.
23	Sub-Engineer (Civil/Mech/Elect)	BS-14	Diploma of three years with one year of working experience	(i) 50% by promotion from amongst the Tracers (BS-12), having five years experience as such on seniority cum fitness basis. (ii) Fifty percent by initial recruitment.

16. As per Recruitment Rules 1972, the post of Estate Engineer is to be filled by promotion from amongst the senior most officers of Engineering Cadre (BPS-17) having B.E (Civil)/BS Engineering Degree qualification having at least (8) years' service in junior class-1 Post or B-tech/Diploma in Civil, having minimum 14 years' service in Junior Class-I post and 80% of Assistant Engineers possess Graduate or equivalent qualifications 20% of Assistant Engineers hold diplomas. However, in the Rules 2013, the post of Estate Engineer is to be filled by promotion from amongst the Assistant Engineers (BS-17), having at least eight years experience and possessing a degree in Civil Engineering or equivalent qualification, on a seniority cum fitness basis or Diploma in civil having minimum fourteen years experience in Junior Class-I post.

17. From the above, it is clear that when the private respondents were appointed in the year 2005 as Sub-Engineer and were promoted to the post of Assistant Engineer (BPS-17) in 2008 they had only approximately three years of service in the Sub-Engineer cadre and the requirement for the promotion to the post of Assistant Engineer was at-least four years' service in Sub-Engineer cadre as such they lacked approximately one year service. It further appears from the record that when the private respondents were promoted to the post of Estate Engineer (BPS-18) in the years 2009 and 2010, they had only one and two years of experience in the Assistant Engineer cadre, though the requirement was eight years' experience as Assistant Engineer (BPS-17) as such they lacked approximately six or seven years' service.

18. The record further reflects that the private respondents hold B.E (Civil) Engineering Degree qualification and as per the previous policy of Pakistan Engineering Council dated 10.11.1993, the B-Tech and Diploma (DAE) holders could also be promoted up to 20% in grade 17 only as such B-Tech or Diploma (DAE) degree holders were held not eligible for promotion in BPS-18. There is no denial of the fact that private respondents are post-graduates having academic qualifications to hold the post of Assistant Engineer (BPS-17), however, they only lacked approximately one year's experience for the subject post and this could be the reason, private respondents were initially de-notified vide office order dated 01.10.2013, to the post of Assistant Engineer (BPS-17), by relaxing approximately one year's experience, however, this ordeal continued to happen and the respondent department vide office orders dated 25.02.2015 and 01.04.2015 demoted the private respondents to the post of sub-Engineer BS-14 which demotion was later on cancelled vide another office order

dated 29.07.2015, fortunately they were again reverted the private respondents to the post of Sub-Engineer (BPS-14) vide order dated 20.07.2017, in compliance with the order dated 23.06.2017 passed by the learned Single Judge of this Court (O.S) in Civil Suit No.2483/2016, which office order was, later on, cancelled vide another office order dated 04.07.2022 by restoring the position of the private respondents as Estate Engineer (BPS-18).

19. It is shocking to note that a compliance report was submitted before the Supreme Court and the notification dated 31.10.2016 about the promotion of the private respondents was never brought to the notice of the Supreme Court and the scrutiny committee of SITE without obtaining the orders of Supreme Court, promoted the private respondents, which is apathy on the part of respondent SITE, however, the private respondents succeeded to obtain another promotion to BS-18 vide notification dated 03.11.2016.

20. In such circumstances, the question arises whether after 2008 and up to 2024 the private respondents in the intervening period have gained the experience and are now entitled to be promoted to the post of Estate Engineer (BPS-18).

21. On the aforesaid proposition, it is now well settled that if a person during the pendency of constitutional petition fulfilled the requisite qualification to hold such a post then writ of quo warranto could not be issued against such person as such Employees no more suffered disqualification to hold the post in question. On the aforesaid proposition the Supreme Court in the case of Asif Hussain and others v. Sabir Hussain and others¹, whereby the Supreme Court has held at paragraphs 6 & 7 as under:

“6. Now coming to the second limb of the argument of the petitioners' counsel that the qualification and experience of the person under attack in quo warranto is to be judged on the date of issuance of such writ meaning thereby that in case age, qualification and experience is acquired pending action under quo warranto then keeping such change, quo warranto may not be issued. We are afraid that such proposition cannot be accepted as it would render the substantive statutory requirement for a public office a nullity and would vitiate the entire selection process. No doubt a writ in the form of quo warranto is an extraordinary discretionary jurisdiction and the Court is not bound to exercise such jurisdiction in each and every case specially where on account of laches the matter has lost its significance or in cases of minor discrepancies, sheer curable technicalities or where the approach is doctrinaire unless it is shown that non-interference would result in grave injustice or would amount to endorsing the retention of illegal gains. However, in cases where the eligibility of a public servant is under attack on the ground that such public servant did not fulfil the substantive condition of eligibility to such office on the cutoff date prescribed in the process, then such violation of the substantive statutory requirement could not be overlooked merely on the ground that pending action in the Court such government servant has met the required condition of such office.

¹ 2019 SCMR 1720

7. As to the case of Ammad Ahmed (supra) whereby Lahore High Court amongst other after placing reliance on one of its own judgment in the case of M. A. Jabbar and others v. Federation of Pakistan (1999 PLC (C.S.) 686) held that "if a person during pendency of constitutional petition fulfilled the requisite qualification to hold such a post then writ of quo warranto could not be issued against such person as such Employees no more suffered disqualification to hold the post in question". We also examined the case of M. A. Jabbar (supra) and it appears that in the said case learned Single Judge after placing reliance on the judgment of this Court in the case of Farzand Ali (supra) came to the following conclusion:-

"Thus, the crucial date to determine the qualification of a person to hold a post is not only the date of appointment but also the date of issuance of the writ petition and if pending disposal of the writ petition, a person fulfils the qualification to hold such a post, writ of quo warranto is not to be issued against such a person. Reference may be made to Farzand Ali v. West Pakistan (PLD 1970 SC 98)".

We simply cannot subscribe to the view so taken as the High Court has misled itself by mis-interpreting the judgment of this Court in the case of Farzand Ali (supra). In Farzand Ali's case, number of government servants were retired through a constitutional amendment. The government servants challenged their retirement under quo warranto by taking a stance that since certain members of the legislators, for one or the other reasons, were disqualified and could not have voted in favour of such legislation, therefore, amendments were not made by the required majority and, therefore, could not have brought the required results. In this background, it was held: firstly, that the petitioners ought to have challenged such disqualification of the legislators in appropriate proceedings and their holding of such office could not be adjudged in collateral proceedings; secondly, the Court was of the view that since the legislators were not intruders and they had acted under the bona fide belief that they were entitled to act so and had at least a fair colour of title and they have performed their duties with public acquiescence, therefore, their act was as good as those of the de jure members of the assembly; thirdly, it was opined that in case the High Court would have allowed the quo warranto, it would have taken effect only from the date of pronouncement of High Court's judgment and not from any date anterior thereto and that would not have altered the decision regarding the validity of impugned amendment as such amendments would have still been protected not only under certain articles of the Constitution but de facto doctrine; fourthly, that the house by then had stood dissolved, therefore, no relief by way of quo warranto could be granted and the matter has only become of an academic interest. In this context, this Court has observed that:-

"If the quo warranto had been allowed by the High Court, as pointed out by Waheeduddin Ahmad, J., it would have taken effect only from the date of the pronouncement of the High Court's judgment and not from any date anterior thereto and that would not have altered the decision regarding the validity of the impugned amendments".

It appears that this portion of the judgment was misunderstood, firstly in the case of M.A. Jabbar (supra) and then followed in other cases while placing reliance on the case of Farzand Ali by reading it in the light of M. A. Jabbar (supra) by holding that "the crucial date to determine the qualification of a person to hold a post is not only the date of appointment but also the date of issuance of the writ petition". Likewise in the case of Sajid Hussain v. Shah Abdul Latif University Khairpur [PLD 2012 (Sindh) 232] at para 10(ii) it was held that, "Both at the time of institution of the writ petition and on the date decision it must be shown that the holder suffered from any disqualification to hold the public office", providing tacit leverage to those who get rid of such disqualification during pendency of proceedings, which finding not only are self-contradictory, endorses retention of illegal gain but also provide leverage to the executive by condoning their wrongs and that too at the cost of giving up a jurisdiction conferred by the constitution."

22. In the circumstances which we have narrated above in paragraphs supra, it is indeed difficult at this stage to hold that the private respondents do not have the requisite academic qualification to hold the promotion post, however, it appears from the records that the private respondents lacked experience for the

subject promotion post. Even it is well-settled law that if a public servant is appointed by promotion in violation of any provision of law, the competent authority can look into the matter and this Court, at this juncture, cannot dilate upon whether the private respondents lacked the academic qualification for the subject post, however, the only issue remains to be determined whether the respondent department has followed to the directions contained in the order dated 24.10.2016 of the Supreme Court passed in Criminal Original Petitions No.106 to 111 & 174 of 2016, giving directions for de-notifying officers/officials working in SITE to their original position. Paragraph No.2 of the order (supra) is reproduced as follows:-

“2. The Petitioners’ Counsel further complains that inspite of the directions contained in the aforesaid judgments, Ahmed Nawaz Jagirani has not been de-notified to his original position and is serving in BS-19 even today. Ahmed Nawaz Jagirani shall appear in person on the next date of hearing to justify as to how after being appointed as P.R.O (BS-16) he could be promoted to BS-19, under the garb of up-gradation. The M.D, S.I.T.E and the Additional Secretary, Services, shall place before us the service profile of Ahmed Nawaz Jagirani. The M.D, S.I.T.E and the Secretary, Services, shall issue requisite notification in the intervening period in compliance with the aforesaid judgments of this Court and report compliance, failing which this Court shall initiate contempt proceedings against the M.D, S.I.T.E and or any other official who is found guilty of willful defiance of order of this Court.”

23. In our view, once the Supreme Court of Pakistan has concluded in its order referred to hereinabove, this Court cannot travel into the merits of the case nor could take a different view. Ex-facie the Respondent-SITE has failed to offer any plausible explanation either in their pleadings or before this Court during arguments as to how private respondents were justified to have reached in BS-18 after de-notifying them in BS-14 by the respondent SITE vide office orders dated 25.02.2015 and 01.04.2015. So far as the notification dated 31.10.2016 promoting the private respondent on the recommendation committee of SITE, in its meeting held on 31.10.2016 the same notification was not brought on record before the Supreme Court when the compliance report was submitted by the Managing Director SITE. In pursuance of the order dated 24.10.2016, only notification dated 03.11.2016 was placed on record whereby the private respondents were promoted to the post of Estate Engineer BS-18, which prima facie show the intention of the respondent SITE that they intended to promote the private respondents without seeking permission from the Supreme Court as they were demoted to the post of BS-14 by the orders of the Supreme Court, if this is the position of the case, judicial propriety demands that this matter be remitted to the Promotion Committee of respondent SITE Ltd, to look into the qualifications including experience of the private respondents to hold the promotion posts of BS-17/18 and if they meet the

qualifications i.e. experience, at this juncture, they shall make efforts to re-consider the case of private respondents for promotion without discrimination, strictly following the findings of the Supreme Court as discussed in the preceding paragraphs.

24. The aforesaid exercise shall be undertaken within one month. In the intervening period, the impugned notification shall be kept in abeyance, and the decision of the promotion committee to the extent of respondent No.5 shall be subject to the outcome of the Civil Suit pending before the learned Singl Judge (O.S) of this Court.

25. This petition stands disposed of in the above terms.

JUDGE

JUDGE

Shafi