JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.867 of 2022

Dr. Muhammad Naseem Khan

Versus.

Dr. Shahzad Ali Khan and others

Petitioner by	:	Mr. Adnan Iqbal, Advocate.
Respondents by	:	M/s Hafiz Munawar Iqbal, Syed Pervez Zahoor, Sardar Abdul Wahab and Zainab Mustafa, Advocates for respondents No.1 and 2. Syed Nazar Hussain Shah, learned Asstt: Attorney-General along with Mr. Majid Khan, Asstt: Director (Legal), Ministry of N.H.S.R & C.
Dates of Hearing	:	10.03.2022, 06.04.2022, 17.05.2022, 18.05.2022 & 20.05.2022.

ARBAB MUHAMMAD TAHIR,J.:- Through the present writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as **"the Constitution")**, the petitioner, Dr. Muhammad Naseem Khan, seeks multiple reliefs since on the one hand, he calls in question the office order dated 04.03.2022, issued by the Vice Chancellor of the Health Services Academy (hereinafter referred to as the **"H.S.A."**) (respondent No.1), whereby his contractual services under the USAID funded project, were terminated and he was relieved from his duties with effect from 07.03.2022 and was called upon to report to his parent department, and on the other hand, he seeks issuance of a writ of *quo warranto* against respondent No.1

(Dr. Shahzad Ali Khan, who had issued the impugned office order), challenging his appointment as Vice Chancellor of the H.S.A. on the ground that he has not been appointed in accordance with Section 12 of the Health Services Academy Restructuring Act, 2018 ("hereinafter referred to as **"the 2018 Act"**). Additionally, the petitioner seeks a direction to be issued to respondent No.2 to treat him at par with other similarly placed contractual employees, who are still working on contract basis.

FACTUAL BACKGROUND:-

2. The facts in brief, necessary for the disposal of the present writ petition, are that the petitioner holds a Doctorate Degree in the field of Public Health. Pursuant to the recommendations dated 08.10.2020 made by the Hiring Committee of H.S.A., the petitioner was appointed as Professor (Public Health) in the H.S.A. on 20.10.2020 at fixed monthly salary of Rs.300,000/- (inclusive of all kind of fringe benefits, allowances and applicable taxes) under Technical Assistance funded by USAID. The said contractual appointment was for a period of one year (extendable) from the date of the joining of duty OR till the availability of the funds, whichever was earlier. The appointment under the said arrangement did not confer any right to be converted into a permanent appointment/absorption in any manner whatsoever. According to the petitioner's assertion, the term of his contract was extended for another period of one year (i.e. until 15.11.2022) with an increase in his remuneration. The other terms and conditions of his service remained the same. During this period, as per the petitioner's stance, he remained on key positions in the H.S.A. Vide impugned office order dated 04.03.2022, his contractual services were terminated before the expiry of the term of his contract. Hence, this petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

3. Mr. Adnan Iqbal, Advocate, learned counsel appearing on behalf of the petitioner after narrating the facts, contended that based on the petitioner's performance, his contract period was extended until 15.11.2022; that to the utter surprise of the petitioner, the petitioner's contract was terminated without assigning any reason; that respondent No.1 who issued the impugned office order is neither the competent authority nor the Vice Chancellor of H.S.A.; that the petitioner's contractual services were terminated by an incompetent authority; that had the petitioner's performance not been satisfactory, his contractual appointment could not have been extended and he could not have been appointed on key positions; that the petitioner, with a *mala fide* intent, has not been provided with a copy of the office order extending his contractual period; that the petitioner had been striving to serve H.S.A. to the best of his ability throughout his contract; that at no material stage, was any show cause notice issued to the petitioner prior to the termination of his services; that the petitioner has been discriminated against in as much as other similarly placed contractual employees are still working in H.S.A. whereas his services have been terminated; that the petitioner's removal is the result of personal grudge and enmity; that respondent No.1 illegally is occupying the office of Vice Chancellor; that respondent No.1 had no authority to terminate the petitioner's service.

4. Furthermore, it was contended that the office of Vice Chancellor, H.S.A. is lying vacant since 31.08.2021; that ever since 31.08.2021, respondent No.1 has self-assumed the charge of Vice Chancellor of H.S.A. without there being any notification in this behalf; that the provisions of the 2018 Act provide for a

competitive, fair and transparent manner to be adopted for the appointment of Vice Chancellor; that Section 12 of the said Act provides that the Vice Chancellor shall be appointed on the recommendations of the Senate of H.S.A. which shall be assisted by the Search Committee to be constituted by the Senate of H.S.A.; that respondent No.1 has never assumed the office of Vice Chancellor as per the procedure laid down by the 2018 Act; that respondent No.1 is an Associate Professor having his Ph.D. in an irrelevant field i.e. Management Sciences and not in Public Health; that the impugned officer order be declared as illegal and unlawful having been issued by an incompetent authority i.e. respondent No.1, who is not the Vice Chancellor of H.S.A. Learned counsel for the petitioner while contending relied upon the judgments reported as 2013 PLC (CS) 1264, PLD 2012 SC 132, 2013 PLC (CS) 1254, PLD 2002 Karachi 60, and 2007 SCMR 703.

SUBMISSIONS OF THE LEARNED COUNSEL FOR RESPONDENTS NO.1 and 2:-

5. On the other hand, Hafiz Munawar Iqbal, Advocate, learned counsel appearing on behalf of respondents No.1 and 2 contended that the present writ petition is not maintainable since the post against which the petitioner was employed, was a “project post”; that the petitioner’s appointment was made for a period of one year under USAID funded project; that the petitioner’s appointment did not confer any right upon him to claim his retention in H.S.A. for an indefinite period; that the petitioner was neither a permanent employee nor a contractual employee since he was appointed for a donor based project for a period of one year (extendable) or till the availability of the fund, whichever was earlier; that the petitioner has no *locus-standi* to file the present writ petition since he has no legal right to claim further extension

in H.S.A.; that the petitioner's services were neither terminated nor dismissed rather the same were discontinued and he was relieved from the contractual service and was directed to join his parent department; that respondent No.1 lawfully exercised the powers subsequent to the delegation of powers by the then Vice Chancellor; that necessary communiqué with the controlling Ministry regarding the appointment of a regular Vice Chancellor is already under process after the premature retirement of the then Vice Chancellor; that respondents No.1 and 2 not only discontinued the services of the petitioner but also those of two other similarly placed employees; that the then Vice Chancellor delegated his powers on 06.05.2021 and proceeded on ex-Pakistan leave followed by a request for premature retirement; that respondents No.1 and 2 never violated any of the provisions of the 2018 Act; that it is well settled law that a Court of law is not expected to interfere in the affairs of the degree awarding institution; that the petitioner's services were hired under the technical services/assistance funded by the USAID and Government of Pakistan for the execution of the project titled "Strengthening the capacity of the H.S.A.; that no illegality or irregularity has been committed by respondents No.1 and 2 calling for interference by this Court under Article 199 of the Constitution. Learned counsel for respondents No.1 and 2 prayed for the writ petition to be dismissed with costs.

6. On behalf of respondent No.4 (Federal Government through its Health Secretary), arguments advanced by the learned AAG, were more or less the same as the ones advanced by the learned counsel for respondents No.1 and 2.

7. I have heard the submissions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the present writ

petition have been discussed in detail (supra) and need not be reiterated.

8. Through the petition in hand, the petitioner has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution by making twofold prayers (1) to declare the impugned office order dated 04.03.2022 as illegal, without lawful authority and *void ab initio* having been issued by an incompetent person and (2) direct respondent No.1 to quote the authority under which he is holding the post of the Vice Chancellor of H.S.A.

9. This Court, at the first instance, deems it appropriate, to deal with the first grievance agitated by the petitioner regarding the impugned office order dated 04.03.2022. The record shows that on 18.09.2020, the petitioner, through job application form, applied for the position of Professor (Health Services) at H.S.A. Islamabad under Technical Assistance project in a donor supported project funded by USAID. Subsequently, vide letter dated 01.10.2020, the petitioner was informed to appear for interview on 08.10.2020. In the said letter dated 01.10.2020, it had unequivocally been mentioned as *infra*:-

> ***"3. This is a donor supported contractual position for limited period and selection thereof shall not confer any right for permanent absorption at Health Services Academy or in any other public sector entity"***
>
> **Emphasis laid:**

10. On the recommendations made of the Hiring Committee of H.S.A. in its meeting held on 08.10.2020, the petitioner was appointed as Professor (Public Health) **at a fixed monthly remuneration** of Rs.300,000/- (inclusive of all kind of fringe benefits, allowances and applicable taxes) under Technical

Assistance project funded by USAID. **The said contractual appointment was for a period of one year (extendable) from the date of the joining of duty OR till the availability of the funds, whichever was earlier.** The said appointment/selection was not to **confer any right for permanent absorption at H.S.A.** or in any other Public Sector entity.

11. The record shows that the petitioner's services were hired under the Technical Assistance funded through MoU between the USAID and the Government of Pakistan for the execution of the Project titled *"Strengthening the capacity of Health Services Academy, Islamabad".* The PC-I of the said Project was approved by CDWP in its meeting held on 06.07.2017. The said project was meant for contribution in bridging the gaps of the Academy identified by the Higher Education Commission to function efficiently as a Degree Awarding Academic Institution. The record is suggestive of the fact that the post against which the petitioner was appointed, was a Project Post" under the PSDP and the petitioner was selected for a specific term of one year, which was further extendable from the date of the joining of duty or subject to the availability of the funds, whichever was earlier. The words *"subject to the availability of the funds"* clearly means that the appointment of the petitioner was to last till the life of the Project.

12. A perusal of the impugned order dated 04.03.2022 clearly shows that the petitioner was informed that his contractual services under the USAID funded project cannot be continued any more. It is well settled that an appointment on "Project Post" does not confer any right for permanent absorption or to be retained for an indefinite period. It is my view that no sooner any Project comes to an end, the employees appointed on Project posts and for the purposes of such a Project, can be shown the doors on the winding up of the Project.

13. The High Court cannot step into the shoes of the appointing authority. It also cannot extend the scope of a contract that has been signed by an employee as the same goes against the spirit of the very concept of contract employment. When an employee accepts a post in a project, he is aware of the fact that the project will come to an end on its completion or cessation of its funding (as the case may be) and with that, his employment will also come to an end. Forcing the authorities to "accommodate or retain" such employees for an indefinite period or to absorb them, is not only a transgression of the powers vested with the High Court under Article 199 of the Constitution, but is also a burden on the Government Exchequer which the Court is not at liberty to place. There is nothing in the impugned office order dated 04.03.2022 passed by the competent authority which is illegal more particularly when the petitioner's employment has already been discontinued in accordance with the terms and conditions of his contract employment. It is the prerogative of the employer to decide the terms and conditions of an employee's contract. It is not for the Court to step into the shoes of the employer and force it to employ someone for whom there may not be a sanctioned post available and even if there is one, without following due process, procedure and criteria. Learned counsel for the petitioner was unable to point out to this Court any rule creating a right for regularization of the petitioner's service or his indefinite stay in H.S.A. It is well settled principle of law that regularization cannot take place without there being any statutory backing. The petitioner cannot claim his appointment in respondents No.1 and 2 Institute for an indefinite period since it is unequivocally provided in his appointment letter dated 20.10.2020 that *"his appointment shall be for a period of one year from the date of the joining of duty* ***OR*** *till the availability of the funds, whichever was earlier"*. The petitioner cannot be thrust upon respondents No.1

and 2 since he was employed for a specific Project and subject to the availability of the funds. Respondents No.1 and 2 in their written comments have negated the petitioner's stance *qua* non-providing him with a copy of the office order extending his contractual period in terms that "denied being incorrect. A copy of extension letter is attached. The petitioner never intimated about non-receipt of extension letter. However, the salary was being regularly deposited in petitioner account on monthly basis". However, there is letter/document on the record showing an extension in the petitioner's contract. Even otherwise, the petitioner cannot claim his permanent absorption and/or retention in H.S.A. for an indefinite period. At best, a contract employee can approach the appropriate forum for recovery of damages against an employer for breach of contract, if a case is made out against the employer. It is well settled proposition of law that the High Court in exercise of its Constitutional jurisdiction under Article 199 of the Constitution cannot assume the role of the appointing authority and direct employer to amend/alter the terms and conditions of the contract in favour of employee, which have been agreed upon by the said employee.

14. In the case of **Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others Vs Sher Aman and others (2022 SCMR 406),** the Hon'ble Supreme Court has inter-alia held as follows:-

> *"----Art. 199---Civil service---Contractual employment---Project posts---Constitutional jurisdiction of the High Court---Scope---High Court could not step into the shoes of the appointing authority---* ***When the High Court was exercising jurisdiction under Art. 199 of the Constitution, it could not extend the scope of a contract or alter/amend the terms and conditions of employment in favour of employee that had been signed by***

an employee as the same went against the spirit of the very concept of contract employment---When an employee accepted a post in a project, he was aware of the fact that the project would come to an end on its completion or cessation of its funding (as the case may be) and with that, his employment would also come to an end*---Forcing the Government to "accommodate/adjust" such employees was not only a transgression of the powers vested with the High Court under Art. 199 of the Constitution, but was also a burden on the Government Exchequer which the court was not at liberty to place---Employer had the prerogative to decide the terms and conditions of an employee's contract, and it was not for the court to step into the shoes of the employer and force him to employ someone for whom there was no available post and even if there was one, without following due process, procedure and criteria.*

Emphasis laid.

15. In the case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs Intizar Ali and others (2022 SCMR 472), the Hon'ble Supreme Court has inter-alia held as follows:-

"This Court in a number of cases has held that ***temporary/contract/project employees have no vested right to claim regularization****. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts, which admittedly is not the case before us. This Court in the case of PTCL v. Muhammad Samiullah (2021 SCMR 998) has categorically held that ad-hoc, temporary or contract employee has no vested right of regularization and this type of appointment does not create any vested right of regularization in favour of the appointee"*

Emphasis laid:

16. In the case of **Secretary Local Government, Election Rural Development Khyber Pakhtunkhwa and others Vs Muhammad Tariq Khan and others (2022 PLC (C.S) 186),** the Hon'ble Supreme Court has *inter-alia* held as follows:-

> *"**Temporary/project employees, who were appointed specifically till the completion of a certain project could not be regularized as they neither had any vested right to hold such post beyond prescribed period** nor the Government owed any obligation to maintain continuity in their service for an unlimited period."*
>
> **Emphasis laid:**

17. In the case of **Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar and others Vs Abdul Manan and others (2022 PLC (C.S) 23),** the Hon'ble Supreme Court has inter-alia held as follows:-

> *"---employees who were appointed against a project post--- **Whenever the said project came to an end unless otherwise provided, the posts in the said project too came to an end and all appointees stood relieved**"*
>
> **Emphasis laid:**

18. In the case of **Pakistan Railways through Chairman Islamabad and another vs. Sajid Hussain and others (2020 SCMR 1664),** it has been held as follows:-

> *"In ordinary terms the word 'project' is used to denote any undertaking which is for a limited period **and after the objective for which the said project has been set up is achieved, funding for the same dries up and employees who were hired for a limited period for duration of the project have to be relieved of their duties owing to the fact that the project has concluded**, the funding has ceased and the very basis on*

which such employees were hired has come to an end."

Emphasis laid:

19. It is thus held that the duties performed by the petitioner were contractual in nature and were for a specific project and his services were "subject to the availability of the funds" or for a period of one year from the date of the joining of duty, whichever was earlier. Thus, the impugned office order dated 04.03.2022 terminating the petitioner's contractual services, does not suffer from any legal infirmity calling for interference by this Court.

20. Now turning to the issue regarding the appointment of respondent No.1 as the Vice Chancellor of H.S.A., who had issued the impugned office order dated 04.03.2022. The petitioner assails respondent No.1's appointment on the ground that he does not have any authority under the law to terminate his services and that respondent No.1's appointment as the Vice Chancellor of H.S.A. is not backed by any provision of the law in general and Section 12 of the 2018 Act in particular.

21. As discussed earlier, through the petition in hand, the petitioner also seeks the issuance of a writ of *quo warranto* against respondent No.1 challenging his appointment as the Vice Chancellor of H.S.A. It ought to be borne in mind that it is not mandatory for the issuance of a writ of *quo warranto* that any of the fundamental and/or legal rights of a person seeking such a writ are infringed. A person is at liberty to challenge the validity of an appointment of an individual to a public office, but nonetheless, the Court must satisfy itself as to the filing of a petition of *quo warranto* that the same has been filed with *bona-fide* intention. It is well settled preposition of law that the High Court is vested with discretionary powers under Article 199 of the Constitution to grant discretionary relief to a person by issuing directions, writs and orders.

22. This Court in the case of **Ayaz Ahmed Khan Vs. Federation of Pakistan and others (2021 PLC (C.S.) 1394 Islamabad)** while deliberating upon the issue of *quo warrant* has held as follows:-

> *"**A writ of quo warranto is not to be issued as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The foremost obligation of the Court while hearing a petition seeking the issuance of a writ of quo warranto is to enquire into the conduct and motive of the relator and may, in its discretion, decline to issue a writ where it would be vexatious to do so.** Reference in this regard may be made to the judgments in the cases of Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899), Muhammad ShahidAkram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Mirza Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526)"*
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> *6. For instituting a writ of quo warranto, it is not necessary that any fundamental or other legal right of the petitioner is infringed. Any person is free to challenge the validity of an appointment to a public office. However, the Court must be satisfied that the petition is bona fide and not motivated by any malice against the person whose appointment is under challenge. A 4 W.P. No.2490/2021 writ of quo warranto should be refused where it is an outcome of malice or ill-will. The Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object."*

23. Similarly, in the case of **Dr. Y. S. Rajasehara Reddy and others Vs. Sri Nara Chandrababu Naidu and others (AIR 2000 A.P. 142),** the Court has summarized the scope for the issuance of writ of *quo warranto.*

CONDUCT OF THE PETITIONER.

24. The conduct of a person seeking a relief in the constitutional jurisdiction of the High Court is of paramount importance for the exercise of such powers. The exercise of writ jurisdiction by a High Court has to be founded on sound discretion and on consideration of the recognized judicial principles governing exercise of such discretion. The High Court cannot refuse to take into consideration a petitioner's conduct which disentitles him / her from such relief. The High Court in exercise of the powers conferred by Article 199 of the Constitution can grant relief only to a person whose conduct is such that does not disentitle him / her to obtain such a relief. It is well settled that a writ of *quo warranto* is not to be issued as a matter of course rather it is the Court's discretion whether to refuse or grant it keeping in view the facts and circumstances of the case. The exercise of writ jurisdiction of a High Court has to be based on sound discretion and on consideration of the recognized judicial jurisprudence governing the exercise of such discretion. The High Court cannot refuse to take a petitioner's conduct into account in the writ of *quo warranto* which disentitles him / her from such relief.

25. The Court must, while hearing a petition seeking the issuance of a writ of *quo warranto*, enquire into the conduct and motive of the relator and when the Court is not satisfied as to the conduct of the petitioner/relator, it may, in its discretion, refuse to issue a writ where it would be vexatious to do so. Reliance may be placed on the law laid down in the case of **Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899),** wherein it was inter alia held as follows:-

> *"---**the relief of quo warranto, which is purely a discretionary relief as quo warranto is not issued as a***

***matter of course and the Court can and will enquire into the conduct and motive of the relator**. So also there is no specific rule for the exercise of discretion by the Court in granting or refusing an information in the nature of quo warranto."*

Emphasis laid.

26. In the case of **Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335),** it was inter alia held as follows:-

*"---But at the same time **grant of relief in quo-warranto is based on principles of equity and thus the conduct and motive of the petitioner can be looked into by the High Court while entertaining the writ of quo-warranto**.",*

27. 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 activise 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."

Emphasis added.

27. 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).**

29. 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 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."*

30. The Hon'ble Supreme Court in the case of **Dr. Azim-ur-Rehman Khan MeoVs. 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 an 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."*

31. In the case of **Ashok Kumar Pandy Vs. The State of West Bengal (AIR 2004 SC 280),** it was inter alia held as under:-

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be

thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

32. In the case of **Aziz-ur-Rehman Ch. Vs. M. Nasiruddin and others (PLD 1965 SC 236),** it was held as follows:-

> ***"The Court from which the writ was sought was entitled to enquire into the conduct and motives of the appellant for such a writ and if the information was considered to be merely of a vexatious nature the Court was entitled to refuse to exercise its discretion in favour of the appellants."***

33. Perusal of the record shows that the Syndicate of H.S.A. approved the retirement of the then Vice Chancellor of H.S.A., namely Dr. Assad Hafeez with effect from 01.09.2021. Furthermore, the Syndicate ratified the arrangements proposed by the then Vice Chancellor, H.S.A. and directed H.S.A. to submit the reference to the President of Pakistan being the Chancellor of H.S.A through the Ministry of National Health Services, Regulations and Coordination for further guidance and necessary orders in the matter. It is apparent from the record that the petitioner was happy with the appointment of respondent No.1 as the Vice Chancellor of H.S.A. until February, 2022. It is not until 04.03.2022 that respondent No.1 issued the impugned office order terminating the petitioner's contractual services which were hired for a USAID funded project, the petitioner developed hatred against respondent No.1. Had the petitioner being aggrieved by respondent No.1's appointment as the Vice Chancellor of H.S.A., he could have challenged the same at the relevant time. The conduct of the petitioner to challenge respondent No.1's appointment as Vice Chancellor of H.S.A. only when he (respondent No.1) issued an adverse order i.e. the impugned office order, bespeaks volumes of the mala fides and ulterior motives on

the part of the petitioner. In this view of the matter, the personal vengeance/grudge of the petitioner against respondent No.1 cannot be ruled out particularly when respondent No.1 issued the impugned office order dated 04.03.2022. As such, it could safely be held that the present petition is the outcome of *malice* and ill-will on the part of the petitioner. It is well settled that the Constitutional jurisdiction of the High Court cannot be resorted to settle the personal grudges/differences between the parties as such this petition is not maintainable on this score alone.

COURT CANNOT FUNCTION AS A SELECTION/APPOINTING AUTHORITY:-

34. As discussed above, this Court in exercise of its Constitutional jurisdiction cannot ascribe to itself the role of the Selection/Appointing Authority in service matters and the responsibility of deciding the suitability of an appointment, posting or transfer is the exclusive domain of the Executive Branches of the State. It is also well settled that the Court of Constitutional Causes should ordinarily refrain itself from interfering in the policy making domain of the Executive. Reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in case law of **Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others (2008 SCMR 960),** wherein it was held as under:-

> *"Needless to observe that in exercise of constitutional jurisdiction, the* ***High Court was not expected to perform the functions of a Selection Authority in service matters so as to substitute its opinion for that of a competent authority****."*
>
> ***Emphasis added.***

35. A similar view was taken in the case of **Ghulam Rasool Vs. Government of Pakistan through Secretary, Establishment Division, Islamabad (PLD 2015 SC 6),** whereby it was held that ***"it***

is also well settled that the Court should ordinarily refrain from interfering in policy making domain of the executive".
Emphasis added.

36. Muhammad Ashraf Sangri vs. Federation of Pakistan and others (2014 SCMR 157), it was held as follows:-

> *"---Candidate passed written test of CSS examination but failed in viva voce/interview---Plea raised by candidate was that Interview Board did not assess him in accordance with procedure at interview---Validity---**Interview was subjective test and it was not possible for a court of law to substitute its own opinion for that of Interview Board, in order to give relief to the candidate**---**What had transpired at interview and what persuaded one member of the Board to award him 50 marks was something which a court of law was not equipped to probe**---**High Court could not substitute its own opinion with that of Interview Board**---If any mala fide or bias or for that matter error of judgment were floating on the surface of record, High Court would have intervened, as courts of law were more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post, which was subjective matter and could at the best be assessed by functionaries who were entrusted with such responsibility---Supreme Court declined to interfere with the result of candidate declared by Public Service Commission---Petition was dismissed"*

37. In the case of **Zafar Javaid and 6 others Vs. Executive District Officer (Revenue), Okara and 2 others (2015 PLC (CS) 442),** it was held as follows:-

> "---**High Court could not substitute its own opinion with that of Interview Board**---If any mala fide or bias or for that matter error of judgment were floating on the surface of record, High Court would have intervened, as courts of law were more familiar with

such improprieties rather than dilating into question of fitness of any candidate for a particular post, **which was subjective matter and could at the best be assessed by functionaries who were entrusted with such responsibility**"

38. In the case of **Altaf Hussain Vs. FBSC through Chairman and another (2022 PLC (CS) 92)**, it was held as follows:-

> *"The matter relates to the year 2015 and the posts have already been filled, wherein appellant could not qualify, thus, the matter has become a past and closed transaction.* ***Even otherwise, interview was a subjective test and it is not possible for a Court of law to substitute its own opinion for that of Viva Voce Board/Interview Committee, rather it was within the domain of its Members that what persuaded them to award certain marks to a particular candidate and the Court of law is not expected to substitute their findings with its own findings****.*

39. Law to the said effect has also been discussed in the cases of **Arshad Ali Tabassum Vs. The Registrar, Lahore High Court, Lahore (2015 SCMR 112), Miss Gulnaz Baloch Vs. Registrar, Balochistan High Court, Quetta and others [2015 PLC (C.S.) 393], Muhammad Ashraf Sangri Vs. Federation of Pakistan and others (2014 SCMR 157) and Dr. Mir Alam Jan Muhammad Shahzad and others (2008 SCMR 960)**. The case laws relied upon by the learned counsel for the petitioner are distinguishable from the facts and circumstances of the present case and do not come to the aid of the petitioner.

40. In sequel to the discussion made herein above, the impugned office order dated 04.03.2022 does not suffer from any legal infirmity calling for any interference by this Court under

Article 199 of the Constitution. Consequently, this petition, being devoid of merits, is hereby **dismissed** with no order as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 13.06.2022.

JUDGE

ISLAMABAD │13.06.2022
APPROVED FOR REPORTING.

//Kamran//*