

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. W.P. 2744-11 2007

Nazeer Aslam

Titled

Vs

Federal Govt. etc.

(a) Judgment approved for reporting

✓ Yes / No

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

       Yes / No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

Initial of the Judge.

## NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.2744 of 2011.**

Nazar Aslam

Vs.

Govt of Pakistan & Five Others.

Date of Hearing:	27 <sup>th</sup> January, 2012.
For petitioner:	Mr. Sher Afzal Khan, Advocate.
For respondents 1 to 4:	Qazi Rafi-ud-Din Babar, learned D.A-G.
For respondent No.5:	Malik Anwar Mukhtar, Advocate.
For respondent No.6:	Mr. Abdur Rahim Bhatti, ASC.

**JUDGMENT**

**MUHAMMAD ANWAR KHAN KASI. J. :-** The petitioner seeks a writ of quo-warranto calling into question the re-appointment of respondent No.6. Mrs. Shaheen Khan vide Notification No.1/69/2002-E-6 dated 23.09.2011 as Chairperson of Federal Board of Intermediate and Secondary Education Islamabad, as being violative of the policy and instructions of the Federal Government.

2. It is submitted by the learned counsel for the petitioner that respondent No.6 is an employee of the Higher Education Commission of Pakistan in BS-20 and was appointed as Chairperson of the FBISE on deputation basis for a period of three years vide Notification No.F.II (29)/FBISE/ADMN/73 dated

22.092008. It is contended that the said post was in grade 20 but the Board of Governors of BISE in 89<sup>th</sup> meeting dated 11.03.2010, upgraded the post from BS-20 to BS-22 and, therefore, the respondent, being a grade 20 officer, lacked qualification to hold the office as Chairperson of the FBISE.

3. It is alleged that the respondent No.6 had been facing serious charges of corruption as well as stinking charge of plagiarism in respect of her PHD degree in her parent organization and, therefore, her name could not has been forwarded for holding a sensitive appointment in FBISE, which is entrusted with holding of important examinations and keeping secrecy for transparent mechanism in the organization. It is further alleged that respondent No.6 had indulged in corrupt practices and her execution of agreement for the purchase of 425 undeveloped plots out of public fund for employees at the total price of Rs.4,02,750,000/-was illegal and payment of three instalments amounting to Rs.26,0000,000/-was declared illegal and without any lawful authority by the Hon'ble Supreme Court vide order dated 01.07.2011 in writ petition No.2854/2010, whereby it was also ordered that the entire amount shall be refunded to the fund of the Board forthwith.

4. The petitioner has levelled series of allegations against the respondent No.6 regarding

embezzlement in purchases and illegal appointments inspite of ban by the government and unauthorized occupation of the FBISE Guest House despite availing Rs.80,000/-monthly house rent. The allegations contain the unauthorized deposit of 400 million rupees in the Bank of Punjab and deposit of Rs.10/-Crore in Dubai Islamic Bank to please the Federal Minister for Education with<sup>a</sup> deposit of 10 Billion and 200 million rupees in a private bank namely Silk Bank Ltd for recovering commission which, however, was withdrawn from Silk Bank due to the strike of the FBISE employees.

5. The counsel for the petitioner further contended that inspite of lacking qualification, her re-appointment for another period was made without the consent of the lending organization i.e H.E.C by concealing the facts and, therefore, the appointment is without any lawful authority or legal justification. Learned counsel for the petitioner relied upon the following case laws;

1997 PLC (C.S) 451, PLD 1996 Supreme Court 771, 2011 MLD 322 (Lahore), PLD 1974 Supreme Court 228, 1997 PLC (C.S.)451, 1998 PLC (C.S) 1016, 2010 SCMR 378, PLD 2007 Supreme Court 52, 2010 PLD 817 Supreme Court, 2010 PLD 625 LHC(Lahore), 2010 PLC 619 LHC, Lahore, 2009 PLC 722 KHC(Sindh), 2008 PLC 659 LHC(Lahore), 2007 PLD

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52 Supreme Court, 2007 PLD 52 Supreme Court, 1999 SCMR 1585 Supreme Court, 1999 SCMR 2786 Supreme Court, 1999 PSC 686 LHC(Lahore), 1997 PSC 273 LHC(Lahore), 2010 SCMR 378 Supreme Court, 2010 PLC 367 Supreme Court, 2010 PLC 367 Supreme Court, 2011 PLC (C.S.)756, PLD 1996 Supreme Court 324 and 2011 PLC (C.S) 482.

6. 2011 MLD 322 (Lahore) discusses that statutory bodies are governed under Acts, rules and statutes which are meant for the purpose and no one can exceed from its domain, neither supersede nor deviate and if the acts are done by the authority against public interest and in violation of the statutes, then any person can file the writ of quo-warranto.

7. The Hon'ble Supreme Court in PLD 1974 228 held that quo-warranto petition can be moved by any person and the petitioner need not be an aggrieved party.

8. The petition was vehemently contested by the respondents through separate parawise comments.

9. Respondent Nos.1 & 2 i.e Secretary Establishment and Principal Secretary to Prime Minister submitted that Mrs. Shaheen Khan, DG HEC was transferred and posted as chairperson FBISE on deputation basis with the approval of Prime Minister on 17.09.2008 and after expiry of her initial deputation period, it was extended for two

61.

years w.e.f 19.09.2011 with the approval of the Prime Minister vide Notification No.1/69/2002-E-6 dated 23.09.2011.

10. The respondent No.5-HEC submitted that during her service with the HEC, an enquiry was conducted against her but finally she was absolved of the charges with issuance of a warning by the competent authority. It was further submitted that at the time of her appointment as chairperson FBISE, no disciplinary proceedings were pending against her. It was<sup>s</sup> however, admitted that consent of the parent<sup>t</sup> department was not obtained for re-appointment of the petitioner. It was also admitted that petitioner was a grade-20 officer in the HEC.

11. Respondent No.6, Dr. Shaheen Khan filed separate parawise comments by stating that the petitioner has ulterior motives to blackmail the respondent so that he could save his son from disciplinary action already under process against him. Maintainability of the petition was also challenged on the ground of laches as well as having no cause of action against the respondent.

12. On merits, it is stated that her appointment on probation was made under the prescribed rules and again the extension was granted by the competent authority. Quoting the precedent about the appointment and 2<sup>nd</sup> tenure of Dr. Altaf Sheikh, it

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was submitted that no rules were violated in her case and the present petition deserves dismissal. The respondent refuted all the allegations levelled in the petition and stated that the performance of Board and efficiency improved remarkably due to her hard efforts and leading qualities.

13. Respondent counsel relied upon the following case laws; 2011 PLC (C.S.) 203, 2004 PLC (C.S.) 1328, 2004 PLC (C.S.) 1142, PLD 2007 Supreme Court 52, PLD 1965 Supreme Court 598, AIR 1970 Kerala 312, AIR 1961 Madras 450 and (1) AIR 1961 SC 647.

14. The authorities are on the point that quo-warranto cannot be issued as a matter of course on sheer technicalities or doctrine approach. It is also held that issuance of quo-warranto writ is discretionary with the court and petition filed by an interested person is not maintainable.

15. Since the parties placed reliance on the written comments available on file and addressed their arguments at full length, the case is being treated as 'pakka case.'

16. Heard and record perused.

17. Admitted position is that FBISE is a statutory body and if there are any violations of rules or statutes, then anybody can point out those illegalities and can approach the court for the issuance of quo-warranto writ. Good governance emphasis that legal



procedure should be adopted and right person at right place be appointed for smooth running of the affairs. There is no dispute on the point that before the re-appointment / extension of petitioner, the consent of parent department was not obtained.

18. Record reveals that the post of chairperson FBISE was upgraded from BS-20 to BS-22 by the Board of Governors in its 89<sup>th</sup> meeting on 11.03.2010. While the petitioner, admittedly was an officer of BS-20 and, therefore, she could not have been re-appointed against a post which was two steps higher to her grade. Public officer, according to 8<sup>th</sup> edition of Black's Law Dictionary means;

*"A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period".*

19. It has never been the case of the respondents that a grade-22 officer was not available and due to exigency, petitioner was posted against a higher post. In fact such appointments against non-entitlement give rise to frustration and deprivation among the officers who qualify for their appointments on merits against such posts.

20. The appointments against merit always create un-rest among the officers who meet the requirements of postings but are ignored without any justifiable reason. Such actions are not only





detrimental to public interest but also against the policy of good governance and, therefore; the courts are under obligation to strike off such irregularities / illegalities so that people may not lose their confidence in the courts.

21. As far as charges / allegations against the respondent No.6 are concerned, it is not possible under writ jurisdiction to probe into the charges or to give any findings on these because it requires deeper appreciation of evidence, however the observations / directions of the Hon'ble Supreme Court cannot be ignored lightly whereby the utilization of funds of the FBISE in the Housing Project were declared illegal and the entire amount was directed to be refunded. Though the respondents have challenged the said orders through a review petition, yet in absence of any stay order, they hold the field.

22. The upshot of the discussion is that consent of parent department for re-appointment of the petitioner was not obtained and she was given an extension for two years while u/s 11 of the FBISE Act, 1975, the Chairman is appointed by the Federal Government for a term of three years and is eligible for reappointment for a second term and, therefore, reappointment required qualification could not have been ignored.

  
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23. Keeping in view the above, writ petition is accepted and the reappointment of Dr. Shaheen Khan as Chairperson of the FBISE with effect from 23.09.2011 for the second term is declared in violation of rules and without any lawful authority. The respondent No.1 is directed to fill the vacancy on merits out of the qualified officers. There shall be no order as to costs. //

(MUHAMMAD ANWAR KHAN KASI)  
JUDGE.

AMER BAIG.

Announced in Open Court, on the day of 29<sup>th</sup> February, 2012.

JUDGE.

Approved for Reporting.