

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

WRIT PETITION NO.2152/2014

QAZI MUSTAFA KAMAL

VS.

**FEDERATION OF PAKISTAN, THROUGH SECRETARY ESTABLISHMENT
DIVISION, ETC.**

PETITIONER BY: Barrister Faisal Khan Toru, Ms. Hadiya Aziz
and Mr. Khubab Aziz, Advocates

RESPONDENTS BY: Mr. Fazal-ur-Rehman Khan Niazi, learned
DAG.

Mr. Muhammad Nazir Jawad and Mr. Feisal
Hussain Naqvi, ASC, for Respondent No.2.

Mr. Muhammad Akram Sheikh, Sr. ASC, Ch.
Hassan Murtaza Maan and Mr. Sultan Hayat
Ranjha, Advocates for Respondent No.3.

DATE OF HEARING: **16.06.2014**

SHAUKAT AZIZ SIDDIQUI; J: Petitioner invoked the
constitutional jurisdiction of this court by way of filing the instant
writ petition with the following prayer:

*“Under the circumstances expounded above, it is most respectfully
prayed that while accepting the instant constitutional petition, the
impugned Notification No.1/42/2004-E-6 dated 27.02.2014 issued by
respondent No.1 and office order dated 28.02.2014 may kindly be
declared null and void ab initio as respondent No.3 stands disqualify also
in terms of Section 97 (c) of Memorandum of Articles of Association of
PTVC Limited & in violation of directions of Honourable Supreme Court,
Islamabad High Court, Islamabad and laws. The post of MD PTVC be re-
advertised and High Powered Selection Committee may also be
strengthened to select the right candidate as per directions of the Supreme
Court and Islamabad High Court. Moreover, the respondent No.3 may be
stopped to perform the functions and act as MD PTVC being recruited
through unlawful process of recruitment.*

And presented the facts as under:-

2. That the Petitioner is presently performing his duties as Director Special Assignments, Pakistan Television Corporation Ltd ("PTVC"), Islamabad, having an experience of over 28 years in PTVC. That the Respondent No.2 prepared the case for the appointment of Managing Director, PTVC and advertised the said post by inviting applications from suitable candidates as per the given qualification, experience and other terms and conditions published in the Daily Dawn dated 30.04.2013 ("the First Advertisement"). Later on, the Respondent No.2 re-advertised the said post vide advertisement published in the Daily Jang dated 09.10.2013 ("the Second Advertisement"), whereby, firstly, the required academic qualifications were lowered from a Masters Degree to a Bachelors Degree in Mass Communication or Journalism, secondly, the age limit was relaxed and, thirdly, the required work experience of twenty (20) years was reduced to fifteen (15) years. It was contended that this was done purely to make the said advertisement person-specific for the benefit of Respondent No.3. Subsequently, a Corrigendum was also published in the Daily Nation dated 16.10.2013 ("Corrigendum") which amended the Second Advertisement further as follows: (a) the contractual term was revised from two (2) years to three (3) years; (b) the degrees of Bachelors in Arts and Social Sciences were added in the list of academic qualifications required for this position; (c) "written evidence" of fifteen (15) years work experience was changed to "established track record" of fifteen (15) years experience; and (d) the remuneration for this position was changed from that of an MP-1 scale to such package as may be negotiated by the parties, keeping in view the last pay drawn by the successful candidate from the private sector, without fixing any upper limit of

remuneration. Thereafter, the Respondent No.3 applied for the said post of MD PTVC when the stage was all set for him, in a pre-planned manner and was, subsequently, appointed as MD PTVC vide Notification dated 27.02.2014.

3. It was averred by the learned counsel for the Petitioner, Barrister Faisal Khan Toru, that such appointment was in clear violation and against the directions of the hon'ble Supreme Court of Pakistan given in its judgment titled "*Khawaja Muhammad Asif vs Federation of Pakistan & others*", reported as 2013 SCMR 1205, as well as the Islamabad High Court's judgment dated 08.05.2013 passed in W.P No.1874/2013, against the provisions of the Companies Ordinance, 1984, rules of natural justice and all other applicable laws. It was contended that the Respondent No.3 has been appointed as MD, PTVC despite the fact that he was an established defaulter of PTVC to the extent of Rs.14.139 million, as evidenced by the minutes of meeting dated 17.06.2013 of the Dispute Resolution Committee of PTVC, as well as the reconciliation statement dated 07.11.2013 issued by Mr. Matloob Ahmad Khan, Director Finance, PTVC. That, as such, even the Respondent No.5 (Chairman, High Powered Selection Committee) failed to exercise his role and responsibilities with regard to the selection of Respondent No.3 by *inter alia* ignoring the defaulter status of the Respondent No.3 for the last ten (10) years and also ignoring the order of merit and short-listing conducted by M/s A.F.Ferguson & Co.

4. Learned Counsel further argued that the Prime Minister of Pakistan exercised his discretion in an unstructured and illegal manner by discarding the recommendation of the Federal Commission for Selection of Heads of Public Sector Organizations ("FCHPSO"), whereby one Mr. Jamal Shah was proposed as the most suitable candidate for the post of MD PTVC, whereas the

Respondent No.3 was placed as second on the merit list. Learned Counsel added that law does not provide the competent authority with unbridled, unfettered and unstructured powers while exercising its discretion for appointment of the Managing Director, PTVC. He stated that appointing authorities could not be allowed to exercise their discretion at their own whims, or in an arbitrary manner, rather, they are bound to act fairly, evenly and justly, and any violation of such principles is judicially reviewable. Furthermore, in order to exercise fair and transparent discretion, their actions must be based on an objective, open and impartial consideration to decide such matters and the objective of good governance can only be achieved by exercising discretionary powers reasonably. Learned Counsel went on to add that by virtue of Articles 4 and 5 (2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution and to act in accordance with law and decide issues after application of mind, with reasons.

5. The learned counsel contended that the Respondent No.3 has a clear conflict of interest in, on the one hand, being appointed as MD PTVC, and, on the other hand, owning production houses namely, Media Magic (Pvt) Ltd, a private limited company, of which he is an 80% shareholder and M/s Pink Productions, a proprietorship that is proxy managed/run by his wife, Aneela Malick. It was averred that conflict of interest arises when public officials have to make decisions at work that *may* affect their private interests and governments are expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. He further contended that it is well-settled law that the *entire process of recruitment* leading to the appointment to a “public office” can be judicially reviewed under Article 199(1)(b)(ii) of the Constitution.

The recruitment process must be above-board and the Courts are under an obligation to judicially review the integrity of the selection process of a public office. Finally, learned counsel concluded that the appointment of the Respondent No.3 as MD PTVC was also a violation of Sections 199 and 203 of the Companies Ordinance, 1984 in so far as (a) the competent authority for the appointment of the Chief Executive / MD of PTVC was the Board of Directors of PTVC, whereas the said appointment was, in fact, been made by the Establishment Division, Cabinet Secretariat; and (b) the Respondent No.3, as MD PTVC, was precluded from engaging in businesses that were of the same nature and directly competed with PTVC. Learned counsel for the Petitioner placed reliance on case law reported as: PLD 2013 SC 195, Syed Mahmood Akhtar Naqvi and others Vs. Federation of Pakistan and others, PLD 2013 Lahore 386, Tanvir Ahmed Khan Vs. Registrar Lahore High Court, Lahore, PLD 1990 SC 1092, Amanullah Khan Vs. Federal Government of Pakistan, 2010 SCMR 1301, Tariq Aziz-ud-Din case, 2012 PTD 1522, PLD 2013 Lahore 343, Barrister Sardar Vs. FOP, PLD 2012 SC 132, Muhammad Yasin Vs. FOP, 2010 PLC (C.S) 967, Sheikh Zahid Hospital through Chairman & Dean & another Vs. Dr. Muhammad Saeed & others, PLD 2012 SC 132, Muhammad Yasin Vs. FOP (Tauqeer Sadiq case) and 2013 SCMR 1159, Ashraf Tiwana Vs. FOP (Chairman SECP case).

6. On the other hand, the Respondents No.1 to 4 filed their reply and para-wise comments and raised certain preliminary objections to the maintainability of this Writ Petition i.e.: (i) firstly, that the Writ Petition is not maintainable as the Petitioner has an alternate efficacious remedy available to him i.e in the form of filing a complaint before the FCHPSO, constituted in compliance of the orders of the hon'ble Supreme Court of Pakistan in the *Khawaja Asif* case reported as 2013 SCMR 1205; (ii) secondly, that since the

Petitioner himself chose to participate in the pre-qualification process supervised by M/s A.F Ferguson, therefore, he is stopped by his conduct to challenge the validity of that selection process; (iii) thirdly, that the Petitioner has approached this Court with unclean hands and *mala fide* intentions, hence, is not entitled to discretionary relief; and (iv) finally, that the Writ Petition has been belatedly filed with a delay of ten (10) weeks and, therefore, suffers from laches.

7. On merits, the learned counsel for the Respondent No.3, Mr. Muhammad Akram Sheikh, learned Sr. ASC, contended that so far as the lowering of educational qualification and changing of other terms & conditions through the Corrigendum are concerned, the same was done with a view to allowing a larger number of candidates to apply for the said post and to recruit the best talent. Therefore, it is wrong to say that same was done to accommodate a single individual and/or was person-specific. Learned Counsel argued that the entire process of selection of MD, PTVC was totally transparent and competitive and the Respondent No.3 was appointed through a open-merit selection process, which involved a pre-screening stage by a renowned HR Consultancy Firm, namely, M/s A.F. Ferguson, followed by short-listing of five (5) names, out of which two short-listed names were forwarded by the FCHPSO to the Prime Minister, who then made his final choice. It was also averred that the Respondent No.3 was never a defaulter of PTVC, instead, the correct position is that the two entities associated with the Respondent No.3 (Media Magic (Pvt) Ltd., and M/s Pink Productions) had long-standing disputes with PTVC who approached the PTVC independently for the resolution of their disputes. The sums payable were reconciled by mutual agreement on 08.10.2013 and the undisputed liability of Rs.7.236 million was communicated vide letter dated 21.10.2013 and accepted in full by

M/s Pink Productions, prior to any consideration of the Respondent No.3 for the post of MD, PTVC. This liability was paid off in full prior to the appointment of Respondent No.3 as MD, PTVC. Furthermore, the audit certificate from a statutory auditor (i.e Auditor General of Pakistan) is not a mandatory requirement, instead, a clearance certificate was issued by PTVC itself.

8. The learned counsel for the Respondent No.3 further contended that, pursuant to the order dated 08.05.2013 of this Court in W.P.1872/2013, a five-member Selection Board was constituted to consider the working directors of PTVC for the post of MD, PTVC. The said Selection Board was chaired by the Federal Minister for Information, Broadcasting & National Heritage and the other members thereof were the Secretary and Additional Secretary of the Ministry for Information, Broadcasting & National Heritage, along with Additional Secretary II, Establishment Division and the Director General – IP of Ministry of Information, Broadcasting & National Heritage. The Selection Board interviewed all those working directors of PTVC who wanted to be considered for the post of MD, PTVC. The Petitioner also applied to the Selection Board and was interviewed along with the other working directors. That the unanimous conclusion of the Selection Board was that none of the working directors were found suitable for promotion/appointment to the post of MD, PTVC. Hence, after exhausting this step, the next step was initiated i.e. a fresh advertisement for the post of MD, PTVC, was published on 9th October 2013, inviting all qualified members from the general public to apply for the said post. The Petitioner also applied for the same, pursuant to the said advertisement, however, he was not considered suitable by M/s A.F.Ferguson and, therefore, not short-listed. It was, further, vehemently asserted that the Petitioner has

approached this Court with unclean hands as he was given acting charge as MD, PTVC through judgment dated 12.04.2013 passed by this Court in Writ Petition No.2503 of 2009 on the basis that he was the senior most of the working directors of PTVC, but infact he was not the senior-most director at that time. Rather, he was the third senior most director of PTVC, but he did not bring this fact to the notice of this Court, despite knowing well his actual position and seniority. As a result, he illegally occupied the post of acting MD, PTVC, till his relinquishment of charge on 13.01.2014. That the Petitioner's aim in initiating these proceedings was to, once again, illegally occupy the post of MD, PTVC.

9. The next contention of the learned counsel for the Respondent No.3 was that Mr. Muhammad Malick was appointed MD, PTVC, on 27.02.2014, whereas the present writ petition was filed on 05.05.2014 i.e. after ten (10) weeks of the appointment of Respondent No.3, which seems to be an afterthought and a counterblast to blackmail the Respondent No.3 and to stop him from taking action against the Petitioner for his acts of corruption committed during his tenure as acting MD, PTVC. He informed this Court that the Petitioner's case has been recommended to the National Accountability Bureau (NAB) for investigation on account of his alleged corruption during service. Lastly, he argued that when there is material on record to show that a writ petition, styled as a public interest litigation, is nothing but a camouflage to foster personal disputes or vendetta to bring to terms a person, not of one's liking, or gain publicity or a façade for blackmail, such petition is liable to be thrown out for lack of *bonafides*. At the end of arguments learned counsel submitted that, disqualification, if any attached to Respondent No.3 was shedded away before entering to the officer, therefore, this aspect has to be kept out of consideration at the time of issuance of writ. Reliance was placed

on case law reported as: AIR 1976 SC 2428 titled Dr. G. Seirana, Vs. University of Lucknow & others, 2001 MLD 431, Mirza Nasir & others Vs. Mirza Hakim ud Din, 2007 SCMR 569, Overseas Pakistani Foundation & others Vs. Sq. Ldr. (Retd.) Syed Mukhtar Ali Shah & others, PLD 1966 Karachi 31, Ch. Rehmat Ali & others Vs. Custodian, Evacuee Property Lahore & others, PLD 2013 SC 413, Dr. Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan through Secretary M/o Law, Islamabad & others, PLD 1969 SC 42, Dr. Kamal Hussain & others Vs. Muhammad Sirajul Islam & others, PLD 1965 SC 236, Aziz-ur-Rehman Choudhary Vs. M. Nasir-ud-Din etc. 2004 SCMR 1299, Dr. Azim-ur-Rehman Khan, MEO Vs. Govt. of Sindh & another, 2012 SCMR 455, Dr. Akhtar Hassan & others Vs. Federation of Pakistan, (2005) 5 SCC 136, Gurpal Singh Vs. State of Punjab & others (2004) 3 SCC 363, Dr. B. Singh Vs. Union of India and others, (2005) 1 SCC 590, Dattaraj Nathuji Thaware Vs. State of Maharashtra & others.

10. The Secretary Information (Respondent No.2) appointed his private counsel, namely Mr. Feisal Hussain Naqvi, ASC, which is against the settled norms and practice, as in the presence of the learned Additional Attorney General, Deputy Attorney General and Standing Counsel, the Secretary Information (Respondent No.2) was not obliged to engage the services of some private counsel and this fact was pointed out during the case proceedings. Learned counsel so engaged submitted that since his power of attorney is on the file, therefore, he may be allowed to argue. He, subsequently, adopted the arguments advanced by Mr. Muhammad Akram Sheikh, learned senior ASC and further asserted that M/s A.F.Ferguson was an internationally recognized HR Consultancy Firm, which carried out the functions mandated to it by FCHPSO with transparency and short listed five (05) candidates for MD, PTVC purely on merit and in a fully transparent

manner. The learned Deputy Attorney General, while appearing on behalf of Respondent No.1, also defended the process of appointment of the Respondent No.3 by adopting the arguments already advanced.

11. I have heard the learned Counsels for the parties at considerable length and have gone through the entire record.

12. Before adverting to the issue of the validity or otherwise of the appointment of Respondent No.3 as MD, PTVC, I find it appropriate to provide certain facts which led to the initiation of the process pursuant to which Respondent No.3 was appointed as MD, PTVC. The operative part of this Court's judgment dated 12.04.2013 passed in Writ Petition No.2503/2009, titled as "*M. Ashraf Azeem Vs. Federal Govt. of Pakistan, etc*" whereby the appointment of Mr. Yousaf Baig Mirza, as MD, PTVC was declared illegal, is reproduced as under:

*"It is amazing to note that, respondent No.4 was appointed for the 3rd time in October 2010 but terms and conditions of his service were fixed on 15.01.2011 which itself is not only dubious but unprecedented as well. It is beyond the comprehension that any head of Organization would be allowed to take profits from the income/revenue received. I totally failed to understand that why Mr. Yousaf Baig Mirza, declared entitled to get 3% of **Monthly Advertisement Revenue** beside his salary. As head of PTVC, he was supposed to work for generating/increasing income of PTVC but not to get share out of it. Although, his entire package looked unreasonable but this part is offensive to the rights of regular employees and those who retired by giving their youth to PTVC but neither being paid reasonable salaries nor their due pension. I have no hesitation in holding that Mr. Yousaf Baig Mirza, was not entitled to receive any amount against advertisement revenue, therefore, he is under obligation to return whole amount received by him as 3% of Monthly Advertisement Revenue. The august Supreme Court through different authoritative pronouncements, more particularly Tariq Aziz-ud-Din case reported as 2010 SCMR, 1301, Muhammad Yasin's case, reported as PLD 2012, S.C 132, Sh. Riaz-ul-Haq, case in Constitutional Petition No.53/2007 and Hajj Corruption reported as PLD 2011, S.C 963, held categorically that for appointments in the state owned Companies, Corporations, Establishments, Organizations, etc. process of appointment need to*

be competitive, credible, fair, transparent and on merits, instead of political affiliation, specific background and favouritism.

If any director of the PTVC is to be promoted then principle of seniority-cum-fitness has to be followed and if circumstances compel, then any person may be appointed from the open market but through competitive, transparent and objective process.

In this view of the matter, I am totally convinced that appointment of respondent No.4 is result of colourable exercise of authority, without due process, non-transparent approach, against the principles of healthy competition, fairness, openness, merit, offensive to the constitutional provisions and besides the dictums laid down by the Hon'ble Supreme Court of Pakistan. As such notifications of his appointment No.1/12/98-E-6, dated 9th April, 2007, No.1/42/2004-E-6, dated 8th Oct. 2010 followed by Office Order dated 15.01.2011 are set aside. He shall cease to be M.D; PTVC, forthwith, and all the appointments made during his tenure, without competitive process are also declared as illegal and void. The Secretary, Ministry of Information is directed to commence competitive process with proper advertisement if, appointment of M.D PTVC is to be made from open market, may be completed within 03 weeks but not later than 10th of May, 2013. The office of Managing Director, PTVC is very important, sensitive, and strategic post, as organizational behavior of this State Owned Corporation has strong impact on the society and culture of the country.

According to the information, submitted before court, Mr. Mustafa Kamal Qazi, Director Engineering, is the senior most Working Director in PTVC therefore, he is to act as Managing Director, PTVC till the appointment of regular Managing Director through competitive process or through internal appointment of any Director as M.D PTVC.

Acting Managing Director, PTVC shall look after day to day affairs, necessary to run the establishment of the PTVC. He is also directed to proceed in accordance with law against all employees brought to the establishment without competitive process, during last two tenures of Mr. Yousaf Baig Mirza. However, low paid employees like sweepers, maid, qasids, office attendants etc. may not be removed. He is further directed to get calculated from financial expert of PTVC, the total amount received by Mr. Yousaf Baig Mirza as 3% of Monthly Advertisement Revenue and immediately recover that amount from him.

The report of steps taken shall be submitted to the Registrar of this court for perusal of court.

The Writ Petition is disposed of with above directions.

13. In compliance with the above judgment and following the guidelines provided by the august Supreme Court of Pakistan, an advertisement for the appointment of Managing Director, PTV, on a two (2) year contract, was published by the Ministry of Information, Broadcasting & National Heritage in the daily “Dawn” dated 30.04.2014, which is reproduced hereunder:-

**GOVERNMENT OF PAKISTAN
MINISTRY OF INFORMATION AND BROADCASTING
VACANCY ANNOUNCEMENT
MANAGING DIRECTOR**

Applications are invited for a 2 years contractual appointment against the senior position of **Managing Director** in Pakistan Television Corporation, Islamabad under the administrative control of Ministry of Information & Broadcasting. The position is placed in **MP-I Grade** in terms of Finance Division's O.M. No.F.3(2)R-4/2011 dated 24.12.2012 (**Annex-B**) vis-à-vis salary package, perks and privileges. The said OM is accessible on Finance Divisions' website.

Eligibility

The prospective candidate is supposed to possess the following qualification & experience:

- a. MBA, MPA, MSc Mass Communication or Journalism/MSc Engineering from HEC recognized University in Pakistan OR abroad. A degree in law shall be considered an additional asset. Degrees shall be verified from H.E.C.
- b. Age between 45 to 57 years.
- c. Complete understanding of GOP Governance Framework in terms of Rules of Business 1973, Media Laws, Financial Rules and regulations framed there under.
- d. Written evidence of 20 years service experience in a combination of public & private sector organizations in governance, management, financial management, and marketing.
- e. PTV's internal Directors may also apply.
- f. Government Servants meeting the eligibility criteria may also apply.

Responsibilities

The prospective selectee will have to operate in news media and programmes production and related competitive environment, interact with GOP Organizations and must have a fair understanding to deliver in PPRA-regulated and Planning Commission's guidelines regulating * public sector development schemes in GOP Corporations.

Selection Procedure

GOP's selection criteria/procedures outlines in **Civil Establishment Code-2007 (Vol-I: Chapter-2 : SI.Nos.140-141)** read with **Section -198 & 199 of Companies Ordinance-1984** shall apply when shortlisted and called for interview by a Federal Govt's Selection Board.

How to apply

Interested candidates may apply under a covering application, attaching 3 passport size, photographs, Degrees, Testimonials, proof of experience, Metric Certificate as proof of DOB, NIC, complete residential address and Landline Numbers plus Mobile. Applications complete in all respect **(in sealed envelope)** should reach the undersigned by **7th May, 2013** at the following address.

(Adnan Akram Bajwa)
Assistant Director (TV)
4th Floor, Cabinet Block, Pakistan Secretariat
Islamabad

14. However, having some reservations to the above advertisement, Mr. Qazi Mustafa Kamal (present petitioner) the then acting MD, PTVC, filed Writ Petition No.1874 of 2013, contending therein that the Respondents had amalgamated the two separate recourses for appointment as MD, PTVC and the working directors of PTVC were ignored. The said Writ Petition was disposed off vide order dated 08.05.2013 of this Court, pursuant to an undertaking given by Mr. Zahoor Ahmad Barlas, Joint Secretary, M/o Information. The said order is reproduced hereunder:-

“In response to order dated 3.5.2013, Mr. Zahoor Ahmad Barlas, Joint Secretary, M/o Information has put appearance and submitted that due to some inadvertence the ratio of judgement passed by this court was not properly understood and followed, therefore, impugned advertisement was published on 30.04.2013 and some process started, however, after going through the judgement passed by this court he undertakes that firstly working Directors of PTVC shall be considered for promotion in accordance with the rules/regulations of PTVC and on the basis of principle of seniority cum fitness and if any suitable person is not found then Federal Government may consider to appoint any of the Civil Servants as M.D PTVC, from the panel of three nominees and if no civil servant is appointed as M.D PTVC then competitive process through advertisement shall be initiated for taking any person from the open market, entirely on the basis of criteria fixed by the Board of Directors in the light of judgments passed by superior courts.

Mr. Barlas requests that last date fixed by this court for completing the process was 10.05.2013, which may be extended as now entire process has to re-commence. Request is reasonable, therefore, time is extended till 30.05.2013 for completing the process for the appointment of M.D PTVC.

Disposed of.”

15. The above order was assailed through ICA No.732/2013 by the Ministry of Information, Broadcasting & National Heritage, however, vide order dated 20.12.2013, the learned Division Bench (DB) of this Court observed that in pursuance of the direction issued by the hon'ble Supreme Court of Pakistan in *Khawaja Asif* case reported as 2013 SCMR 1205, the Federal Commission for Selection of Heads of Public Sector Organizations (FCHPSO) has been constituted, which is now working, therefore, any such issue could be raised before that Commission. As a result, the order impugned became redundant and the ICA was rendered infructuous and disposed off accordingly.

16. Thereafter, another advertisement dated 9th October, 2013 was published in the daily "Jang" for appointment of MD, PTV, on a two (02) year contract basis, by the M/o Information, Broadcasting & National Heritage, by *inter alia* changing the age limit as "40 – 58 years", instead of "45 – 47 years", as advertised earlier, which is reproduced as under:-

**MINISTRY OF INFORMATION, BROADCASTING AND NATIONAL
HERITAGE
VACANCY ANNOUNCEMENT
MANAGING DIRECTOR**

Applications are invited for a 2 years contractual appointment against the senior position of Managing Director in Pakistan Television Corporation, Islamabad under the administrative control of Ministry of Information, Broadcasting and National Heritage. The Position is placed in MP-I Grade in terms of Finance Division's O.M. No.F3 (2) R-4/2011, dated 24.12.2012 (Annex-B) vis-à-vis salary package, perks and privileges. The said OM is accessible on Finance Division's website.

Eligibility

The prospective candidate is supposed to possess the following qualification & experience:

- a. A degree in Mass Communication or Journalism/MSc Engineering/MBA/MPA from HEC recognized University in Pakistan OR abroad. A degree in law shall be considered an additional asset. Degrees shall be verified from HEC.*
- b. Age between 40-58 years.*
- c. Written evidence of 15 years experience in organizations in governance, management, financial management and marketing.*
- d. PTV's internal Directors/employees may also apply.*

e. Government Servants meeting the eligibility criteria may also apply.

Responsibilities

The prospective selectee will have to operate in news media and programmes production and related competitive environment, interact with GoP Organizations and must have a fair understanding to deliver in PPRA-regulated and Planning Commission's guidelines regulating public sector development schemes in GOP Corporations

Selection Procedure

Supreme Court's guidelines for selection of CEOs of State Owned Enterprises will be followed.

How to apply

Interested candidates may apply under a covering application, attaching 3 passport size, photographs, Degrees, Testimonials, proof of experience, Metric Certificate as proof of DOB, NIC, complete residential address and landline Numbers plus Mobile. Applications complete in all respects (in sealed envelope) should reach the undersigned by **29th October 2013**, at the following address. Those who have already applied for the said post, they need not to apply again.

(Adnan Akram Bajwa)
Assistant Director (TV)
4th Floor, Cabinet Block, Pakistan Secretariat
Islamabad

17. The above advertisement was followed by a "Corrigendum" published in the daily "Nation" dated 16.10.2013, which, *inter alia*, enhanced the contract period from two (2) years to three (3) years. The same is reproduced hereunder:-

GOVERNMENT OF PAKISTAN
MINISTRY OF INFORMATION, BROADCASTING AND NATIONAL
HERITAGE

CORRIGENDUM

VACANCY ANNOUNCEMENT

MANAGING DIRECTOR
(Pakistan Television Corporation)

This is with reference to an advertisement titled vacancy announcement appearing in various newspapers of 9th & 10th October, 2013. Following changed/amendments must be noted in the earlier advertisements of 9th and 10th October, 2013:-

1. Applications are invited for a 3-year contractual appointment, instead of 2 years.
2. Paras A, B and C of the eligibility are amended as follows:-
 - a. A degree in Mass Communication, Journalism of Arts & Social Sciences/MSc Engineering /MBA/MPA or equivalent qualification from HEC recognized University in Pakistan OR abroad. A degree in law shall be considered an additional qualification. Degrees shall be verified from HEC.
 - b. Age between 40-59 years.
 - c. Established track record of a minimum 15 years experience in organizations in governance, management, financial management and marketing. Demonstrable ability to provide leadership in

positioning the company at the forefront of the media industry. Develop a comprehensive strategic plan to advance PTV's mission & objectives, promote revenue, profitability and growth.

3. *In the event of the successful candidate being taken from the private sector, salary package, perks and privileges may be negotiated in view of his/her last drawn salary package, perks and privileges.*

*Last date of receiving applications is also extended to **November 4, 2013.***

(Adnan Akram Bajwa)
Assistant Director (TV)
4th Floor, Cabinet Block, Pakistan Secretariat
Islamabad

18. In order to ascertain whether the appointment of Respondent No.3 has been made by the FCHPSO under the guidelines provided by the hon'ble Supreme Court of Pakistan in the case of *Khawaja Muhammad Asif vs. Federation of Pakistan and others* (reported as 2013 SCMR 1205), the Notification dated 22nd July, 2013, issued by the Establishment Division is also reproduced as under:-

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.6/4/1996.R-3

Islamabad, the 22nd July, 2013

NOTIFICATION

WHEREAS the Supreme Court of Pakistan, in the case of Khawaja Muhammad Asif Vs. Federation of Pakistan and other, (Petition No.30/2013) has directed the Federal Government to constitute a Commission to ensure transparency in the appointment of heads of statutory bodies, autonomous or semi-autonomous bodies, regulatory authorities and organizations established by or under the control of the Federal Government, hereinafter referred to as the “Public Sector Organizations”, so as to ensure that the appointments in such like organizations are made on merit, fairness, openness and in a transparent manner, to improve professional quality and political neutrality of such appointments;

NOW, THEREFORE, the Federal Government, in compliance of the direction of the Supreme Court of Pakistan in the said judgment, hereby constitutes a Commission to be known as the Federal Commission for Selection of Heads of Public Sector Organizations (FCHPSO), hereinafter to as the Commission.

1. **Composition of the Commission :-** (1) The Commission shall comprise the following:-
- (i) Federal Tax Ombudsman Chairman

(ii)	Mr. Shams Kassim Lakha	Member
(iii)	Dr. Ijaz Nabi	Member

(2) Secretary, Establishment Division and Secretary of the Ministry/Division concerned under the Rules of Business, 1973 shall be ex-officio members of the Commission.

(3) Additional Secretary, Establishment Division, shall function as Secretary of the Commission.

(4) The Establishment Division shall be the Secretariat of the Commission.

(5) The Chairman, ex-officio Members and Secretary of the Commission shall function in honorary capacity and shall not be entitled to any additional perks and privileges. Terms and conditions of appointment of non-official members would be determined separately.

(6) The decisions of the Commission shall be expressed in terms of the majority, and in case of equality of votes; the Chairman shall have a casting vote.

(7) No proceedings or act of the Commission shall be invalid merely on the ground of the existence of a vacancy, or defect, in the constitution of the Commission.

2. Status of the Commission:- The Commission shall be completely independent in its functioning.

3. Advertisement of the post.- (1) The Ministry/Division concerned shall advertise the post to be filled and the applications received shall be short listed by a national or international human resource consulting firm.

(2) The human resource consulting firm shall be the one selected by a committee headed by Secretary, Cabinet and consisting of Secretaries Establishment, Finance and Law, on merit through open advertisement.

4. Functions of the Commission.- The Commission shall:-

- (i) implement a Code of Practice that sets out the principles and core processes for fair and transparent merit-based selections;
- (ii) report publicly on an organization's compliance with the Code of Practice;
- (iii) investigate complaints about unfair appointment process;
- (iv) issue an annual report giving detailed information about appointments processes, complaints handled, and highlights of the main issues which have arisen during the previous year;
- (v) take any other measure deemed necessary for ensuring that processes for selections that fall in its purview are conducted honestly, justly, fairly and in accordance with law;
- (vi) Recommend to the concerned authority for appointment of person (s) selected by it which recommendation of the Commission shall be binding.

5. Code of Practice.- *The following Code of Practice shall be observed by all concerned:-*

PART-I

- i. The appointments shall be made in a transparent manner and shall be merit-based.*
- ii. All appointments falling in the purview of the Commission shall be governed by the overriding principle of selection based on merit from amongst individuals whose abilities, experience and qualities have a proven record and best match the need of the concerned organization.*
- iii. No appointment, falling in the purview of Commission, shall take place without first being recommended by the Commission.*
- iv. The appointments procedures shall be subjected to the principle of proportionality, that is, what is appropriate for the nature of the post and the size and weight of its responsibilities.*
- v. Those, selected must be committed to the principles and values of public service and perform their duties with highest level of integrity.*
- vi. The Commission may, from time to time, conduct an inquiry into the policies and procedures followed by an appointing authority in relation to any appointment.*
- vii. The appointment of the successful candidate shall be publicized.*

PART-II

- viii. Holders of public office shall not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.*
- ix. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office shall make choice solely on merit.*
- x. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*
- xi. Holders of public office shall be as open as possible about all the decisions and actions that they take. They shall give reasons for their decisions and restrict information only when the wider public interest clearly demands.*
- xii. Holder of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*
- xiii. Holders of public office shall promote and support these principles by leadership and example.*

6. Selection Committees.- *The Commission may constitute Selection Committees from amongst its Members. The Selection Committees shall function in accordance with the procedure laid down by the Commission.*

7. Procedures.- *The Commission may, in consultation with the Federal Government, lay down procedures for carrying out the aforesaid purposes.*

8. Schedule.- *The Schedule containing names of the concerned Public Sector Organizations is added hereto. The Federal Government may amend the Schedule as and when required.*

19. For the sake of clarity, I also feel it appropriate to reproduce (i) the Agenda Item No.4 of the Minutes of the 6th meeting of the Federal Commission For Selection of Heads of Public Sector Organizations, held on 6th February 2014 in Establishment Division and (ii) the Summary submitted to the Prime Minister by FCHPSO for selection of MD, PTVC.

Agenda Item No.4: *Interviews of shortlisted candidates for the post of Managing Director, PTVC.*

7. According to short listing report furnished by M/S A. F Ferguson & Co. five (05) candidates were shortlisted for the post of Managing Director, PTVC. However, two candidates viz; M Arshad Khan and Mr. Qaisar Ullah Khan conveyed their regret to appear for the interview. Remaining three (3) candidates were appeared and interviewed by the Commission in the following order:-

- i. Syed Jamal Shah
- ii. Mr. Mohammad Malic
- iii. Mr. Rizwan Mumtaz Ali

8. **Syed Jamal Shah** was recommended as number one given his superior academic qualification and richer work experience. The Commission also gave weightage to the fact that Mr. Jamal Shah hails from Baluchistan as the province is generally less represented in the higher echelons of the Federal Government. He holds Masters Degree in English from the University of Baluchistan and a Diploma from the National College of Arts, Lahore, which is 4 years Bachelor Degree Program. He also has a Postgraduate Diploma from Slade School of Fine Arts, University College London, United Kingdom. Syed Jamal Shah has an outstanding career as an Artist, Producer, Director and an entrepreneur. His diverse work experience covers all aspects of the PTVC. The Commission was of the opinion that while he has an independent mind yet he was mindful of the issues that can crop-up running a State owned media house with footprints on 95% of the country. He also had clear roadmap of turning around the institution.

9. **Mr. Mohammad Malick** was considered as second best. He has rich work experience of journalism and knew the issues in PTVC. He has not only worked with print media but has also been associated with the electronic media since its inception in the Pakistan. His work experience while rich covered one aspect of PTVC various feets. He holds Bachelor Degree, which makes fourteen (14) years of education and hence less than the educational requirement laid down in the advertisement, which provides for a degree in Mass Communication, Journalism or Arts & Social Sciences/MSc Engineering/MBA/MPA or equivalent qualification from HEC recognized University in Pakistan OR abroad. A degree in Law shall be considered an additional qualification. Degrees shall be verified from HEC.

The Commission also felt that his personality while charming may not be the best fit as compared to Syed Jamal Shah while dealing with

varied stake holders in this capacity. On a query by the Commission Members, Mr. Mohammad Malick confirmed that Companies owned by him/her spouse i.e M/S Media Magic and Pink productions do not have any outstanding liabilities form or towards PTVC. (underlining is mine)

10. **Mr. Rizwan Mumtaz Ali** was not recommended as he neither have the conceptual clarity nor the personality to turn around as important institution, which is being facing multifarious challenges.

Recommendations:

11. The Commission recommended the following candidates for appointment to the post of Managing Director, PTVC in order of merit:

1. Syed Jamal Shah
2. Mr. Mohammad Malick

The Commission, however, observed that recommendation in respect of Mr. Mohammad Malick as 2nd nominee for the post of Managing Director, PTVC shall be subject to submission of an undertaking by him to the effect that neither his/her spouse's companies have outstanding liabilities towards PTVC nor the PTVC have any liability towards them and relaxation of the competent authority regarding his educational qualification. (Underlining is mine)

**GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION
SECRETARIAT OF FEDERAL COMMISSION FOR
SELECTION OF HEADS OF PUBLIC SECTOR ORGANIZATIONS

SUMMARY FOR THE PRIME MINSITER

Subject: **APPOINTMENT TO THE POST OF MANAGING DIRECTOR, PAKISTAN TELEVISION CORPORATION LIMITED.**

2. Pursuant to Supreme Court of Pakistan's order dated 12th June, 2013 in Constitution Petition No.30/2013 titled Khawaja Muhammad Asif Versus Federation of Pakistan, Federal Commission for Selection of Heads of Public Sector Organizations (FCHPSO) was constituted vide Establishment Division's notification No.6/4/1996-R.3 dated 22nd July, 2013 (Annex-A).
3. The post of Managing Director, Pakistan Television (PTVC) was advertised by the Ministry of Information, Broadcasting and National Heritage in the print media on 16th October, 2013 (Annex-B). Applications received in response to the aforesaid advertisement were forwarded to M/S A. F Ferguson & Co. (HR Consultants) Karachi for short listing of the candidates. According to short listing report furnished by the HR Consultants, five (5) candidates were shortlisted for the post of Managing Director, PTVC. Short listing report furnished by the HR Consultant is placed at **Annex-C**.
4. PTVC, being Public Sector Company registered under the Companies Ordinance, 1984, was taken out of the purview of the Commission; but on request of the Ministry of Information, Broadcasting and National Heritage, purview of the Commission to the extent of selection process of the post of Managing Director, PTVC was restored with the approval of the Prime Minister as conveyed vide Prime Minister Office's U. O No.319/SPM/2014 dated 3rd Feb. 2014 (**Annex-D**).
5. 6th meeting of the FCHPSO was held on 6th February, 2014 at 1100 hours in the Establishment Division to hold interviews of the shortlisted candidates against the post of Managing Director, PTVC. Copy of the minutes of the aforesaid meeting is at (**Annex-E**).
6. FCHPSO, inter-alia, recommended the following candidates for appointment to the post of Managing Director, PTVC in order of merit:-

1. Syed Jamal Shah
2. Mr. Mohammad Malick

7. The Commission, however, noted that in case Mr. Mohammad Malick is selected as Managing Director, PTVC then he should give an undertaking that his/her spouse's companies have no outstanding liabilities towards PTVC. It is further noted that Ministry of Information Broadcasting and National Heritage have confirmed that while Media Magic (a company owned by Mr. Malick) has no liability towards PTVC; however, Pink Productions (owned by spouse of Mr. Malick) has a liability of Rs.4.824 million towards PTVC (Annex-F). **Moreover, relaxation of academic qualification would be required in respect of Mr. Mohammad Malick who only has a bachelor's degree in Arts (B.A) and does not meet the advertised criteria (Annex-G) for selection as Managing Director, PTVC which provides for a degree in Mass Communication, Journalism or Arts & Social Sciences/MSc Engineering/MBA/MPA or equivalent qualification form HEC recognized University in Pakistan OR abroad. A degree in Law shall be considered an additional qualification.**
8. Subsequent to 6th meeting of the FCHPSO held on 6th February, 2014, Intelligence Bureau was requested for background check/necessary clearance in respect of M/S Syed Jamal Shah and Mohammad Malick. In response, Intelligence Bureau vide their Memo No.ECR.170/5-SVA-Vol. (1598)7473-/S-II dated 17th February, 2014 (Annex-H) have observed that none of the aforesaid persons seem suitable for the important assignment of Managing Director, PTVC.
9. Orders of the Prime Minister are solicited to recommendations of the FCHPSO mentioned at para-5 & 6 above keeping in view the input given by the Intelligence Bureau as at para-7 above.

Encl: As above

(Abdur Rauf Chaudhary)
Federal Tax Ombudsman/
Chairman, FCHPSO

*Prime Minister's Office (Mr. Javaid Aslam, Secretary to Prime Minister), Islamabad.
Establishment Division's U.O.No.F.1-23/2014-Com-I dated 19th February, 2014.*

PRELIMINARY OBJECTIONS:

20. Before proceeding to a discussion on the merits of this case, I would first like to address the Preliminary Objections raised by the learned counsel for the Respondents. The first objection was with regard to the maintainability of the Writ Petition on the ground that an alternate efficacious remedy was available to the Petitioner in the shape of filing of a complaint before the FCHPSO under article 4(iii) of the Notification dated 22nd July 2013. Under the said provision, the FCHPSO has been empowered to investigate complaints about unfair appointment process. The learned counsel for the Petitioner, in his rebuttal, stated that such remedy was neither efficacious, nor adequate, since the process of selection adopted by FCHPSO was itself under challenge in this Writ Petition

and that FCHPSO could not fairly and impartially investigate its own appointment process. I am inclined to agree with the learned counsel for the Petitioner in that judicial review can be exercised if the alternate remedy is not adequate or efficacious. Furthermore, the alternate remedy available must be capable of achieving the same purpose as is sought to be achieved through constitutional petition. I am fortified in my view by the case law reported as 2012 SCMR 455 and PLD 2012 Sindh 425. Hence, the alternate remedy available to the Petitioner could not be termed as efficacious or adequate and, therefore, did not debar him from filing the instant Writ Petition, which is in the nature of public interest litigation (Quo Warranto). Moreover, in my estimation remedy under the provision referred above is not available to any aggrieved person, when very appointment is made on the recommendation of FCHPSO itself.

21. The second preliminary objection was with regard to the conduct of the Petitioner. It was contended that the Petitioner was stopped from questioning the validity of the qualification process conducted by M/s A.F.Ferguson, in which he had himself participated. This submission on the part of the learned counsel for the Respondents is misconceived since the contents of the Writ Petition clearly show that it is in the nature of a Quo Warranto petition and the Petitioner has neither prayed for his appointment as MD, PTVC, in place of the Respondent No.3, nor otherwise sought any relief for his own personal benefit. The fact that he may have participated in the pre-qualification process is immaterial in the instant case, as he is to be regarded as a mere 'whistle-blower' or an 'informer' laying information before this Court that the Respondent No.3 was illegally appointed as MD, PTVC and the purpose of this Writ Petition was, therefore, to inquire under what authority the Respondent No.3 was holding the post of MD, PTVC

and whether the entire process of his appointment was carried out within the parameters and criterion laid down by the Hon'ble Supreme Court in the *Khawaja Asif* case (2013 SCMR 1205).

22. The third preliminary objection raised by the learned counsel for the Respondents was that the Petitioner has approached this Court with unclean hands and *mala fide* intentions, hence, is not entitled to discretionary relief. In support of this contention, reliance was placed *inter alia* on the case reported as PLD 2013 SC 413 (*Dr. Muhammad Tahirul Qadri vs Federation of Pakistan*). The question of whether any *mala fides* exist can only be judged on the basis of the facts of each case. In the present case, nothing has been placed on record which would indicate any *mala fides* on the part of the Petitioner, or which would suggest that the Petitioner is seeking to exploit the process of this Court purely for personal gain. I have; therefore, found no lawful basis for this objection. The Petitioner was appointed as acting MD, PTVC, vide judgment dated 12.04.2013 passed in W.P. 2503 of 2009, on the basis that he was the senior-most working director of PTVC. This fact was confirmed and brought to the knowledge of this Court through an independent inquiry conducted by the M/o Information, Broadcasting & National Heritage (comprising of three members, namely, Mr. Raja Muhammad Farooq, Director General, Cyber Wing, M/o I&B, Mr. Asad Ullah Khan, Director Administration, PTVC and Qazi Muhammad Farooq, Section Officer (General), M/o I&B), pursuant to this Court's order dated 6th June 2013 passed in Crl.Org 264-W/2013. The said inquiry committee concluded in its Report that Engr. Qazi Mustafa Kamal (Petitioner) was the senior-most regular director of PTVC. Therefore, the contention of the Respondents that he was not the senior most working director of PTVC and had, allegedly, intentionally concealed this fact from this

Court in W.P. 2503 of 2009, is incorrect. It has been held by the hon'ble Supreme Court in a recent case reported as 2013 SCMR 1159 that the contents of a petition under Article 184(3) will override concerns arising on account of the conduct or antecedents of a petitioner. The relevant portion of the said judgment is reproduced herein below:

“16. That the petitioner has been an employee of the respondent is not sufficient to establish his mala fides, as we clarified in Muhammad Yasin’s case supra. In fact, it is only understandable that if employees and other insiders, who naturally have the most understanding of the functioning of concerned institutions, are the ones who most frequently bring the issues of public importance arising in those institutions to the notice of the constitutional Courts. Furthermore, in Muhammad Yasin’s case supra, while relying on Maulvi Iqbal Haider v. CDA (PLD 2006 SC 394), we clarified that “the contents of a petition under Article 184(3) ibid will override concerns arising on account of the conduct or antecedents of a petitioner.””

23. Similarly, in another case reported as PLD 2012 SC 132, the hon'ble Supreme Court held as follows:

24. Before concluding our discussion on the issue of maintainability of this petition we need to address the respondent’s submission that the petition has been filed mala fide. We have found no lawful basis for this submission. Simply because the petitioner may have been a contender for the office of Chairman, OGRA, does not per se translate into mala fides. The petitioner can genuinely consider himself to be a suitable candidate for the position while simultaneously holding the view that the respondent does not meet the eligibility criteria set out in section 3(4) of the Ordinance. Furthermore, we have already held in the case titled Moulvi Iqbal Haider vs Capital Development Authority and others (2006 SC 394 at 413) that the contents of a petition under Article 184(3) ibid will override concerns arising on account of the conduct or antecedents of a petitioner. This approach is reflective of the sagacity of wise men such as Maulana Jalaluddin Rumi who have emphasized the importance of the message rather than the messenger.”

24. As may be observed from the above-referred judgments, in Writ Petitions in the nature of Quo Warranto, *the message is more important than the messenger* and the contents of such petitions generally override the conduct or antecedents of the Petitioner.

Furthermore, the allegation that the Petitioner filed the instant Writ Petition as an afterthought and a counterblast to blackmail the Respondent No.3 and to stop him from taking action against the Petitioner for his acts of corruption committed during his tenure as acting MD, PTV, also seems fanciful and incorrect. I have observed from the record that the complaints filed against the Petitioner before NAB are dated 2nd and 6th June 2014, whereas the instant Writ Petition was filed on 6th May 2014. Clearly, the Petitioner approached this Court much before the complaints were lodged against him in NAB. Hence, it is incorrect to suggest that this Writ Petition was an afterthought or a counterblast by the Petitioner to any actions taken by the Respondent No.3 against him.

25. Lastly, I now turn to the final preliminary objection raised by the learned counsel for the Respondents i.e. whether the Writ Petition, filed after ten (10) weeks of the appointment of the Respondent No.3, suffers from laches? It is a well recognized principle of law that laches does not apply to writs of quo warranto, as the cause of action is a recurring one, so long as the public office is being held by the person in question. The unlawful holding of a public office is a continuing wrong, which may be called into question by anyone, at any time. I am fortified in my view by case law reported as 2010 PLC (CS) 731, PLD 2010 Lahore 625 and 2002 PLC (CS) 274. Even otherwise, filing of the instant Writ Petition ten (10) weeks after the notification of appointment of Respondent No.3 as MD, PTV, is not a delay and can be regarded as having been filed within a reasonable time. 'Reasonable time' has been interpreted as 120 days in the case reported as 2013 YLR 2132, and as 90 days in the case reported as 2012 CLC 1729.

ON MERITS:

26. The brief facts of this case are discerned from the different documents placed on record, including, in particular, the First and Second Advertisements (along with Corrigendum), the report of M/s A.F.Ferguson, the Minutes of the 6th Meeting of the FCHPSO, the Summary for the Prime Minister prepared and submitted by FCHPSO, the approval of the Prime Minister and the subsequent notification of appointment of the Respondent No.3 as MD, PTVC. The learned D.A.G. and/or the learned counsel for the Respondents have not disputed any of these documents.

27. It is well settled law that the entire process of recruitment leading to appointment to a “public office” can be subject to judicial review under Article 199(1)(b)(ii) of the Constitution. The process has to pass the test of law, which includes the settled principles of due process, openness, fairness, participation and transparency. Appointment to a “public office” is a public trust reposed by the people of Pakistan in the competent authority. It is a key institutional decision and marks the future progress, growth and development of the public institution, which is to be manned by the prospective incumbent to the said public office. This trusteeship in the hands of the competent authority cannot be discharged in a fanciful, erratic, partial and preferential manner. The recruitment process must be above board and devoid of even the slightest smear of nepotism. The Court is under an obligation to judicially review the integrity of the entire selection process to a public office.

28. In the instant case, the process of appointment of MD, PTVC, was initiated through the First Advertisement dated 30th April 2013, followed by the Second Advertisement dated 9th October 2013 and, finally, the Corrigendum to the Second Advertisement

dated 16th October 2013. The said advertisements and corrigendum clearly show that the various criteria for eligibility for the post of MD, PTVC, were changed twice, without any plausible rationale or justification. As held by this Court in the case reported as 2013 PLC (CS) 1147, ***“the office of MD, PTVC is a very important, sensitive and strategic post, as organizational behavior of this state owned corporation has a strong impact on the society and culture of the country.”*** As a matter of practice, heads of large public sector organizations, by virtue of the importance of their position as heads of such organizations, are required to have at least a Master’s degree, if not a PHD or MBA. In the instant case, the educational requirement for MD, PTVC, was lowered, without any apparent reason, from that of a Masters degree to a Bachelors degree, which is all the more surprising considering the fact that a Group-5 category employee of PTVC (Grade 15 or 16) is required to have a Masters degree as a bare minimum. Is it conceivable that the MD of such an organization would be less qualified than a Grade 15/16 officer? Furthermore, the revised terms of the advertisement show that the educational qualification of B.A. in Arts & Social Sciences was added vide the Corrigendum, whereas the requirement of providing “written evidence” of 15 years work experience was changed to “established track record” of 15 years work experience. These changes, by themselves, appear inconspicuous, but become relevant when read in conjunction with the Report dated 31st January 2014 submitted by M/s A.F.Ferguson in which the Respondent No.3 has, admittedly, been shown to have only a B.A. in Arts and was not able to provide experience letters (i.e. written evidence of work experience) from some of his past employers.

29. It, therefore, appears that the Second Advertisement, read with the Corrigendum, were manipulated and maneuvered to

enable the Respondent No.3 to apply for the said post of MD, PTVC. This fact has also been confirmed by the FCHPSO in its 6th meeting held on 6th February 2014, wherein it was stated that the Respondent No.3 held only fourteen (14) years of education, which was *less than the educational requirement laid down in the advertisement* and their recommendation for appointment of the Respondent No.3 as MD, PTVC, would be subject to *relaxation of the competent authority regarding his educational qualification*. This fact was also communicated to the Prime Minister in the Summary prepared by the FCHPSO wherein it was stated as under:

“...Moreover, relaxation of academic qualification would be required in respect of Mr. Muhammad Malick, who only has a bachelor’s degree in Arts (B.A.) and does not meet the advertised criteria (Annex-G) for selection as Managing Director, PTVC, which provides for a degree in Mass Communication, Journalism or Arts & Social Sciences/MSc Engineering/MBA/MPA or equivalent qualification from HEC recognized University in Pakistan OR abroad...”

30. It is, therefore, amply clear that the Respondent No.3 did not meet the requisite educational qualification/criteria advertised for this position and the said criteria was designed and engineered to accommodate him in particular.

31. It was also urged by the learned counsel for the Petitioner that the Respondent No.3 was a long-standing defaulter of PTVC and cleared his liabilities only when he was appointed as MD, PTVC. A perusal of the record reveals that the clearance certificate issued by PTVC to one of the companies owned by the Respondent No.3 (M/s Pink Productions), being managed by his wife, Aneela Malick, was issued on 5th March 2014, whereby a sum of Rs.7.236 million was stated to have been received by PTVC from M/s Pink Productions. It may be noted that the Respondent No.3 was, in fact, appointed as MD, PTVC, on 27th February 2014 i.e. prior to the issuance of the aforesaid Clearance Certificate. In other words,

at the time of his appointment, an established liability of payable amount of PTVC existed against him. It is also important to note that the Respondent No.3 had earlier, at the time of his interview by FCHPSO, stated before the Commission that the companies owned by him/his spouse did not have any outstanding liabilities from or towards PTVC. The pertinent portion of the minutes of meeting of the 6th meeting of FCHPSO dated 6th February 2014 are reproduced herein below:

*“9. ... On a query by the Commission Members, Mr. Mohammad Malick **confirmed** that the Companies owned by him/her spouse i.e. M/s Media Magic and Pink Productions **do not have any outstanding liabilities from or towards PTVC...**” (emphasis provided)*

32. This statement of the Respondent No.3 before the Commission visibly belies the record, since (a) the letter dated 27th February 2014 from M/s Pink Productions & Marketing to the Assistant Director-TV, M/o Information, Broadcasting & National Heritage; and (b) the Clearance Certificate dated 5th March 2014 issued by Director Finance, PTVC, clearly go to show that the Respondent No.3 was a defaulter of PTVC at the time of his interview by FCHPSO and the dues were, subsequently, cleared by him on 27th Feb. and 5th March 2014. Therefore, it is amply clear that the Respondent No.3 intentionally made a false statement before the Commission, in an apparent attempt to persuade the members to recommend him for appointment to the post of MD, PTVC. It is crystal clear that Respondent No.3 mislead the Commission in order to enter PTVC as its head. Another important fact to be taken note of is that, even negotiations to settle the outstanding issue of liabilities against Respondent No.3 started when process of recruitment had already commenced and Respondent No.3 did not pay the amount to clear outstanding liability till notification of his appointment dated 27.02.2014 is

issued. Mr. Muhammad Akram Sheikh, learned counsel for Respondent No.3 very ably tried to defend Respondent No.3 regarding outstanding liability by placing reliance on the concept of “Shedding away” the disqualification at the time of issuance of Writ. This argument of the learned counsel would have worth consideration, had there been question of outstanding amount only, but most painful and alarming aspect is that Respondent No.3 tried to “CHEAT” the Commission by making denial that any outstanding liability existed against him or his spouse. To my mind this is a criminal act by which Respondent No.3 did not shed away his disqualification rather his credibility as an “intellectual”. No compromise can be made on this aspect but unfortunately authority concerned ignored this aspect that Respondent No.3 in order to land in PTVC as MD committed a criminal act of making false statement, misrepresentation and cheating. Moreover, there is no claim that Respondent No.3 has become postgraduate at the time of hearing instant petition, therefore, shield of “shedding away” disqualification is not available to Respondent No.3.

33. Pursuant to the aforesaid meeting, the FCHPSO recommended two names to the Prime Minister for appointment to the post of MD, PTVC, who, ***in order of merit***, were as under:

1. Syed Jamal Shah
2. Mr. Mohammad Malick

34. Astonishingly, the Hon’ble Prime Minister exercised his discretionary power by disregarding Syed Jamal Shah, who was placed at number 1 on the order of merit, without reasons, and, instead, recommended the appointment of the person placed at number 2 on the order of merit i.e. Mr. Mohammad Malick (Respondent No.3), to the post of MD, PTVC. The learned counsel for the Respondent No.3, Mr. Muhammad Akram Sheikh, Sr. ASC, vehemently argued that, under the Rules of Business, the Prime

Minister has absolute discretion in the matter of appointment of heads of public sector organizations and may select any person from the list of recommendations forwarded to him by the FCHPSO. To examine this point, I would like to refer to the functions of the FCHPSO, as given in the Notification dated 22nd July 2013. The relevant portion is reproduced hereinbelow:

“4. Functions of the Commission.- The Commission shall:-

(vi) Recommend to the concerned authority for appointment of person(s) selected by it which recommendation of the Commission shall be binding.”

35. The question of whether or not the Prime Minister has a discretion in selection/appointment of heads of public sector organizations is addressed in para 4(vi) of the Notification dated 22nd July 2014, reproduced hereinabove, which clearly states that *“the recommendation of the Commission shall be binding”*. Furthermore, it is also stated therein that the FCHPSO shall *“recommend to the concerned authority for appointment of “person(s)” selected by it”*. The word “person(s)”, as used therein, is to be distinguished from the word “persons”, as both have different connotations. “Person(s)” usually denotes the singular, as well as the plural forms, whereas “Persons” would denote only the plural. It could, therefore, be argued that the word “person(s)”, as used in the above-referred Notification, implies that the FCHPSO can recommend either one person for one particular post or more than one person, to the concerned authority for the posts of two or more Organizations. However, when read with the latter part of this para i.e. *“the recommendation of the Commission shall be binding”*, it becomes amply clear that the intention was to recommend the name of only one person to the concerned authority, which recommendation would then become binding. Had it been the case

that two, three or four names were to be recommended by the Commission, then it would make the latter part of this paragraph redundant i.e. would all such recommendations be considered binding? It would be ludicrous to imply that all the names recommended to the concerned authority for a single post would be binding!

36. Hence, in my view, the word “person(s)” used in this context may be explained as meaning that:

- (a) The FCHPSO can recommend various persons for the positions of heads of various public sector organizations; and*
- (b) For each such position, FCHPSO can recommend only one person, which recommendation would then be binding.*

37. It may be added that, in the context of selection through open advertisement, merit and a painstaking interview/short-listing process, it is all the more important that the person selected by the FCHPSO as being the most suitable candidate for the job in question, is appointed to such post, rather than giving the concerned authority the option or discretion of hand picking and choosing any person out of the list provided. This would tantamount to making the entire selection process meaningless and thwart the principle of recruitment on merit. As per the hon’ble Supreme Court of Pakistan in the *Khawaja Asif* case (2013 SCMR 1205), the FCHPSO was to be mandated to ensure that all public appointments are made solely on merits. It was also held that the FCHPSO should comprise of independent and competent members and, as a part of their functions, they should (a) chair the selection panels for appointing heads of public/statutory bodies; and/or (b) appoint Public Appointments Assessors to chair the selection panels for appointing heads of public/statutory bodies,

where appropriate. Hence, the matter of selection of the heads of public/statutory bodies has been fully entrusted to the FCHPSO, who may even avail the services of a Public Appointment Assessor to assist the FCHPSO in carrying out the shortlisting of candidates on merit. In the instant case, this process was initially carried out by M/s A.F.Ferguson & Co, an HR resource consulting firm, and, subsequently, further short-listing was done by the Commission itself out of the five (5) names sent by M/s A.F.Ferguson & Co.

38. Once it was concluded that Syed Jamal Shah topped the order of merit and was considered the most suitable candidate for the post of MD, PTVC by both M/s A.F.Ferguson and the FCHPSO, the FCHPSO should have only sent his name to the Prime Minister for appointment, which recommendation would then have been binding. Unfortunately, it appears now that the entire process of multiple advertisements, short-listing, selection and final appointment was maneuvered, manipulated, tailored and pre-engineered to secure the appointment of Mr. Muhammad Malick as MD, PTVC. There can be no other explanation for his appointment as such. There is no reasoning or plausible explanation of discarding recommendation of person, on top of the merit list, which itself is sufficient to show arbitrary and colourable exercise of authority. The Rules of Business have to be read in the light of Khawaja Asif's case and mandate of FCHPSO. The recommendations of FCHPSO are binding unlike panel of nominees submitted by Establishment Division from which Prime Minister may exercise his discretion to pick any of the nominees. The Executive Authority must realize that appointments made like in the instant matter bring bad name to it and stigmatise the credibility of persons on the helm of affairs. From the peculiar circumstances and the mannerism in which Respondent No.3 has been appointed,

lead to the conclusion that, if Respondent No.3 appointment as MD PTVC was COMPULSION for the authority.

39. Finally, I tend to agree with the learned counsel for the Petitioner, that, even if it is presumed that the Prime Minister had the discretion to pick and chose any name from out of the two proposed names for the post of MD, PTVC (which is denied), such discretion was not employed in a structured, transparent and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable.

Constitutional and jurisprudential importance of structured discretion was that it nursed the requirements of due process, transparency, fairness and safeguarded discretion against the vice of discrimination and arbitrariness. It has been held in the case reported as 2010 SCMR 1301 that even the Chief Executive of the country is bound to act in accordance with law and decide issues after application of mind, with reasons. The relevant portion of the said judgment is reproduced herein below:

“Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind---Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different articles including Arts. 4 and 25 of the Constitution---Once it is accepted that the Constitution is supreme law of country, no room is left to allow any authority to make departure from any of the provisions of law and rules made thereunder---By virtue of Arts. 4 and 5 (2) of the Constitution, even Chief Executive of the country is bound to obey command of the Constitution and to act in accordance with law and decide issues after application of mind with reasons.”

40. It is also astonishing to note that the Respondent No.3 was appointed as MD, PTVC vide Notification dated 27th February 2014, with immediate effect, whereas the same notification states that *“the terms and conditions of his appointment will be settled separately”*. In other words, he was appointed as MD, PTVC, prior to settlement of the terms and conditions of his service, including salary, perks and other privileges. This speaks volumes of the pre-conceived intention of the Respondents in constructing the appointment of Mr. Muhammad Malick as MD, PTVC.

41. From the above discussion, it may be concluded that the process of appointment of the Respondent No.3 as MD, PTVC, failed to pass the test of law, including the settled principles of openness, fairness, merit and transparency. Furthermore, it violated the principles and guidelines laid down by the hon'ble Supreme Court of Pakistan in the *Khawaja Asif* case reported as 2013 SCMR 1205. I may also add that, it is indeed unfortunate that judicial attempts to eliminate the pernicious culture of arbitrariness, favouritism and nepotism by *inter alia* providing for the establishment of the FCHPSO and laying down various guidelines and principles, are being circumvented by the Executive in one way or another. Instead of appreciating and acknowledging the fact that appointment to a public office is a sacred public trust reposed by the people of Pakistan in the competent authority, it is bent upon discharging such trusteeship in a whimsical, temperamental, partial and preferential manner. Another, important fact which surfaced during the course of arguments of learned counsel for the parties was that Intelligence Bureaus (IB) through its confidential report gave negative remarks about both the individuals, but with the indulgence of executive authorities

another report favouring to the concerned was obtained, which by itself shows that authority was bent upon to appoint, Respondent No.3, despite the fact that nothing leaning in his favour was available on the simple criteria.

42. Since, the entire process carried out by the Respondents is not only dubious but besides the norms of transparency, credence, fair play and integrity, therefore, this Court would refrain from issuing direction to appoint Syed Jamal Shah as M.D. It is an admitted fact that both the candidates shortlisted for appointment have their own set up for “private production” and they had been selling the product of their companies to PTVC. In such circumstances both the candidates were disqualified even to be considered, what to talk of appointment as their personal interest clash with the interests of PTVC.

In the attending circumstances, interest of State owned Organization can only be safeguarded if it's head is appointed through transparent mode, credible procedure, real competitive process, settled norms and as per spirit of the dictum laid down by the apex Court in Khawaja Asifs case.

43. Before parting with this judgment, I would like to borrow and reproduce an excerpt of the hon'ble Supreme Court from the case reported as PLD 2012 SC 132, which beautifully encapsulates the importance of public offices and is most relevant to the instant matter:

31. Much before these declarations by legislatures and courts, we find exhortations to this effect in the common sense insights to be found in diverse systems and eras in history. We thus have in the classical texts of the Greek ancients, and the writings of those such as Sheikh Saadi, wherein the deleterious consequences of nepotism and cronyism in administrative appointments have been highlighted. Amongst other sources, one finds reference to this in the "Qaboos Namah", a book that Ameer Unsur Ma' ali Kaikaus wrote in the 11th century A.D. for the instruction of princes, including his son Gilan Shah, in the art of good

governance. The Ameer cautioned that **when "appointing officers to responsible positions, act carefully and grant positions only to those who are qualified for the duties entailed in that job; and also, beware that when an ignoramus who is not up to the assigned task gets appointed, he will never frankly concede his lack of ability to you; instead, to hide his lack of worth, he will boldly embark upon task after task, and make a mess of it all".** [Kaikaus, The Book of Qaboos, page 206-7; Tehran (1963)]. And in a similar vein, warning against the hazards of turning public offices into sinecures, he advises that **"if at all you wish to bestow favours upon someone, give him valuable gifts; do not, however, confer on him a high office for which he does not possess the requisite competence".** [Kaikaus, The Book of Qaboos, page 207; Tehran (1963)]. We also find mention of some very pertinent principles in this regard in Nizamul Mulk Toosi's "Siyasat Namah", also written in the 11th century, which displays an uncanny cognizance of the evils of nepotism which seem eternally to haunt the corridors of high power even in this day and age. He emphasizes that **"the ruler should make sure that he does not award public office to his cronies (merely on the basis of their friendship with him) ... for such arrangements can give rise to many an evil".** [Toosi, The Book of Government, p. 120; Tehran (1994)] The modern day discourse on good governance, whether in the law or in Courts, is only an expression of these universal principles."

44. For the above reasons, this Writ Petition is allowed and the process of appointment of the Respondent No.3 (Mr. Muhammad Malick) as MD, PTVC, is declared to be non-transparent, non-competitive, result of questionable procedure, polluted process, unprecedented and illegal. Accordingly, the Notification No.1/42/2004-E-6 dated 27th February 2014, along with Office Order No.HP/130/2085 dated 28th February 2014, are hereby set aside and Mr. Muhammad Malick shall forthwith cease to be MD, PTVC.

45. The Respondent No.5, Chairman, FCHPSO, is directed to re-initiate the competitive process of appointment of MD, PTVC, afresh, strictly in line with the guidelines laid down by the

Supreme Court of Pakistan in the *Khawaja Asif* case (2013 SCMR 1205) and the observations recorded herein.

The Writ Petition is **allowed** in above terms.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Announced in Open Court on 24.06.2014.

JUDGE

Approved for Reporting

“Waqar Ahmad”

Uploaded By: "Zulqarnain Shah"