

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

W.P.No.3766/2016

Dr. Farzana Bari

**Versus**

Ministry of Law, Justice and Human Rights and others

**Date of Hearing:** 06.02.2018  
**Petitioner by:** Mr. M. Shoiab Razzaq, Advocate,  
**Respondents by:** Mr. Afnan Karim Kundi, learned Additional  
Attorney-General,  
M/s Salman Akram Raja, and Asad Ullah  
Ladha, Advocates for respondent No.4,

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Dr. Farzana Bari, has called in question the appointment of Ms. Khawar Mumtaz (“Ms. Mumtaz”) as the Chairperson of the National Commission on the Status of Women (“NCSW”), through notification dated 13.10.2016, issued by Ministry of Law, Justice and Human Rights (“respondent No.1”). The said writ petition is in the nature of *quo warranto*. The petitioner’s grievance is that Ms. Mumtaz was appointed in violation of the procedure prescribed in the National Commission on the Status of Women Act, 2012 (“NCSW Act”).

2. The petitioner is a Director at the Centre of Excellence for Gender Studies at Quaid-e-Azam University, Islamabad, and a well known human rights’ activist. The petitioner was one of the candidates whose credentials were examined by respondent No.1 in order to determine her suitability for appointment as the Chairperson of NCSW.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-**

3. Mr. M. Shoaib Razzaq, Advocate, learned counsel for the petitioner submitted that Ms. Mumtaz had already completed a term of three years as the Chairperson of NCSW, and that her re-appointment was not made in a transparent manner; that nominations and appointments in statutory bodies are required to

be made strictly in accordance with the law; that the executive cannot exercise authority in a monarchical fashion and punish those who resist usurpation of their due and lawful rights; that the fundamental rights of the public at large had been violated by Ms. Mumtaz's re-appointment as the Chairperson of NCSW; that the executive functionaries had acted in a discriminatory manner by making the said appointment in violation of the procedure prescribed in Section 4 of the NCSW Act; and that in appointing Ms. Mumtaz as the Chairperson of NCSW, the Federal Government had committed procedural irregularities, which had adversely affected the rights of the other suitable candidates especially that of Dr. Farzana Bari, who had obtained more marks than Ms. Mumtaz in the merit list initially prepared by respondent No.1.

4. Furthermore, it was submitted that a committee constituted by the Prime Minister considered the Curriculum Vitae ("C.Vs") of the eligible candidates, and devised a different grading system under which highest marks were given to Ms. Mumtaz; that since Ms. Mumtaz was more than 70 years of age, she could not be appointed as the Chairperson of NCSW; that notification dated 09.10.2007 provides that a person more than sixty-five years of age cannot be appointed as head of a statutory body; and that Ms. Mumtaz was appointed as the Chairperson of NCSW due to her influential background. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned notification dated 13.10.2016 to be set-aside.

**CONTENTIONS OF THE LEARNED ADDITIONAL ATTORNEY-GENERAL:-**

5. On the other hand, learned Additional Attorney-General ("A.A-G.") submitted that the appointment of Ms. Mumtaz as the Chairperson of NCSW was strictly in accordance with the provisions of the NSCW Act; that through public notices published in several newspapers, suggestions were invited by respondent No.1 for filling the position of the Chairperson of NCSW; that respondent No.1, vide notification dated 14.09.2015, constituted a committee to "*scrutinize the suitable person*" for appointment as

the Chairperson of NCSW; that in the meeting held under the aegis of the Special Assistant to the Prime Minister, it was decided to submit a list of seven eligible candidates to the Prime Minister and the Leader of the Opposition for consideration; that the Ministry of Human Rights, on 17.12.2015, submitted a summary to the Prime Minister with the list of seven eligible candidates; that the list of the eligible candidates in the said summary was not in order of merit, but in an alphabetical order; that along with the said summary, a statement regarding the candidates' qualifications and experience along with their CVs was also submitted; and that in the said summary, the Prime Minister was requested to select three names in consultation with the Leader of the Opposition for recommendations to the Parliamentary Committee in terms of Section 4(2) of the NCSW Act.

6. It was further submitted that on 09.05.2016, the Secretary to the Prime Minister noted that the pending summary regarding the appointment of the Chairperson of NCSW could not be traced; that the Ministry of Human Rights was required to immediately resubmit the said summary or to initiate a fresh summary through the Law and Justice Division giving complete details and options; that for the said purpose, the Prime Minister constituted a seven-member committee headed by the Minister for Law and Justice; that on 16.05.2016, the Prime Minister asked for the resubmission of a summary regarding the appointment of the Chairperson of NCSW with recommendations of the committee which had been constituted on 09.05.2016; that vide notification dated 10.05.2016, issued by the Ministry of Human Rights, a seven-member committee headed by the Federal Minister for Law and Justice was constituted to scrutinize the CVs and finalize the recommendations for the appointment of the Chairperson of NCSW; that on 30.06.2016, the Ministry of Human Rights, informed the Secretary to the Prime Minister that the committee constituted by the Prime Minister had examined the earlier summary submitted on 17.12.2015 by Ministry of Human Rights for the appointment of the Chairperson of NCSW, and that it did not agree

with the weightage which had been assigned for academic qualifications and experience of the candidates; that the committee decided that there should be no discrimination against the holders of local degrees; that the said committee decided to give a different weightage to academic qualifications and documented experience than the one given by respondent No.1 before submitting the initial summary to the Prime Minister; that the said committee reassessed the eligible candidates and submitted a list of eligible candidates in order of their suitability for the consideration of the Prime Minister; that in the said list of eligible candidates, Ms. Mumtaz ranked at serial No.1; that the said committee recommended that the Prime Minister may consider the nominees preferably in the order of ranking for further consultation with the Leader of the Opposition; that vide letter dated 22.09.2016, the Secretary to the Prime Minister informed the Speaker, National Assembly, that three names (Ms. Khawar Mumtaz, Professor Dr. Farkhanda Zia, and Ms. Huma Akhtar Chughtai) had been agreed between the Prime Minister and the Leader of the Opposition for consideration of the Parliamentary Committee of the National Assembly; that on 05.10.2016, the Parliamentary Committee on the Appointment of the Chairperson of NCSW considered the said three names and confirmed the name of Ms. Mumtaz for appointment as the Chairperson of NCSW; and that vide impugned notification dated 13.10.2016, Ms. Mumtaz was appointed as the Chairperson of NCSW. Furthermore, the learned A.A-G. submitted that since there had been no violation in the process for the appointment of Ms. Mumtaz as the Chairperson of NCSW, the writ petitions were liable to be dismissed.

**CONTENTIONS OF THE LEARNED COUNSEL OF MS. KHAWAR MUMTAZ (RESPONDENT NO.3):-**

7. Mr. Salman Akram Raja, ASC, learned counsel for Ms. Mumtaz, submitted that the petitioner had misunderstood the three-step procedure provided in Section 4 of the NCSW Act for the selection of the Chairperson of NCSW; that each step of the

said process has been properly followed before Ms. Mumtaz was appointed as the Chairperson of NCSW; that Dr. Farzana Bari could not have instituted a writ of *quo warranto* against Ms. Mumtaz since she was one of the candidates for the post of Chairperson of NCSW and was, therefore, an interested party having a direct interest in the appointment; that in the case of Muhammad Yasin Saqib Vs. Chairman, Pakistan Telecommunication Corporation, Islamabad (2003 PLC (C.S.) 1105), it has been held *inter-alia* that a writ of *quo warranto* is not maintainable if it has been filed by a party who was directly affected by the appointment under challenge; that in the cases of Muhammad Liaquat Munir Rao Vs. Shams-ud-Din (2004 PLC (C.S.) 1328), and Dr. Azim-ur-Rehman Meo Vs. Government of Sindh (2004 SCMR 1299), the Hon'ble Supreme Court had held *inter-alia* that writs of *quo warranto* cannot be issued as a matter of course and that the High Court would be entitled to look into the conduct, motive and lack of *bonafides* of the petitioner for the purpose of granting or refusing relief in exercise of its discretionary jurisdiction.

8. It was further submitted that Ms. Mumtaz was qualified to be appointed as the Chairperson of NCSW because she was a lady with experience of working on issues related to women's rights for more than fifteen years, and was committed to the cause of women's empowerment; that respondent No.1, after proper scrutiny, had submitted a list of suitable persons to the Prime Minister and the Leader of the Opposition for onward reference to the Parliamentary Committee; that the Federal Government scrutinized each candidate in order to check whether they met the criteria prescribed in Section 3(2)(a) of the NCSW Act, 2012; that respondent No.1 was not required by the statute to send any sort of a merit list to the Prime Minister and the Leader of the Opposition; that the Federal Government forwarded seven names (including Dr. Bari and Ms. Mumtaz) for the consideration of the Prime Minister and the Leader of the Opposition in terms of Section 4(1) of the NCSW Act; that it was the discretion of the

Prime Minister and the Leader of Opposition to select three names out of the list forwarded to them by the Federal Government; that after the list of qualified candidates had been sent by the Federal Government to the Prime Minister, the latter constituted an advisory committee on an *ad-hoc* basis in order to assist him in selecting three names out of the list of qualified candidates submitted by respondent No.1; that the mandate of the said committee was not statutory in nature; that the recommendations of the advisory committee were lawful and valid; and that the Prime Minister and the advisory committee had full discretion and was at liberty to devise a new criteria for scrutinizing the credentials of the candidates for the position of the Chairperson of NCSW.

9. Furthermore, it was submitted that this Court cannot substitute its own opinion with the one formed by the advisory committee; that in the case of Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad (2008 SCMR 960), it has been held that the Court cannot substitute its own opinion for that of a regulatory authority or a selection committee unless *malafide*, bias or error of judgment were floating on the surface of the record; that the criteria devised by the advisory committee cannot be termed as arbitrary or in violation of the statute; that the advisory committee was justified in allocating marks for the candidates' qualifications and experience; that the Leader of the Opposition did not object to any of the three names proposed by the Prime Minister for onward submission to the Parliamentary Committee; that it is not disputed that the Prime Minister and the Leader of the Opposition had agreed on the three names to be forwarded to the Parliamentary Committee; that there is no dispute as to the legality of the deliberations of the Parliamentary Committee which nominated Ms. Mumtaz for appointment as the Chairperson of NCSW; that the provisions of the NCSW Act do not provide for an upper age limit for the appointment of the Chairperson of NCSW; and that it is not disputed that Ms. Mumtaz is more than sixty-five years of age, but the notification dated 09.10.2007 cannot override the provisions

of the NCSW Act, 2012. Learned counsel prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties with great interest and keenness, and have perused the record with their able assistance.

11. Learned counsel for Ms. Mumtaz raised an objection to the maintainability of the petition on the ground that since the petitioner was one of the candidates for the position of Chairperson of NCSW and was, therefore, personally aggrieved by the appointment of Ms. Mumtaz against the said position, the writ petition filed by her was not maintainable.

12. The law appears to be well settled that writs of *habeas corpus* and *quo warranto* stand on a different footing from other writs like writs of *mandamus*, *certiorari* and prohibition. Insofar as writs of *mandamus*, *certiorari* and prohibition are concerned, it is necessary that the right sought to be enforced should ordinarily be a personal or individual right of the individual petitioner. The aforesaid rule has been relaxed or modified in case of writs of *habeas corpus* and *quo warranto*. Insofar as the writ of *quo warranto* is concerned, the Courts have taken the view that any member of the public could sue if he had no private interest to serve and that it was for the public advantage. Reference in this regard may be made to the following case law:-

- (i) In the case of Hafiz Hamdullah Vs. Saifullah Khan (PLD 2007 SC 52), it has been held as follows:-

*“A writ of the quo warranto is in the nature of laying an information before a Court, against a person who claimed and usurped an office, franchise or liberty, requesting for holding an enquiry to enable him to show the authority under which he supported his claim of right to the office, franchise or liberty. Its object is to determine the legality of the holder of a statutory or constitutional office and decide whether he was holding such office in accordance with law or was unauthorizedly occupying a public office. Where a person prays for a writ of quo warranto the Court would be under an obligation to enquire whether the incumbent is holding the office under the orders of a competent authority and also to examine whether he would be legally qualified to hold the office or to remain in the office. For issuance of a writ of quo warranto the person invoking the*

*jurisdiction of the High Court under Article 199 of the Constitution is not required to fulfill the stringent conditions required for brining himself within the meaning of an aggrieved person. Any person can move the High Court to challenge the usurpation or unauthorized occupation of a public office by the incumbent of that office and he is not required to establish his locus standi to invoke the constitutional jurisdiction under Article 199 of the Constitution in a manner as generally required by the said Article.”*

(Emphasis added)

- (ii) In the case of Dr. Azim-ur-Rehman Meo Vs. Government of Sindh (2004 SCMR 1299), it has been held as follows:-

*“There is no cavil with the proposition that in respect of order of quo warranto it is not necessary that a person must be aggrieved and no such restriction could be placed which is in fact contemplated under sub-clause (a) of clause 1 of Article 199 of the Constitution and accordingly any person irrespective of the fact whether he is an aggrieved person or otherwise can invoke the Constitutional jurisdiction by way of writ of quo warranto against usurpation of a public office by a person without having any lawful authority.”*

- (iii) In the case of Nazar Aslam Vs. Federal Government and six others (2013 PLC (C.S.) 974), this Court has held that if there were any violations of rules or statutes in making the appointment of the Chairperson of a statutory body, anybody can point out those illegalities and can approach the Court for the issuance of writ of *quo warranto*. Law to the said effect has also been laid down by the Hon'ble Supreme Court in the cases of M.U.A. Khan Vs. Rana Muhammad Sultan (PLD 1974 SC 228), Al Jahad Trust through Raees-ul-Mujahidin HabibulWahabulKhairi Vs. Federation of Pakistan (PLD 1996 SC 324), Malik Asad Ali Vs. Federation of Pakistan (PLD 1998 SC 161) and Captain retired Muhammad NaseemEjazi Vs. Province of Punjab (2000 SCMR 1720). Therefore, the said objection raised by the learned counsel for Ms. Mumtaz is spurned.

13. As mentioned above, it is well settled that in order to maintain a writ of *quo warranto*, the petitioner need not be an aggrieved person. This does not imply that a writ of *quo warranto*



filed by a person aggrieved by the appointment of a public office holder would not be maintainable if the essential ingredients for the issuance of such a writ was satisfied in a particular case. True, in the cases of Mudassar Hassan Rana Vs. The Federal Government (2017 PLC (C.S.) 1342), Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Barrister Sardar Muhammad Vs. Federation of Pakistan (2013 PLC (C.S.) 625), it has been held that a writ of *quo warranto* was not maintainable on behalf of a person whose personal interest was involved in the matter. I cannot bring myself to agree with the view expressed in the said judgments. Article 199(1)(b)(ii) of the Constitution provides that that a writ of *quo warranto* can be filed by “any person”. An “aggrieved person” cannot be excluded from the ambit or meaning of “any person”. If a writ petition filed by a contestant for a public office against the public office holder is held not to be maintainable, would such a contestant have to look for a person who is not personally aggrieved by the appointment under challenge and file a writ petition through such a surrogate or will he/she have to simply swallow the fact that there were violations in the appointment process? I have not found anything inequitable in the petitioner’s conduct and motive in filing the writ petition. Her learned counsel had emphasized that the petitioner was interested in the process for the appointment of the Chairperson of NCSW to be carried out strictly in accordance with the procedure prescribed in Section 4 of the NCSW Act. Such an interest did not disentitle Dr. Bari from filing a writ of *quo warranto* against Ms. Mumtaz’s appointment. Therefore, the said objection raised by the learned counsel for Ms. Mumtaz is rejected.

14. NCSW was constituted by the Federal Government under the provisions of the NCSW Act for the promotion of social, economic, political and legal rights of women as provided in the Constitution of the Islamic Republic of Pakistan, 1973, and in accordance with international declarations, conventions, treaties, covenants and agreements relating to women including the

Convention on the Elimination of all forms of Discrimination Against Women. The procedure for the appointment of the Chairperson of NCSW is provided in Section 4 of the NCSW Act. Since the petitioner's grievance is that Ms. Mumtaz has been appointed as the Chairperson of NCSW in violation of the procedure prescribed in Section 4 of the NCSW Act, 2012, it is essential to reproduce the said Section herein below:-

*"4. Appointment of Chairperson.---(1) The Federal Government shall through public notice, invite suggestions for suitable persons for appointment as Chairperson and, after proper scrutiny, shall submit a list of those persons to the Prime Minister and the Leader of the Opposition in the National Assembly.*

*(2) The Prime Minister shall in consultation with the Leader of the Opposition in the National Assembly forward three names for Chairperson to a Parliamentary Committee for hearing and confirmation of any one person:*

*Provided that in case there is no consensus between the Prime Minister and the Leader of the Opposition, each shall forward separate list to the Parliamentary Committee.*

*(3) The Parliamentary Committee shall be constituted by the Speaker of the National Assembly and shall comprise fifty per cent members from the treasury benches and fifty per cent from the opposition parties, based on their strength in Majlis-e-Shoora (Parliament), to be nominated by the respective Parliamentary Leaders:*

*Provided that the total strength of the Parliamentary Committee shall not exceed twelve members out of which one-third shall be from the Senate.*

*(4) The Parliamentary Committee shall regulate its own procedure.*

*(5) The Parliamentary Committee shall forward the name of the nominee confirmed by it to the Prime Minister, who shall appoint the Chairperson accordingly."*

*(Emphasis added)*

15. The record shows that on 22.12.2012, Ms. Mumtaz was appointed as the Chairperson of NCSW. Since she assumed the charge of her office on 01.01.2013, her three-year term was due to expire on 01.01.2016. In terms of Section 4(1) of the NCSW Act, respondent No.1 (Ministry of Law, Justice and Human Rights) issued public notices on 21.06.2016 inviting suggestions and

recommendations for the appointment of a suitable person as the Chairperson of NCSW for a term of three-years. Vide notification dated 14.09.2015, issued by the respondent No.1, a five-member committee was constituted *“to scrutinize the suitable person”* for appointment as the Chairperson of the NCSW. In response to the said public notice, thirteen persons submitted their credentials to respondent No.1. Out of these thirteen candidates, six were found to be ineligible on account of insufficient work experience. The credentials of the remaining seven candidates were scrutinized by respondent No.1, which had devised a grading system whereunder marks were allocated to each candidate under the heads of (i) qualification, (ii) 15 years experience related to women (iii) experience in administration and finance, (iv) research/consultancies in gender and human rights, (v) publications (i.e. articles/books) on gender related human rights issues, and (vi) representation at the local and international level.

16. The marks given by respondent No.1 to each of the seven candidates found to be eligible were as follows:-

1.	Dr. Fauzia Saeed	39 Marks
2.	Dr. Farzana Bari	37 Marks
3.	Ms. Khawar Mumtaz	32 Marks
4.	Ms. Huma Akhtar Chughtai	32 Marks
5.	Dr. Farkhanda Zia	28 Marks
6.	Ms. Rehana Hashmi	25 Marks
7.	Ms. Sofia Noreen	25 Marks

17. Section 4 of the NCSW Act only required the respondent No.1/Federal Government to submit the list of suitable persons for appointment as the Chairperson of NCSW after proper scrutiny. The law did not require respondent No.1 to give grades or marks to the candidates. Any such grading or marks given to the candidates by respondent No.1 was an exercise not required by the statute. Under Section 3(2)(a) of the NCSW Act, 2012, the Chairperson of NCSW was required to be a women with experience of working on issues related to women’s rights for more than 15 years, and was committed to the cause of women’s empowerment. Therefore, all that respondent No.1 was required

to do was to submit to the Prime Minister and the Leader of the Opposition, a list of suitable persons with experience of working on issues related to women's rights for more than fifteen years, and were committed to the cause of women's empowerment.

18. As regards the appointment process for the Chairperson of NCSW envisaged by Section 4 of the NCSW Act, 2012, the role of the Prime Minister comes into play after the Federal Government submits a list of qualified candidates for the said post to the Prime Minister and the Leader of the Opposition. It is not disputed that vide summary dated 17.12.2015, respondent No.1 forwarded the names of all the seven eligible candidates to the Prime Minister in terms of Section 4(1) of the NCSW Act, 2012. This list was also forwarded to the Leader of the Opposition.

19. The admitted position is that the names of the seven eligible candidates forwarded by respondent No.1 to the Prime Minister and the Leader of the Opposition were not in order of merit. The statement of the seven eligible candidates indicating their names, qualifications, experience and CVs were also sent along with the said summary. Since Section 4(1) of the NCSW Act does not require respondent No.1 to forward the list of eligible candidates to the Prime Minister and the Leader of the Opposition in order of merit (as determined by respondent No.1), no illegality was committed by respondent No.1 by not forwarding the names of the eligible candidates in order of merit. In the summary dated 17.12.2015, it is explicitly stated that all seven candidates had been found to be eligible for the position of Chairperson of NCSW.

20. The contention of the learned A.A-G. that these names were not forwarded in order of merit, but in an alphabetical order (whether in accordance with their surnames or first names), is not correct. The names of the eligible candidates forwarded by respondent No.1, in its summary dated 17.12.2015, were in the following order:-

1. *Dr. Farkhanda Zia,*
2. *Dr. Farzana Bari,*
3. *Dr. Fauzia Saeed,*
4. *Ms. Khawar Mumtaz,*

5. *Ms. Huma Akhtar Chughtai,*
6. *Ms. Rehana Hashmi, and*
7. *Ms. Sofia Noreen.*

21. It can be noticed that the name of Ms. Khawar Mumtaz is at serial No.4, whereas that of Ms. Huma Akhtar Chughtai is at serial No.5. Therefore, respondent No.1 did not forward the names of the eligible candidates to the Prime Minister in an alphabetical order.

22. Now, the summary dated 17.12.2015 appears to have gone missing. The Secretary to the Prime Minister's note dated 09.05.2016 shows that the summary dated 17.12.2015 could not be traced in the Prime Minister's office. Consequently, respondent No.1 was required to immediately resubmit the same or initiate a fresh summary through the Law and Justice Division. For this purpose the Prime Minister constituted a seven-member committee headed by the Minister for Law and Justice. Respondent No.1 was required to submit the recommendations of the committee after consideration of all the CVs within a period of seven days. For the sake of clarity, paragraphs 30 and 31 of the note file on the subject of *"appointment of Chairperson for National Commission on the Status of Women"*, are reproduced herein below:-

*"30. A reference has also been made to a pending summary for appointment of regular Chairperson which could not be traced in this office. The Ministry shall immediately resubmit the same or initiate a fresh summary through Law & Justice Division giving complete details and options. For this purpose, the Prime Minister has also been pleased to constitute a committee to be headed by the Minister of Law & Justice with the following composition:*

<i>i.</i>	<i>Mr. Zahid Hamid, Minister for Law &amp; Justice</i>	<i>Convener</i>
<i>ii.</i>	<i>Ms. Saira Afzal Tarar, Minister of State for National Health Services, Regulations &amp; Coordination</i>	<i>Member</i>
<i>iii.</i>	<i>Ms. Anusha Rehman Ahmed Khan, Minister of State for Information Technology</i>	<i>Member</i>
<i>iv.</i>	<i>Kh. Zaheer Ahmed, Special Assistant to the Prime Minister</i>	<i>Member</i>
<i>v.</i>	<i>Senator Ayesha Raza Farooq</i>	<i>Member</i>
<i>vi.</i>	<i>Ms. Marriyum Aurangzeb, MNA</i>	<i>Member</i>
<i>vii.</i>	<i>Secretary, Human Rights Division</i>	<i>Member</i>

*31. The recommendations of the Committee after consideration of all CVs, shall be submitted within a period of seven (07) days.*

*Sd/-  
9<sup>th</sup> May, 2016  
(Fawad Hasan Fawad)  
Secretary to the Prime Minister”*

23. In response to my query from the learned A.A-G. as to why the Prime Minister constituted the seven-member committee when the constitution of such a committee was not envisaged by any provision of the NCSW Act, he submitted that since the summary dated 17.12.2015 from respondent No.1 to the Prime Minister had been lost, respondent No.1 was required to resubmit the same or initiate a fresh summary. He submitted that in these circumstances, the said committee was constituted by the Prime Minister so that it could re-examine the proposals made by respondent No.1 in its summary dated 17.12.2015. He further submitted that letter/noting dated 16.05.2016 from the Prime Minister’s office shows that the summary dated 17.12.2015 had subsequently been found, but respondent No.1 was nonetheless required to resubmit a summary with the recommendations of the seven-member committee constituted on 09.05.2016. At this juncture, it is pertinent to reproduce herein below paragraph 32 of the said note file:-

*“The Prime Minister has seen and is pleased to desire that the instant summary be resubmitted with the recommendations of the Committee constituted vide orders dated 9<sup>th</sup> May, 2016. (copy enclosed)*

*Sd/-  
16.05.2016  
(Dr. Ijaz Munir)  
Additional Secretary  
16-05-2016”  
(Emphasis added)*

24. The said noting shows that again on 16.05.2016, respondent No.1 was required by the Prime Minister to resubmit the summary on the appointment of the Chairperson of the NCSW with the recommendations of the seven-member committee constituted on 09.05.2016. This shows that the matter was referred back to respondent No.1 for the resubmission of the summary with the

recommendations of the seven-member committee for the said appointment.

25. The learned A.A-G. also brought on record notification dated 10.05.2016, issued by the Ministry of Human Rights, and submitted that through the said notification, the seven-member committee headed by the Federal Minister for Law and Justice had been constituted to scrutinize the CVs of the candidates and make recommendations for appointment of a suitable person as the Chairperson of NCSW.

26. The Secretary, Ministry of Human Right's note dated 30.06.2016 shows that the seven-member committee changed the criteria originally devised by respondent No.1 for determining the suitability of the candidates for appointment as the Chairperson of NCSW, and on the basis of the changed criteria/grading formula, re-assessed the candidates. The marks given to each of the eligible candidates by the said committee were as follows:-

1. Ms. Khawar Mumtaz (45/50 marks)
2. Professor Dr. Farkhanda Zia (40/50 marks)
3. Dr. Huma Akhtar Chughtai (38/50 marks)
4. Dr. Farzana Bari (37/50 marks)
5. Ms. Rehana Hashmi (34/50 marks)
6. Ms. Sofia Noreen (not in the list)
7. Dr. Fouzia Saeed (withdrew her nomination)

27. Having done so, the said committee made the following recommendation to the Prime Minister:-

*"The Committee recommended that the Honourable Prime Minister may consider these nominees, preferably, in the order of ranking for further consultation with the Honourable Leader of the Opposition for forwarding three names to the Parliamentary Committee for hearing and final confirmation of one person in terms of S.4 (2) of the NCSW Act, 2012."*

(Emphasis added)

28. The minutes of the meeting of the seven-member committee show that the single agenda item of the meeting of the said committee was to *"re-examine the earlier proposal submitted on 17<sup>th</sup> December 2015 for the selection of Chairperson, National Commission on the Status of Women (NCSW) and make recommendations after consideration of CVs of the nominees"*. Although the names of the qualified candidates suggested to the

Prime Minister by the seven-member committee were the same as the ones forwarded by respondent No.1 to the Prime Minister, vide summary dated 17.12.2015, (save one who had opted out of the contest), the names suggested by the said committee were in order of merit as determined in accordance with the criteria devised by the said committee, whereas the names which had been forwarded earlier by respondent No.1 were not in order of merit. Additionally, the names suggested by the said committee were with a recommendation to the Prime Minister to consider the nominees, in order of ranking, whereas those forwarded by the Federal Government contained no such recommendation.

29. The fact that recommendations of the seven-member committee including the recommendation to consider the candidates in order of ranking, prevailed with the Prime Minister is evidenced by the fact that the names of the three candidates forwarded by the Prime Minister and the Leader of the Opposition to the Parliamentary Committee were the ones which had been given the highest marks by the said committee. Ms. Mumtaz, being on top of the list, was nominated by the Parliamentary Committee for appointment as the Chairperson of NCSW. Thereafter, vide notification dated 13.10.2016, Ms. Mumtaz was appointed by the Federal Government as the Chairperson of NCSW for a period of three years.

30. I cannot bring myself to agree with the contention of the learned A.A-G. that the seven-member committee had been constituted through notification dated 10.05.2016, issued by the Ministry of Human Rights to scrutinize the CVs of the candidates and make recommendations for appointment of a suitable person as the Chairperson of NCSW. The bare perusal of the said notification shows that the said seven-member committee had been constituted by the Prime Minister for making recommendations for the appointment of Members of the NCSW under Section 5(2) of the NCSW Act, 2012. Section 5 of the NCSW Act, 2012, *inter-alia*, provides that the Members of the NCSW shall be appointed by the Prime Minister from amongst the names



recommended by the Federal Government. The said notification dated 10.05.2016 was only with respect to the appointment of the Members of NCSW and not the Chairperson of the NCSW. Therefore, it is safe to hold that the seven-member committee for making recommendation of suitable person for appointment as the Chairperson of NCSW had not been constituted by virtue of the said notification dated 10.05.2016.

31. The conclusion that the seven-member committee constituted through notification dated 10.05.2016 was for making recommendations for appointment of Members of NCSW, and not the Chairperson of NCSW is buttressed by the fact that on 03.05.2016, the Secretary, Ministry of Human Rights, had informed the Secretary to the Prime Minister that since a number of CVs had been received for appointment as Members of NCSW, a Committee may be constituted under the Federal Minister for Law and Justice or Special Assistant of the Prime Minister for Law for proper scrutiny of the CVs and for finalizing recommendations as per Section 5(ii) of the NCSW Act, 2012.

32. Regardless of whether such a committee was constituted through a notification or otherwise, the vital question that needs to be determined was whether after the Federal Government had, on 17.12.2015, submitted a summary to the Prime Minister forwarding the names of the seven qualified candidates for the Chairperson of NCSW, could the matter be referred back to the Federal Government by the Prime Minister after constituting a committee with the mandate to make recommendations or suggestions *qua* the appointment of the Chairperson of NCSW. The answer is a curt 'NO'. This is because Section 4 of the said Act does not empower the Prime Minister to constitute a committee comprising of his chosen persons to make recommendations for the appointment of the Chairperson of NCSW. Therefore, the proceedings of the seven-member committee culminating in the recommendations for the appointment of Chairperson of NCSW, were *coram non judice* and void *ab-initio*.

33. The learned A.A-G. and the learned counsel for Ms. Mumtaz have contradicted their own selves by asserting that the statute did not require the Federal Government to give marks to each of the qualified candidates in the scrutiny process, and then defending the allocation of marks given by the seven-member committee. They also asserted that when the names of the qualified candidates were initially forwarded by the Federal Government to the Prime Minister and the Leader of the Opposition, they were not in order of merit. However, the seven-member committee, whose constitution and working is defended by the learned A.A-G. and the learned counsel for Ms. Mumtaz, had adopted a new criterion for the award of marks to each candidate. It is an admitted position that the list of qualified candidates was forwarded to the Prime Minister in order of merit as determined by the seven-member committee. The learned A.A-G. and the learned counsel for Ms. Mumtaz cannot be permitted to take such contradictory positions.

34. Having held the proceedings of the seven-member committee culminating in the recommendations for the appointment of the Chairperson of NCSW, to be *coram non judice* and void *ab-initio*, the question which arises for consideration is whether this is enough for the issuance of a writ of *quo warranto* as prayed for by the petitioner.

35. "*Quo warranto*" literally means "by what warrant". It is issued to determine the right of a person holding an office and directing him to disclose under what authority he is holding that office. The purpose of the writ of *quo warranto* is to ensure that a public office is occupied by an authorized person only. The two conditions which are essential for the issuance of a writ of *quo warranto* are that (i) the appointment under challenge must be to a public office; and that (ii) the said appointment should have been made without the authority of law or in other words contrary to the relevant statutory provisions.

36. It is not disputed that the office of the Chairperson of NCSW is a public office since it is the creature of a statute i.e. the NCSW

Act. The offices created under the Constitution or specific statutes are deemed to be public offices. The functions and powers of the NCSW are set out in Section 11 of the NCSW Act. All these functions are in the nature of public functions. Section 12(2) of the NCSW Act provides that the Chairperson of NCSW shall chair all meetings of the NCSW. Section 12(6) of the NCSW Act provides that all the decisions of the NCSW shall be authenticated by the signature of the Chairperson or a person authorized by the Chairperson. By virtue of Section 13 of the NCSW Act, the Chairperson is also a member of the Executive Committee of the NCSW. The Chairperson is the principal accounting officer of the NCSW. Since the appointment under challenge in this writ petition is to a public office, the first condition for the issuance of a writ of *quo warranto* is satisfied.

37. Now, it needs to be determined whether there was any violation of the procedure prescribed in Section 4 of the NCSW Act in the appointment of Ms. Mumtaz as the Chairperson of NCSW, which would warrant the setting aside of the said appointment. The aberration in the appointment process in the case at hand is that the Prime Minister instead of considering and applying his mind to the list of suitable persons along with their qualifications, experience and CVs sent by respondent No.1 in the form of the summary dated 17.12.2015, and then carrying out meaningful consultation with the Leader of the Opposition so as to select three names out of the said list for onward submission to the Parliamentary Committee, decided to constitute a seven-member committee of his own choosing and referred the matter back to respondent No.1 to resubmit a summary with the recommendations of the said committee. As mentioned above, the minutes of the meeting of the said committee show that the said committee “re-examined” the proposal submitted by respondent No.1, in its summary dated 17.12.2015, and then made its own recommendations to the Prime Minister based on a grading criteria different from the one earlier adopted by respondent No.1. The statute did not empower the Prime Minister to constitute a

committee to re-examine respondent No.1's determination of suitability of candidates for the position of the Chairperson of NCSW. The recommendations of the said committee were contained in the note dated 30.06.2016 from the Secretary, Ministry of Human Rights. At no material stage was a fresh summary sent by respondent No.1 to the Prime Minister. The seven member committee's recommendations prevailed with the Prime Minister. This is evident from the fact that the three names forwarded to the Parliamentary Committee after the consultation between the Prime Minister and Leader of the Opposition are exactly the same and in the same order as proposed by the seven-member committee. Since I find the constitution, deliberations and recommendations of the seven-member committee to be *dehors* (outside the scope) of the NCSW Act, I hold the same to be *coram non judice* and void *ab-initio*.

38. It is also well settled that in order for a writ of *quo warranto* to be issued, the office in question must be held in contravention of law. A case of a simple irregularity will not attract *quo warranto*. In the case of Dr. Kamal Hossain Vs. Muhammad Sirajul Islam (PLD 1969 SC 42), it has been held that a writ of *quo warranto* is not to issue as a matter of course on sheer technicalities on a doctrinaire approach. In the case of Muhammad Rafique Vs. Muhammad Parvaiz (2005 SCMR 1829), it has been held that some minor irregularities, if any, in the appointment of the petitioner were not sufficient for the issuance of a writ of *quo warranto* against the petitioner.

39. The role that the Prime Minister has to play in the appointment process for the Chairperson of NCSW is of vital importance. A departure or an aberration in such an appointment process prescribed by statute cannot be termed as a technicality or a simple irregularity. It is well settled that when a statute requires a process to be carried out in a particular manner, it must be carried out in that manner. The Prime Minister acting upon the recommendations of the seven-member committee and not applying his mind to the contents of respondent No.1's

summary dated 17.12.2015, had the affect of the other candidates found suitable/eligible by respondent No.1 for the appointment not to be considered.

40. It is not disputed that the Prime Minister, in exercise of his executive authority, could have constituted a committee within the Prime Minister's Secretariat for assisting him in selecting three candidates out of the list of eligible/suitable candidates submitted by respondent No.1, for consultation with the Leader of the Opposition, but he could not have constituted a committee to make recommendations regarding appointment of the Chairperson of the NCSW by referring the matter back to respondent No.1. Respondent No.1 had already discharged its statutory obligation by submitting the summary dated 17.12.2015 in which the list of suitable persons for appointment as the Chairperson of NCSW had been provided. It was for the Prime Minister and the Leader of Opposition to have applied their minds to the list of candidates so submitted along with their qualifications, experience and CVs, and selected three persons for onward submission to the Parliamentary Committee. The learned A.A-G. admitted that neither was the earlier summary dated 17.12.2015 resubmitted, nor was a fresh summary submitted by respondent No.1 to the Prime Minister, but the Secretary, Ministry of Human Rights, on 30.06.2016, forwarded the deliberations and recommendations of the seven-member committee regarding the appointment of the Chairperson as well as the Members of the NCSW to the Secretary to the Prime Minister. The submission of the deliberations and recommendations of the seven-member committee to the Prime Minister could not be held to be the performance of respondent No.1's statutory obligation under Section 4(1) of the NCSW Act. The statute (i.e. Section 4(1) of the NCSW Act, 2012) envisages the "proper scrutiny" of the qualified candidates for the position of the Chairperson of NCSW to be carried out by the Federal Government (i.e. respondent No.1) and not by any committee constituted by the Prime Minister. By no stretch of imagination

can the seven-member committee be equated with the “Federal Government”. Since the earlier summary dated 17.12.2015 or a fresh summary had admittedly not been submitted by respondent No.1 to the Prime Minister after the constitution of the seven-member committee, the Prime Minister carried out the consultative process with the Leader of the Opposition on the basis of the recommendations of the seven-member committee contained in note dated 30.06.2016 from the Secretary, Ministry of Human Rights, and not on the basis of respondent No.1’s summary dated 17.12.2015 and the accompanying material about the eligible candidates for appointment as the Chairperson of NCSW. This rendered the consultative process between the Prime Minister and the Leader of the Opposition contemplated by Section 4 (2) of the NCSW Act not to be meaningful or purposeful. The Prime Minister’s mind was impregnated with the recommendations of the seven-member committee when the consultation with the Leader of the Opposition took place for selecting three candidates.

41. The upper age limit for the appointment of the Chairperson of NCSW has not been fixed in the NCSW Act. It is well settled that the provisions of an executive fiat cannot override the provisions of the statute. The mere fact that Ms. Mumtaz was more than sixty-five years of age would not be an impediment in her being considered or appointed as the Chairperson of NCSW.

42. In view of the above, I hold that on account of the abovementioned violation in the process of the appointment of the Chairperson of NCSW, the writ petition is allowed, and the appointment of Ms. Mumtaz, through notification dated 13.10.2016 is set-aside. Furthermore, it is directed that the Prime Minister shall take into consideration respondent No.1’s summary dated 17.12.2015 and the accompanying material in carrying out the consultative process with the Leader of the Opposition as envisaged by Section 4 (2) of the NCSW Act. It is expected that the said direction shall be complied with expeditiously and preferably

within a period two weeks from the date of the receipt of this judgment.

43. I allow this petition with a heavy heart, because Ms. Mumtaz's appointment is being set-aside for no fault of hers. Her qualifications and ability to be appointed as a Chairperson of NCSW were not questioned. All acts performed and decisions taken by Ms. Mumtaz while holding the said office are saved under the *de facto* doctrine. She will be considered along with the other contestants already found suitable by respondent No.1 for the position of the Chairperson NCSW. No order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2018

(JUDGE)

Qamar Khan\*

**APPROVED FOR REPORTING**

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