

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(Judicial Department)

“Writ Petition No. 3712 of 2013”

Nisar Khan Khattak
Versus
Haji Adam & another

Petitioner By: Mr. Afnan Karim Kundi, Advocate.
Respondent No.1 By: M/s Shoaib Shaheen & Saif-ur-Rehman
Bukhari, Advocates alongwith respondent
No.1.

Respondent No.2 By: M/s Hafiz Hifz ur Rehman & M.Anwar
Mughal, Advocate

Date of Hearing: 21.08.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

“In view of the preceding, the appointment of respondent No.1 as General Manager in PEMRA may kindly be set aside having been made in violation of law and in usurpation of the said office.”

It is further prayed that the respondent No.2 be directed to recover such amounts as have been paid to and the monetary value of other perks and privileges granted to respondent No.1 during the period he remained illegally appointed as General Manager in PEMRA.

Any further or better relief just and appropriate in the circumstances may also be graciously granted.”

2. Briefly stated facts of the petition are that the petitioner is a law abiding and tax-paying citizen of Pakistan and is interested in the establishment of rule of law in all spheres of our national life including, *inter alia*, adherence to all laws and rules applicable to appointment of functionaries of the State and its authorities like respondent No.2/ Pakistan Electronic Media Regulatory Authority

(hereinafter be called as “**PEMRA**”). The PEMRA is a statutory authority created under a special law i.e. PEMRA Ordinance, 2002 and is, therefore, to be strictly governed by the said law and the rules and regulations made thereunder including regulations made under Section 4 (3) of the PEMRA Ordinance specifying the terms and conditions of service of its employees. The petitioner wishes to lay information before this Court *vis-a-vis* the usurpation and unauthorized occupation by respondent No.1 of the office of firstly General Manager and now Director General (Admin) in PEMRA. That on 16.06.2006, respondent No.1 joined PEMRA as Assistant General Manager (BS-17) on deputation from the Federal Public Service Commission for a period of three years. Thereafter, while on deputation, vide Office Order No.4 (507)/ 2006-P.Admn dated 10.05.2008, respondent No.1 was posted as the Executive Secretary to the Chairman PEMRA, in his own pay and scale. On 03.03.2009, respondent No.2 invited applications for, *inter alia*, five posts of General Manager. In response to the aforesaid advertisement, respondent No.1 serving as the Principal Staff Officer to the then Chairman PEMRA was also amongst the aspirant candidates for appointment as General Manager in PEMRA in Non-Technical Cadre. Alongwith the application for appointment as a General Manager, respondent No.1 also submitted a request before the then Chairman PEMRA with whom he was then serving as Principal Staff Officer stating therein, *inter alia*, as under:-

“I possess all required qualification, skills and age limit for the advertised slot. My total Government Service length as of March 27, 2009 stands about 24 years. However, my total service in BS-17 and is about 9 years which is less than the experience solicited by PEMRA i.e. 10 years.

I am associated with PEMRA for about three years and I have been working under your kind supervision since February, 2008. I have tried my best so far to prove my loyalty, honesty and dedication to work is best known to all. Being on the ladder of career, I do intend to excel and move forward through competition which could only be possible through your kind support.”

3. The request of respondent No.1 was acceded to by the then Chairman PEMRA purportedly under Regulation 26(6) of the PEMRA Employees Service Regulations, 2008 and hence, he was granted the required relaxation without there being any 'exceptional qualifications' as required in the aforesaid Regulation 26 (6). For reference, Regulation 26 (6) of the Service Regulations is reproduced hereunder:-

"26. Initial appointment to posts in PS 6 and above.

(6) Chairman may relax age limit and experience on initial appointment to a person having exceptional qualification."

Besides the undue favour of relaxation of the requirement of ten years' experience, respondent No.1 was fully favoured by violating the regional quota for Sindh (U) and despite being from Sindh (R), he was accommodated by usurping the only seat reserved for Sindh (U). The appointment of respondent No.1 was manipulated against the Sindh (U) quota through the Selection Board and it was shown that two candidates most suitable were from the quota of Sindh (U). The Selection Board, hence suggested that a candidate may be adjusted against the regional quota of Sindh (U), whose quota may be adjusted in future recruitments and this was in sheer disregard of Regulation 27 (6) of the Service Regulations which requires the Sindh (U) seat to be carried over and filled on subsequent recruitment. Regulation 27 (6) is reproduced for ease of reference as under:-

"27. Observance of Merit and Provincial Quota.

(6) The share of the province or region which cannot or is not filled by candidates belonging to that province or region shall be carried over and filled on subsequent recruitment."

Accordingly, the Selection Board recommended four candidates for the position of General Manager (BPS-9), i.e Wakeel Khan General Manager (Technical) Merit, Muhammad Safdar Rehman, General Manager (Non-Technical) Punjab, Haji Adam, General Manager (Non-Technical) Sindh (R) and Shamim Gul Durrani, General

Manager (Non-Technical) Sindh (R). Subsequently, respondent No.1 through Memorandum No. F.4 (781)/2009-HR dated 02.09.2009, was selected/ appointed as a General Manager (BPS-9) in PEMRA and now has been illegally promoted as Director General in PEMRA.

4. Learned counsel for the petitioner has contended that PEMRA is a statutory authority created under a special law i.e PEMRA Ordinance, 2002 and is to be strictly governed by the said law and the rules and regulations made there under including regulations made under Section 4 (3) of the PEMRA Ordinance specifying the terms and conditions of service of its employees; that the appointment of respondent No.1 as a General Manager and subsequent illegal promotion to the position of Director General in PEMRA is in sheer negation and stark violation of settled law and the provision of the Service Regulations; that the impugned appointment is liable to be struck down being illegal and ultra vires of the law as it is a consequence of abuse of authority and discretion; that respondent No.2 is vested with the authority to make appointments, such authority cannot be exercised in an arbitrary and whimsical fashion and requires to be exercised in accordance with the provisions of law, in a fair and transparent manner; that the impugned appointment runs afoul of the mandatory provision of Regulation 26 (6) of the Service Regulations; that respondent No.1 did not possess any exceptional qualities or property to be granted relaxation in experience. Further contended that respondent No.1 barely met the minimum criteria/ qualification and admittedly possess second Division MA degree; that by no stretch of imagination, does an MS (Economics) in second Division stand out as an exceptional qualification. Next contended that respondent No.1 further lacked any worthwhile credentials and admittedly none were mentioned in his application for relaxation either; that no cogent reason or explanation whatsoever was cited by the then Chairman while granting relaxation to respondent No.1, whereas under Section 24-A of the General Clauses Act, 1897, the then

Chairman was not only bound to act justly, fairly and reasonable, but also to record reasons in writing for the grant of relaxation to respondent No.1; that the impugned appointment of respondent No.1 has not been made in accordance with principles of regulating the exercise of discretion that are now well entrenched within our jurisprudence. Further contended that the impugned appointment is also in direct conflict with provincial quota-related provisions of the Service Regulations; that appointment of respondent No.1 is in violation of Article 18 of the Constitution as it has deprived other eligible candidates from being considered and appointed on the same post, especially those belonging to Sindh (U); that actions of respondent No.2 and its functionaries in wrongly considering and appointing respondent No.1 are unlawful, illegal, arbitrary and are liable to be struck down in the exercise of judicial review powers of this Hon'ble Court for being illegal and ultra vires of the law and the Constitution. Finally, prayed for acceptance of the instant writ petition.

5. Conversely, learned counsel for respondent No.1 has opposed the contentions of learned counsel for the petitioner contending that respondent No.1 is not holding a public office in terms of Article 199- (1) (b) (ii) of the Constitution, therefore, writ of *Quo Warranto* is not maintainable; that the rules of service of the PEMRA are non-statutory; that the petition has been filed after four years of the appointment of respondent No.1, therefore, the petition is hit by principle of laches; that respondent No.1 and one Shamim Gul Durani were appointed against the Regional quota of Sind Rural against the advertised posts of General Manager Rural but the petitioner has only challenged the appointment of respondent No.1, which shows personal grudge against respondent No.1, hence, he cannot be said that he has approached this Court with clean hands; that the Chairman i.e. Competent Authority granted relaxation in experience to respondent No.1, keeping in view 23 years' experience in accordance with law; that not only respondent No.1 but 45 other officers/officials during the said recruitment process

were also granted relaxation in age and experience. Further contended that respondent No.1 is holding Master Degree plus ten years experience in 17 grade and if the service in 16 grade is to be counted, his experience is above ten years; that respondent submitted an application before the Chairman, PEMRA, Islamabad, for relaxation of experience limit to apply against the post of General Manager (BPS-19), which was allowed vide order dated 16.03.2009; that after test and interview, respondent No.1 was appointed as General Manager; that there were other 45 candidates, who were granted relaxation and under regulation No.26(6) of PEMRA Employees Service Regulation 2008, the Chairman has the authority to relax age limit and experience; that there was no discrimination rather all the exercise was done in a just and fair manner; that there are other employees, who were granted relaxation of 12 years and 6 years and were appointed and serving but their appointment has not been challenged; that in September, 2013, respondent No.1 issued show cause notices therefore, in retaliation to that the instant petition has been filed.

6. Learned counsel for respondent No.2 contended that writ of *Quo-Warranto* under Article 199 can only be filed against a public office whereas, respondent No.1 is not holding a public office and that the petitioner also does not fall within the definition of “any person” which is necessary for maintaining a writ of *Quo-Warranto*; that writ petition No.2060/2018 titled “**Amjad Ali Vs. Federation of Pakistan, etc**” was filed before this Court which has been dismissed vide judgment dated 27.02.2020, holding that writ against PEMRA employees is not maintainable; that respondent No.1 was on top of list, whereas Shamim Gul Durrani was on second position; that the petition has been filed after four years of the appointment of respondent No.1, therefore, the petition is hit by principle of laches; that the rules of service of PEMRA are non-statutory, as such, the instant petition is not maintainable and is liable to be dismissed.

7. Arguments of the learned counsel for the parties heard and available record perused with their able assistance.

8. For the purpose of issuance of a writ in the nature of *Quo Warranto* under Article 199 (1) (b) (ii) a person against whom it is sought, must hold a public office. As a corollary, a writ in the nature of *Quo Warranto* would not be competent if the person, against whom it is being sought, does not hold a public office. The expression public office has not been defined in the Constitution. In order to determine, the question as to whether a particular post would fall within expression of a “public office” for the purposes of Article 199 (1) (b) (ii) of the constitution, guidance is sought from the principles and law enunciated by the august Supreme Court in its celebrated judgment in the case of “Salahuddin and 2 others versus Frontier Sugar Mills and Distillery Limited, Tokht Bhai and 10 others” (PLD 1975 SC 244) wherein, it has been held as under:-

“A public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign function of the government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is a trust conferred by a public authority for a public purpose, embarrassing the idea of tenure, emolument and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract, to which such power and function are not attracted. The determining factor, the best is whether the office involves a delegation of some of the sovereign functions of government either executive, legislative or judicial to be exercised by the holder of the public benefit. Unless his powers are of this nature, he is not a public officer.”

The stance of the petitioner is that the present incumbency i.e. the post of General Manager, PEMRA falls within the concept of public office, whereas the respondents addressed arguments to the contrary. It is important to mention that the basic law creating Pakistan Electronic Media Regulatory Authority (PEMRA) and the functions it performs are reproduced and dilated upon. PEMRA is the creation of Pakistan Electronic Media Regulatory Authority (PEMRA), 2002. Section 3 of the said Ordinance provides for

creation of authority. Under Section 2 to 3, the Authority is a body corporate having perpetual succession and a common seal with the powers subject to provisions of the Ordinance, the authority can hold and disposed of property and can sue and be sued. The functions of the authority have been provided in Section 4 and it primarily is responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan established for the purpose of International, National, Provincial, District, Local or special target audiences. More specially sub-Section 2 of the Ordinance provides that the Pakistan Electronic Media Regulatory Authority (PEMRA) shall regulate the distribution of foreign and local TV and radio channels in Pakistan. The composition of Authority is provided in Section 6 of 2002 Ordinance, whereby it is stipulated that it shall consists of a Chairman and twelve members to be appointed by the President of Pakistan. The qualification of the Chairman and members is provided in Section 6 as well. The funding of Pakistan Electronic Media Regulatory Authority (PEMRA) is provided in Section 14 by virtue of which the initial seed money was given by the Federal Government; that the primary source of income is from issuance and renewal of licenses for establishing and operating broadcast or CTV stations. By virtue of Section 16, Pakistan Electronic Media Regulatory Authority (PEMRA) is susceptible to audit by Auditor General of Pakistan. Section 39 of Pakistan Electronic Media Regulatory Authority Ordinance- 2002 provides for making of rules, whereas the power to make regulations is provided in sub-Section 3 of Section 4, *ibdi*.

9. The Hon'ble Division Bench of Sindh High Court in its judgment reported as “Sohail Baig Noori Versus High Court of Sindh through Registrar and 2 others” [2017 PLC (C.S.) 1142], has traced the history of writ of quo warranto and its scope. It was observed as follows:-

“The writ of quo warranto is in the nature of writ of right for the king against any subject who claim or usurp any office, to enquire by what authority he supported his claim in order to determine the right. Quo warranto proceeding affords a

judicial remedy by which any person who holds an independent substantive public office or franchise or liberty is called upon to show by what right he holds the said office. In other words this specie of writ gives judiciary a weapon to control executive action from making appointment to public office against the law. This also protects the public from usurper of public office. The purpose of writ is to pose a question to the holder of a public office where is your warrant of appointment by which you are holding this office? In the writ of quo warranto no special kind of interest in the relator is needed nor is it necessary to explain what of his specific legal right is infringed. It is enough for its issue that the relator is a member of the public and acts bona fide. This writ is more in the nature of public interest litigation where undoing of a wrong or vindication of a right is sought by an individual for himself but for the good of the society or as a matter of principle. For the purpose of maintaining writ of quo warranto there is no requirement of an aggrieved person, but a whistle blower need not to be personally aggrieved in the strict sense may lay the information to the court to enquire from the person holding public office. The conditions necessary for issuance of writ of quo warranto are that the office must be public and created by a statute or constitution itself; the office must be substantive one not merely the function of an employment of a servant at the will during the pleasure of others; there has been contravention of the constitution or a statute or statutory instrument and appointing such person to that office, while essential grounds for issuing writ of quo warranto are that a holder of the post does not possess the prescribed qualification; the appointing authority is not competent authority to make appointment and that the procedure prescribed by law has not been followed and the burden of proof is upon the appointee who has to demonstrate that his appointment is in accordance with law and rules.

9. *The Halsbury's Laws of England, 3rd Edition Vol. II, dealt with writ of quo warranto in the following terms. (Also See AIR 1965 SC 491).*

"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is

called upon to show by what right he holds the said office, franchise or liberty, if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

10. *The Halsbury's Laws of India, Volume 35. Page 145 delineates that the writ of Quo warranto is a discretionary remedy which the court may grant or refuse according to the facts and circumstances of each case. The writ lies only in respect of a public office of a substantive character. The writ calls upon the holder of a public office to show to the court under what authority he is holding that office. The court may oust a person from an office to which he is not entitled. It is issued against the usurper of an office and the appointment authority is not a party. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which*

he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person may effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.”

10. The writ calls upon the holder of a public office to show to the Court under what authority he is holding that office. The court may oust a person from an office to which he is not entitled. It is issued against the usurper of an office and the appointing authority is not a party. The *Quo-Warranto* proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order in other words, the procedure of *Quo-Warranto* gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right.

11. This Hon'ble Court while deciding Writ Petition No.2060/2018 titled as ***“Amjad Ali Vs Federation of Pakistan, etc.”*** has declared that employees of the PEMRA do not fall under the definition of “Public Office Holder” and dismissed the said Writ Petition of *Quo-Warranto* on the ground that the same is not maintainable. In the said writ petition learned counsel appearing on behalf of PEMRA made the following submissions:-

On the other hand, learned counsel for Pakistan Electronic Media Regulatory Authority (PEMRA), inter-alia, contended that the instant petitions are not competent inasmuch as respondent No.3 is not a public office holder, hence writ of quo warranto is not maintainable. It was further contended that resignation is an expression of intention and it has to be

taken according to its verdicts and accordingly the acceptance is to be taken on the account of the same. It was submitted that the instant petitions are barred by laches; that the petitions have not been filed with bona fides inasmuch as the petitioners are directly interested as the dispute exists regarding the seniority of the petitioners and respondent No.3, it has remained the past departmental practice to allow such lien; that the Rules of service of the PEMRA are non-statutory, hence the petitions are not maintainable. In support of his contentions, learned counsel placed reliance on cases reported as “Shahid Khalil Vs. Pakistan International Airlines Corporation, Karachi” (1971 SCMR 568), “Salahuddin and 2 others Vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others” (PLD 1975 SC 244), “Sajid Hussain Vs. Shah Abdul Latif University, Khairpur through Registrar and 4 others” (PLD 2012 Sindh 232), “Sohail Baig Noori Vs. High Court of Sindh through Registrar and 2 others” [2017 PLC (C.S.) 1142], “Malak Naz Vs. Board of Governors through Secretary and 4 others” (2017 CLC 256), “Muhammad Khan Vs. Pakistan through Secretary, Ministry of Interior, Karachi” [PLD 1958 (W.P.) Karachi 75], “Dr. Muhammad Munir-ul-Haq and others Vs. Dr. Muhammad Latif Chaudhry and others” (1992 SCMR 2135), “Dr. Bushra Ashiq Siddiqui Vs. Muhammad Aslam” (1989 MLD 1351), “Muhamad Liaquat Munir Rao Vs. Shams-ud-Din and others” [2004 PLC (C.S.) 1328], “Syed Ali Raza Asad Abidi Vs. Ghulam Ishaq Khan, President of Pakistan and another” (PLD 1991 Lahore 420), “Nazir Ahmad Vs. Pakistan and 11 others” (PLD 1970 SC 453), “Asian Food Industries Ltd. and others Vs. Pakistan and others” (1985 SCMR 1753), “M.U.A. Khan Vs. M. Sultan and another” (1981 SCMR 74), “Haji Muhammad Boota and others Vs. Member (Revenue), Board of Revenue, Punjab and others.” (PLD 2003 SC 979), “Shafique Ahmed Khan and others Vs. NESCOM through Chairman, Islamabad and others” (PLD 2016 SC 377) and “Arbab Muhammad Hashem Khan and others Vs. The Crown” (PLD 1954 Federal Court 1).

12. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying

that act, is in discharge of public duty meant ultimately for public good.

13. In the instant case, respondent No.1 has been appointed against the post of “General Manager” by respondent No.2/ PEMRA which is the creation of Pakistan Electronic Media Regulatory Authority Ordinance, 2002 and Section 3 of the referred Ordinance provides for creation of the authority. Pakistan Electronic Media Regulatory Authority (PEMRA) is a Regulator of Electronic Media to regulate the industry. The legislature deemed it appropriate to have a body for licensing and keeping check and balance. The Federal Government has a say in the referred Authority inasmuch as it appoints the Chairman and the Members. Though, Pakistan Electronic Media Regulatory Authority (PEMRA) is an autonomous body and is a separate entity from the Federal Government but the role of Federal Government cannot be ruled out. Since it is a statutory body with role of the Government in appointment and removal of the Members and Chairman, hence the sovereign through the said statutory body works as Regulator. In other words, Pakistan Electronic Media Regulatory Authority (PEMRA) performs the function of sovereign by way of licensing electronic media and regulating it otherwise. The next question for examination in the referred law and facts and circumstances is that whether every officer of Pakistan Electronic Media Regulatory Authority (PEMRA) is a Public office holder, the Chairman and the Members since constitute Authority, they for sure are public office holders for the purposes of Article 199 of the Constitution. As observed in “**2017 PLC (C.S.) 1142**” supra not every officer performing minute functions can be regarded as a public office holder. In the instant case, the appointing authority for the post of General Manager, PEMRA is not the Federal Government but Pakistan Electronic Media Regulatory Authority (PEMRA); undoubtedly, it is a senior position but the fact remains, it is not in the mainstream constituting authority.

14. It is an admitted position that the service regulations of Pakistan Electronic Media Regulatory Authority (PEMRA) are non-statutory. It was argued by the learned counsel for the petitioner that the service regulations are non-statutory. Even otherwise, on the touchstone of the latest case law on the subject reported as "Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others" (2017 SCMR 571) according to which, if any regulations or rules are framed for internal regulation and consumption, they are non-statutory; hence since the service regulations of PEMRA are for internal consumption, they are non-statutory.

15. It is settled law that while deciding the writs of quo warranto, the conduct and the motive of the petitioner cannot be ruled out as observed by the Hon'ble Supreme Court of Pakistan in case reported as "Muhammad Liaquat Munir Rao Vs. Shams-ud-Din and others" [2004 PLC (C.S.) 1328], wherein the august Apex Court deprecated the practice of public servants instituting proceedings by way of *Quo Warranto* with oblique considerations or motives of self-gain. The basic purpose of the instant petition seems to be the issuance of show cause notice to Dr. Mukhtar Ahmad, General Manager (Operations), PEMRA Headquarters to explain his position regarding his appointment as General Manager by respondent No.1 dated 12.09.2013. Perusal of the record reveals that respondent No.1 and Shamim Gul Durani were appointed against the regional quota of Sind (Rural) against the advertised post of General Manager but the petitioner only challenged the appointment of respondent No.1, which shows his malafide and also personal grudge against respondent No.1. The appointment of Mr. Shamim Gul Durani as General Manager on the regional quota of Sind (Rural) has not been called in-question and he has also not been arrayed as respondent in the instant petition, which shows that this petition has been filed with discrimination and to resolve some personal grievances. Record further shows that the petitioner is a resident of Peshawar and not a domiciliary of Sindh but even then he has

invoked the jurisdiction of this court questioning the allocation of seat quota reserved for Sindh Urban and Rural.

16. Further the instant petition has been filed after a lapse of 04 years of the appointment respondent No.1, therefore, this petition is also hit by the principle of laches. Reliance in this regard is placed upon the judgment passed by this Court in writ Petition No.1538/2011, titled as "Ashfak Jumani Versus Federation of Pakistan and 2 others" wherein it has been held that second deputation and permanent absorption was made in January/February, 2008 and for more than three years, these actions were not challenged and challenge at this stage is hit by laches. In this regard, I am also fortified by the law laid down in the case of "S.Sharif Ahmed Hashmi v. The Chairman, Screening Committee, Lahore and another" (1980 SCMR 711) wherein, a four member bench of the Hon'ble Court refused to condone the delay of twelve years in approaching the constitutional jurisdiction of the High Court and held that the case was squarely hit by the doctrine of laches. In the absence of any explanation as to why the rule of laches should not be duly applied the discretionary relief of issuance of a writ as envisaged by Article 199 of the Constitution should not have been granted.

17. The doctrine of laches has been discussed in detail by the Honourable Supreme Court in the case of "State Bank of Pakistan v. Imtiaz Ali Khan" [2012 PLC (C.S.) 218] wherein it has been held as under:-

"30. Laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have

enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party.

It is settled principle of our jurisprudence as well that delay defeats equity and that equity aids the vigilant and not the indolent. In the case of "Jawad Mir Muhammadi v. Haroon Mirza" (PLD 2007 SC 472), a full Bench of this Court has held that laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case; question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing , constitutional petition, the same cannot be overlooked or ignored subject to facts and circumstances of each case.

18. In the case of "Member (S&R)/Chief Settlement Commissioner v. Ashfaq Ali" (PLD 2003 SC 132), the apex Court of the country has held as follows:-

"writ jurisdiction is undoubtedly discretionary and extraordinary which may not be invoked by a party who demonstrates a style of slackness and laxity on his part: law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief."

In the case of "Muhammad Azhar Siddiqui v. Federation of Pakistan" (PLD 2012 SC 774), the Hon'ble Supreme Court has held as follows:-

"the Supreme Court retains the discretion to deny petitioners who approaches the Court after undue delay or with unclean hands and the question as to whether a particular case involves the element of public importance is to be determined by the Court with reference to the facts and circumstances of each case. In the case of Dr. Akhtar Hussain Khan v. Federation of Pakistan (2012 SCMR 455) this Court after relying upon the judgment of the Indian Supreme Court in the case of Air India Ltd. v. Cochin International Airport Ltd. [(2002) 2 SCC 617] has held that in the event of some irregularity in the decision making process, the Court must exercise its discretionary power of judicial review with circumspection and only in furtherance of public interest and not merely for making out a legal point. It should always

keep the larger public interest in mind to interfere or not to interfere.”

19. Granting relief in the nature of *quo warranto* is within the discretionary power of the superior Courts and this relief cannot be allowed as a matter of course, rather the conduct and the bona fides of the petitioner, the cause and the object of filing such petition is also of considerable importance, which is to be examined. If the petition has been filed with some malafide intent or ulterior motive and to serve the purpose of someone else, the remedy of *quo warranto* cannot be allowed to be a tool in the hands of the petitioner, who approached this Court with malafide intentions and either had his own personal grudge and score to settle with the holder of a public office or is a proxy for someone else, who had a similar object or motive. The remedy of *quo warranto* should not be allowed to be used as a pressure tactic for purposes of restraining the respondent from performing functions and discharging their duties in accordance with the Constitution and the law. Writ of *quo warranto* can only be issued in exceptional cases. Relief of *quo warranto* should not be allowed as a matter of course, more so when the candidature of a candidate was duly scrutinized at the time of the scrutiny of his appointment to ascertain whether he was qualified or disqualified in terms of the Constitution and the law. The Court is not required to go into the merits of the case and should summarily dismiss the petition on the basis of lack of bonafides and extraneous motives of the petitioner and on account of the petition being frivolous. In the case in hand, the appointment of respondent No.1 was made on the recommendation of the Selection Board.

20. In the case reported as “Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others” (2017 SCMR 571) wherein it has been held that “*if any regulations or rules are framed for internal regulation and consumption, they are non-statutory*”; hence since the service Regulations of PEMRA are for internal consumption, therefore, they are non-statutory and the employees of

Pakistan Electronic Media Regulatory Authority (PEMRA) are not public servants. Further the petitioner has also failed to explain as to how he was able to lay his hands on the confidential/ important document of the department which have been annexed with this petition. In the case reported as "Muzaffar Hussain, Principal, Government Weaving and Finishing Institute, Shahdara, Lahore versus Punjab Public Service Commission through Secretary and 2 others" (2001 P L C (C.S.) 634) it has been held as under:-

"Before we part with, this judgment we would like to express our displeasure over this conduct of the petitioner who had appended documents with this petition i.e. the abovementioned Annexures which he had obtained otherwise than in accordance with law. It may be stated here that even such a misconduct on the part of any litigant was sufficient to disqualify him for the grant of any discretionary relief."

21. In view of what has been discussed above, the instant petition is without merit and is **dismissed**.

(Ghulam Azam Qambrani)
Judge

Announced in open Court on this 24th day of September, 2020.

Judge

"Approved for reporting."

Rana. M. Ift