

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.120-2020

Sarfraz Ahmad Khan, Advocate

Vs.

Government of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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17.01.2020	Mr. Mustafa Hussain Khan Baluch, Advocate for petitioner.
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The petitioner, in the instant petition,  
has made the following prayers:-

*"It is therefore, respectfully prayed that the writ petition may kindly be accepted and appointment of Ms. Shahana Ahmad Ali Company Secretary of PPL be declared as illegal, unlawful void ab-initio and ultra vires to the constitution of the Islamic Republic of Pakistan, 1973.*

*It is also further prayed that the proposed extension in the service of Ms. Shahana Ahmad Ali by the respondents No.1 to 3 may kindly be declared as unlawful void ab-initio ultra vires to the constitution of Islamic Republic of Pakistan, 1973.*

*It is further prayed that Ms. Shahana Ahmad Ali be directed to return the perks and privileges she enjoyed as Company Secretary (CS) of PPL with effect from her illegal appointment till today.*

*An express speaking clear direction may be issued whereby the respondents No.1 to 3 may directed to restrain/refrain from extending the service of the Ms. Shahana Ahmad Ali in any manner whatsoever and to immediately initiate the process of appointment of Company Secretary (CS)*

*in PPL according to law and HR policy of PPL in the interest of justice.*

*Any other relief which this Honourable Court deems fit and appropriate may also be awarded in the favour of the petitioner”.*

2. Learned counsel for the petitioner, *inter alia*, contended that this is a public interest litigation challenging the appointment/extension of respondent No.4 as Company Secretary of Pakistan Petroleum Limited. It was contended that extension is being given to the referred respondent in violation of law. Learned counsel was confronted with the nature of writ petition and he candidly replied that the petition is in the nature of quo warranto. It was further enquired whether the parameters of writ of quo-warranto as provided in Article 199 of the Constitution and elaborated by the Hon'ble Supreme Court of Pakistan in its judgments are duly complied with; learned counsel was unable to assist the Court.

3. Arguments advanced by learned counsel for the petitioner have been heard and the documents, placed on record, examined with their able assistance.

4. The instant petition, as noted above, is in the nature of quo-warranto challenging extension being granted to respondent No.4 as Company Secretary, PPL.

5. Under Article 119 (1)(b)(ii) of the Constitution, any person can approach this Court requiring the person within the territorial jurisdiction of this Court holding or purporting to hold a public office to show

under what authority of law, he claims to hold that Office. The concept of public office was elaborated by the Hon'ble Supreme Court of Pakistan in cases reported as 'Salahuddin and 2-others Vs. Taj Muhammad Khanzada' (PLD 1975 Supreme Court 244) as follows:-

*"The term, public office, is defined in Article 290 of the Interim Constitution as including any office in the Service of Pakistan and membership of an Assembly. The phrase 'Service of Pakistan' is defined, in the same Article, as meaning any service, post or office in connection with the affairs of the Federation or of a Province and includes an All-Pakistan Service, any defence service and any other service declared to be a Service of Pakistan by or under Act of the Federal Legislature or of a Provincial Legislature but does not include service as a Speaker, Deputy Speaker or other member of an Assembly. Reading the two definitions together, it becomes clear that the term 'public office', as used in the Interim Constitution, is much wider than the phrase 'Service of Pakistan', and although it includes any office in the Service of Pakistan, it could not really refer to the large number of posts or appointments held by State functionaries at various levels in the hierarchy of Government. As early as 1846, the House of Lords in Henry Faran Darley V. Reg. (6), expressed the view that 'a proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by Charter of the Crown alone, or by the Crown with the consent of Parliament, provided the office be of a public nature and a substantive office, and not merely the function or employment of a deputy or servant held as the will and pleasure of others'. Their lordships held the office of Treasurer of the public money of the country of the city of Dublin to be an offence for which an information in the nature of quo warranto would lie. In other words, their Lordships excluded,*

*from the purview of the term 'public office', the large number of servants of the Crown who were not holding any statutory, representative or elective office.*

*This view seems to have held the ground throughout. As summed up by Ferris (Extraordinary Legal Remedies, 1925 Edition, p.145), '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 functions 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 public authority for a public purpose, embracing the ideas of tenure, duration, emolument and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract, to which such powers and functions are not attached... The determining factor, the test, 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 for the public benefit. Unless his powers are of this nature, he is not a public officer'.*

In view of above position of law, respondent No.4 is not holder of public office hence petition under Article 199 (1)(b)(ii) of the Constitution is not maintainable against her.

6. Even-otherwise, Pakistan Petroleum Limited has Principal Office at Karachi as per the address given in the memorandum of parties and the Company Secretary is also based in Karachi. This Court lacks territorial jurisdiction in the matter.

7. For the above reasons, instant petition is not maintainable and is accordingly dismissed in limine.

(AAMER FAROOQ)  
JUDGE

Zawar