

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.3944 OF 2019

(Against the judgment dated 20.09.2019
passed by the Peshawar High Court,
Peshawar in Writ Petition No.4406-P/2019)

Jawad Ahmad Mir

...Petitioner

VERSUS

Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi,
District Swabi, Khyber Pakhtunkhwa and others

...Respondents

For the Petitioner

Raja Saif-ur-Rehman, ASC

For Respondents:

N.R.

On Court Call:

Ch. Aamir Rehman, Addl. AGP

Date of Hearing:

18.10.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Judgment dated 20.09.2019 passed by the Peshawar High Court in Writ Petition No. 4406-P/2019, whereby the writ petition filed by the petitioner was dismissed.

2. The essential facts as jotted down in the memo of the petition are that Prof. Dr. Khanzadi Fatima Khattak was appointed as Vice Chancellor for Women University, Swabi ("**Women University**") for a period of three years w.e.f. 27.07.2016 and, upon the expiry of her tenure, the matter of appointing a new Vice Chancellor was in process through the Academic Search Committee, but in the meanwhile the Government of Khyber Pakhtunkhwa, *vide* Notification No.SO(U-IV)HE/3-4/ASC/2019 dated 31.07.2019 ("**Notification**"), authorized Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, to look after the affairs of the office of Vice Chancellor, Women University till the regular appointment of

Vice Chancellor. The petitioner thereafter challenged the Notification but the writ petition was dismissed.

3. The learned counsel for the petitioner argued that there is no provision in the Khyber Pakhtunkhwa Universities Act, 2012 ("**KPU Act**"), which may support the impugned Notification. He maintained that under sub-section (3) of Section 12-A of the KPU Act, upon expiry of the tenure of Vice Chancellor, the Pro Vice Chancellor shall be deemed to be the Acting Vice Chancellor, therefore the impugned Notification is liable to be cancelled. He further argued that under the KPU Act, it is nowhere provided to assign look-after charge to the respondent No.1. It was further contended that the learned High Court failed to consider consistently followed practice whereby the Vice Chancellor was usually given an extension in line with Section 12 of the KPU Act, thus authorizing the incumbent Vice Chancellor to continue for another term. He further argued that in all female universities in KPK the Vice Chancellor is female rather than male, but this aspect was ignored by the learned High Court.

4. Heard the arguments. The procedure for the appointment/removal of a Vice Chancellor, as encapsulated under Section 12 of the KPU Act provides that the Vice Chancellor shall be appointed by the Chancellor on the advice of the government from a panel of up to three candidates recommended by the Academic Search Committee which is constituted by the Chancellor for the recommendation of persons suitable for appointment as Vice Chancellor of the University. The mandatory procedure which is to be adopted by the Academic Search Committee while recommending the panel of three candidates is provided under Schedule-II. Whereas the procedure for the Office of Pro Vice Chancellor is provided under Section 12-A of the KPU Act whereunder the Pro Vice Chancellor is to be appointed by the Chancellor from amongst the three senior most Deans or Teachers, for a period of two years, to act as officiating Vice Chancellor or Acting Vice Chancellor, as the case may be. However, under sub-section (3), the Pro Vice Chancellor is deemed to be Acting Vice Chancellor to perform all the functions and powers of the Vice Chancellor in the case of expiration of the tenure of the regular Vice Chancellor, or any other case which requires the appointment of a regular Vice Chancellor,

and he remains in the office till the appointment of a regular Vice Chancellor under the KPU Act.

5. The petitioner had questioned the Notification whereby the Governor of KPK/Chancellor, Women University authorized respondent No.1, Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi to look after the affairs of the office of Vice Chancellor, Women University till the appointment of a regular Vice Chancellor. The language of the impugned Notification unequivocally demonstrates that this assignment was given as a stopgap arrangement for looking after the affairs of the Women University till such time that a regular Vice Chancellor is appointed. The learned counsel for the petitioner argued that in the absence of the Vice Chancellor, the Pro Vice Chancellor should have been given charge as Acting Vice Chancellor of the University and there was no justification to give the charge to respondent No.1 in the intervening period. We have flicked through the reply of the respondent No.1 and 5 submitted in the High Court wherein it was specifically pleaded that there was no permanent faculty in the Women University, nor was there any Pro Vice Chancellor available during the tenure of the Vice Chancellor and, since the selection process was not initiated as envisioned under the KPU Act, therefore the impugned Notification was issued to run the day-to-day affairs of the Women University.

6. The learned High Court while dismissing the writ petition observed in paragraph 11 as under:-

"As the tenure of previous Vice-Chancellor has already been expired and there is no Pro-Vice-Chancellor to act as Acting Vice-Chancellor, therefore, the absence of the Vice-Chancellor would not only create numerous complications and cause hurdles in the smooth administrative and financial business of the University but also have an adverse impact on the running academic sessions. Thus, impugned notification cannot be cancelled at the cost of the future of students of the University. Moreover, the respondent No.1 is Vice-Chancellor of the University of Swabi who was appointed as such in accordance with the provisions of the Act X of 2012 and as such he meets the criteria to hold the office of V.C. in another University. Presently, respondent No.1 has been assigned duties to look-after the office of Vice-Chancellor, Women University Swabi till arrival of the regular Vice-Chancellor; hence, this type of arrangement is no doubt a stopgap arrangement where process for appointment of a regular incumbent is in progress before Academic Search Committee. Looking after the office of V.C. of Women University by the respondent No.1, who otherwise is competent and meet the criteria to hold the office of VC, cannot be termed as usurp

of the said office in Women University rather such an arrangement is beneficial for the general public and in particular for the students studying there. Undoubtedly, the purpose of the impugned notification is to safeguard the public interest which is an exception as the object of constitutional jurisdiction is to enforce and protect a 'vested right' and same is not for the establishment of a right. Right to be enforced under Art. 199 of the constitution must not only be an existing right but for seeking remedy under the said Articles the infringement of such vested right must be there. Reliance is placed on the case of 'Abdul Khalique Vs. Federation of Pakistan etc. reported in 2016 PLC (C.S.) 530.

7. At times the person possessing requisite antecedents to qualify for a particular post may not be available in the department and, while the selection for appointment is under process, or is delayed due to some plausible reason for the time being, the competent authority, in view of exigency, may assign acting charge and current charge as a stopgap arrangement. The expression 'stopgap' means a temporary way of dealing with a problem or satisfying a need and/or something that can be used until something better or more permanent can be obtained. Ad-hoc appointment is made, or look-after/acting or additional charge is given, under exceptional situations as a stopgap arrangement for a limited period with the sole aim and intention to continue such appointment till the regular appointment on the post. A person appointed as a stopgap arrangement does not hold such post in a substantive capacity; this arrangement characterizes a class which is distinct and dissimilar from those who are appointed to posts in Service compliant to the relevant rules of recruitment. Look-after or additional charge as a stopgap arrangement shall not entitle the incumbent to claim any benefit on account of such arrangement which can be revoked or withdrawn by the competent authority at any time without assigning any reason.

8. The writ of *quo warranto* is in the nature of setting forth an information before the High Court against a person who claimed and usurped an office, franchise or liberty. The rationality of the writ of *quo warranto* is to settle the legality of the holder of a statutory or Constitutional office and decide whether he was holding such public office in accordance with law or against the law. The writ of *quo warranto* can be instituted by a person though he may not come within the meaning of words "aggrieved person". For the purpose of maintaining a writ of *quo warranto* there is no requirement of an aggrieved person, and a whistle blower

need not to be personally aggrieved in the strict sense and may relay the information to the court to enquire from the person holding public office. The purpose of the writ of *quo warranto* 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 which of his specific legal rights is infringed. It is enough for this 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, or for the good of the society, or as a matter of principle. The conditions necessary for the issuance of a writ of *quo warranto* are that the office must be public and created by a statute or Constitution itself; the office must be a substantive one and 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 by appointing such person to that office. The essential grounds for issuing a writ of *quo warranto* are that the holder of the post does not possess the prescribed qualification; the appointing authority is not the competent authority to make the appointment and that the procedure prescribed by law has not been followed. The burden of proof is then upon the appointee to demonstrate that his appointment is in accordance with the law and rules. It is clear that before a person 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 a 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. The concept and aftermath of the writ of *quo warranto* has been articulated in different jurisdictions with the following approach and frame of mind:-

Halsbury's Laws of England (Third Edition), Volume 11, page 145:

Quo warranto. 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.

An information in the nature of quo warranto lay only if the office was substantive in character, that is, an office independent in title, and if the holder of the office was an independent official, not one

discharging the functions of a deputy or servant at the will and pleasure of others. An information in the nature of a quo warranto lay in respect of an office held at pleasure, provided the office was one of a public and substantive character.

Halsbury's Laws of India, Volume 35, Page 145:

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.

American Jurisprudence (Second Edition), Volume 16, page 578:

Quo warranto is intended to prevent the exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising those powers. It cannot be used to test the legality of official actions of public corporations or officers, though it has been held that it may be used to determine whether a constitutional officer is attempting to usurp power not granted him by the constitution or laws.

Corpus Juris Secundum, Volume LXXIV, page 174-175

The writ of quo warranto is an ancient common law, prerogative writ and remedy. Indeed, it is one of the most ancient and important writs known to the common law. The ancient writ was in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right, or, in the case of nonuser, long neglect, misuser, or abuse of a franchise, a writ commanding defendant to show by what warrant he exercised such franchise, never having had any grant of it, or having forfeited it by neglect or abuse.

Black's Law Dictionary (Tenth Edition), page 1447:

Quo warranto 1. A common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed.

"Quo warranto means 'by what warrant?' – or authority? – and was a proceeding to inquire whether authority existed to justify or authorize certain acts of a public character or interest. Originally the proceeding of quo warranto was a criminal one instituted by the crown, the purpose of which was to find out, in the course of a formal inquiry, whether or not persons or corporations were exercising a privilege or franchise, illegally, or if persons who had no right to do so were occupying some public office. If it were found that the person or corporation was in fact illegally interfering with the prerogative power of the crown, or was in fact doing some other illegal act, it was ousted from the illegal practice or office. Accordingly, it can be seen at once that the proceeding on quo warranto was not one to be used by private parties in the conduct of ordinary litigation." Charles Herman Kinnane, *A First Book on Anglo-American Law* 662 (2d ed. 1952).

9. In our jurisdiction, compliant with the dictum laid down by this Court in various judgments, such as the case of Masudul Hassan

vs. Khadim Hussain and another (PLD 1963 SC 203), it was held that writ of *quo warranto* was in its nature an information lying against a person who "claimed or usurped an office, franchise or liberty" and was intended to enquire by what authority he supported his claim in order that the right to the office may be determined. In the case of Capt. (Retd.) Muhammad Naseem Hijazi vs. Province of Punjab and others (2000 SCMR 1720), this Court held that in the writ of *quo warranto*, under Article 199 of the Constitution of the Islamic Republic of Pakistan the High Court in exercise of its Constitutional jurisdiction is competent to enquire from any person, holder of a public office to show that under what authority he is holding the said office. Whereas in the case of Hafiz Hamdullah vs. Saifullah Khan and others (PLD 2007 SC 52), it was held that the object of writ of *quo warranto* is to determine 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. For issuance of a writ of *quo warranto*, the person invoking the jurisdiction of High Court under Art.199 of the Constitution is not required to fulfill the stringent conditions required for bringing himself within the meaning of an aggrieved person. Likewise, in the case of Imran Ahmad Khan Niazi vs. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265), this Court held that Constitutional petition in the nature of a writ of *quo warranto* was maintainable against a Member of the Majlis-e-Shoora (Parliament), if he was disqualified or did not possess or had lost his qualification, in such behalf. Power to disqualify a member in cases where for some reason he escaped disqualification at the time of filing his/her nomination papers but such fact/event was discovered subsequently, could, in appropriate cases and subject to availability of admitted facts or irrefutable evidence be exercised by the High Court under Article 199 and by the Supreme Court under Article 184(3) of the Constitution.

10. At this juncture, it is quite interesting to quote an excerpt from the case of Dr. B. Singh vs. Union of India and Others, reported as **(2004) 3 SCC 363**, in which it was held that only a person who comes to the court with *bona fide* and public interest can have *locus standi*. Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no

public interest except for personal gain or private profit, either for themselves or as a proxy for others, or for any other extraneous motivation or for glare of publicity. The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect.

11. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of *certiorari* or a writ of *quo warranto* or it is motivated by *mala fide* intention to gain some undue advantage as a proxy and driving force for others. Here the main thrust of the learned counsel for the petitioner was that if the tenure of the previous Vice Chancellor expired, then why he was not granted an extension in line with Section 12 of the KPU Act, instead of assigning looking after charge to the respondent No.1. The petitioner has failed to establish that look-after charge as a stopgap arrangement was handed over against any law or rules of service, and/or that the person who was handed over the charge was not competent to hold the office of Vice Chancellor of another University as an additional or acting charge basis as a stopgap arrangement till the regular appointment of a Vice Chancellor in accordance with the KPU Act. The petitioner also has no lawful right to espouse the cause of extension in the tenure of the previous Vice

Chancellor in office, nor can a Vice Chancellor who completed his tenure claim extension as a vested right if the competent authority is not interested in his extension for any legitimate or justifiable reason. All the more so, the learned Additional Attorney General for Pakistan, as per instructions received from the Registrar of the Women University, has informed us that a new Vice Chancellor has been appointed and the stopgap arrangement is over.

12. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned High Court. The Civil Petition is therefore dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the
18th October, 2022
Khalid
Approved for reporting.