

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.7374 of 2013.

Muhammad Nauman Younas Versus *Election Commission of Pakistan
and others*

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary
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24.04.2018		Mr. Aurangzeb Ghumman, Advocate for the petitioner. Peerzada Niaz Mustafa Qureshi, Advocate for the petitioner in connected W.P. No.8421 of 2013. Mr. Muhammad Naveed Rana, Assistant Attorney-General with Muhammad Rauf Nawaz, Additional Controller of Examination. M/S Sh. Muhammad Rafiq Goreja and Sheikh Jamshed Hayat, Advocates for respondent No.5. Mian Anwar Mubin Ansari, Advocate for respondent No.6.
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By means of this single order, I intend to dispose of this petition, as also connected Writ Petition No.8421 of 2013. In both the petitions, although the petitioners are different, but common question of law is involved in these matters.

2. Through these writs of *quo warranto*, Ch. Irshad Ahmad Arain-respondent No.5, who was declared a returned candidate to the Provincial Assembly of Punjab from constituency PP-233 Vehari-II by means of notification issued by the Election Commission of Pakistan on 22.05.2013 under Section 42 sub-sections (3A) and (4) of The Representation of the People Act, 1976 (Act No.LXXXV of 1976), was required to show under what authority of law, he is holding the office of the Member Provincial Assembly. A further prayer was also made to start criminal proceedings against respondent No.5 for preparing and using the bogus educational certificate as genuine one showing him to be a graduate.

3. Writ of *quo warranto* is provided under Article 199(1)(b)(ii) of The Constitution of the Islamic Republic of Pakistan, 1973, which reads as follow:-

“199. Jurisdiction of High Court. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law--

(a)

(i)

(ii)

(b) *on the application of any person, make an order—*

(i)

(ii) *requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office.”*

Scope and meaning of the writ of *quo warranto* is provided in various dictionaries, which for ready reference are reproduced as under:-

Black’s Law Dictionary, 10th Edition

(Law Latin “by what authority”), a common-law writ used to inquire into the authority by which a public office is hold or a franchise is claimed—also termed *writ of quo warranto*.

The Advanced Law Lexicon

Information in the nature of *quo warranto* is the modern form of the ancient 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. While relying on an Indian Supreme Court case, it is further provided that the *quo warranto* proceedings affords a judicial remedy by which any person, who holds an independently 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.

West's Legal Thesaurus/Dictionary

A remedy to challenge the continued exercise of unlawful authority.

Wharton's Law Lexicon

A writ issue-able out of the King's Bench Division of the High Court of Justice, in the nature of a writ of right for the Crown against him who claims or usurps any office, franchise, or liberty to inquire 'by what authority' he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or misuser or abuse of it, whereby it is forfeited.

The concept of such nature of writ has been examined by our Superior Courts and in order to get enlightened on the subject, some cases are cited herein below:-

(MASUDUL HASSAN versus KHADIM HUSSAIN AND ANOTHER) P L D 1963 Supreme Court 203

Referring again to the monograph on Crown proceedings in volume 11 of Halsbury's Laws of England, the now obsolete writ of *quo warranto* was in its nature an

information laying 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. It was necessary for the issuance of the writ that the office should be one created by the State, by charter or by statute, and that the duty should be of a public nature.

(Hafiz HAMDULLAH versus SAIFULLAH KHAN and others)
P L D 2007 Supreme Court 52

Writ of *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--- 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---Where a person prays for a writ of *quo warranto*, the Court would be under an obligation to inquire 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----Any person can move High Court to challenge the usurpation or unauthorized occupation of a public office by the incumbent of that office.

(Dr. MUJAHID ALI MANSOORI and others versus UNIVERSITY OF THE PUNJAB and others) 2005 P L C (C.S.) 694

The aim and object of a writ in the nature of *quo warranto* is to pose a question to the person holding public office to show his authority as to under what law he claims to hold such office, and if it is proved that public office is being

usurped, then the writ may be issued by the Court. In order to succeed in a petition for *quo warranto*, it is to be shown that such a disqualification to hold a public office must exist and persist not only on the date of institution of the petition, but also at the time of decision by the Court. Writ of *quo warranto* is not issued, if it is found that the issuance of such a writ will be futile. If the holder of public office is ineligible for appointment to that office and remains ineligible up to the date of the hearing of writ petition, he is undoubtedly a usurper and the principle of futility of writ would not be attracted.

(MUZAMMAL AHMED KHAN versus IMRAN MEER and others) 2010 P L C (C.S.) 1023

A writ of *quo warranto* is confined to the limited object of an inquiry into the appointment of a person holding a public office to show under what authority of law, the incumbent claims to hold that office, whereas the other writs seem to be wider in scope as they seek relief in respect of an act, which is either to be refrained from for being not permitted by law or to be done for being required by law or to be declared to be without lawful authority.

(MUHAMMAD IQBAL KHATTAK versus FEDERATION OF PAKISTAN) 2011 P L C (C.S.) 65

Writ of *quo warranto* is in the nature of a public interest litigation, where undoing of a wrong or vindication of a right is sought by an individual not for himself but pro bono public.

(Barrister SARDAR MUHAMMAD versus FEDERATION OF PAKISTAN and others) P L D 2013 Lahore 343

Quo warranto proceedings afforded a judicial remedy by which any person, who held an independent substantive public office was called upon to show by what right he held the said office, so that his title to it might be duly determined,

and in case the finding was that the holder of the office had no title, he would be ousted from that office by a judicial order.

(WAHEED SABIR versus Rana ZAHID HUSSAIN KHAN and others) P L D 2013 Lahore 586

Writ of *quo warranto* can be issued against a person, who is holding a public office without any lawful authority or he is a usurper.

4. On the touchstone of definition and scope of writ of *quo warranto* and the manner in which such subject has been dealt with by the Courts in Pakistan, the reply to the question posed through present petitions is simple enough and it has rightly been pointed out by Sh. Muhammad Rafiq Goreja, Advocate appearing for respondent No.5 that if respondent No.5 is required to show any authority of law under which he is holding a public office, the simple answer is that the authority required for this purpose is the notification issued by the Election Commission of Pakistan on 22.05.2013 in pursuance of provisions of Section 42 sub-sections (3A) and (4) of The Representation of the People Act, 1976, which still holds the field and to the extent of respondent No.5, it was never recalled. Such notification could have been tested on judicial review, in case, any contesting candidate in the process of election opposing respondent No.5 would file an election petition before Election Tribunal constituted to proceed with such challenge, if put to election of Member of Parliament in view of Article 225 of The Constitution of the Islamic Republic of Pakistan, 1973 read with the provisions of The Representation of the People Act, 1976. No such election petition was ever filed against respondent No.5 by any contesting candidate in the said election, as such, in a challenge in the nature of *quo warranto* by a voter of the area, who is not competent to call in question the notification issued

by the Election Commission of Pakistan declaring respondent No.5 as a returned candidate, the validity of referred notification would be a sufficient answer to voters like present petitioners, who desire to see the authority of a Member of Parliament to hold such Constitutional office. Since notification dated 22.05.2013 is still intact qua respondent No.5, hence till it holds the field, the same is the authority under which respondent No.5 can legitimately claim to hold a Constitutional office of MPA.

5. So far as the question of initiating any proceeding against respondent No.5 on the allegation of forgery of some educational degree allegedly prepared by means of fabrication and using the same as genuine one is concerned, suffice it to say that letter dated 19.04.2013 issued by the University of Punjab through which the educational degree showing respondent No.5 as a graduate was declared as bogus and was produced at the time of scrutiny of nomination papers before the Returning Officer, has already been called in question by respondent No.5 in a civil suit titled "*Irshad Ahmad versus University of the Punjab and others*" instituted on 23.01.2014 before the Civil Court at Lahore, which is still pending and lastly it was fixed on 30.04.2018 in the Court of Mr. Ejaz Farid, Civil Judge 1st. Class, Lahore. Till the time, the referred civil suit is finally adjudicated upon by the Court seized of the matter, no proceeding whatsoever of any nature can be ordered to be started against respondent No.5 on such allegation.

6. I have also noted with great concern that validity and authority under which an elected Member of Parliament is holding a Constitutional office, was called in question by the voters of the area in the year 2013, but for one reason or other, the petitions could not have been decided and now in the month of May, 2018 when the term of the Assembly is going

to expire, these petitions have been argued and in these last days of present Provincial Assembly, even if the petitioners succeed in establishing their cause raised in these writ petitions, the result would be nothing but a futile exercise, for, the person to whom some disqualification to hold Constitutional office was alleged, has spent almost whole of his normal tenure as MPA. This require that the petitions of such nature must be given some preference and be decided on merits on accelerated basis, so that a person, if having no valid authority to occupy a Constitutional office must be checked on judicial side before much water is flown under the bridges.

7. For what has been discussed above, both the writ petitions having no force, are **dismissed**.

(IBAD-UR-REHMAN LODHI)
Judge

Announced in open Court on 10.05.2018.

Judge

Approved for reporting.

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.8421 of 2013.

Mehmood Ahmad Versus *Election Commission of Pakistan
and others*

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary
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24.04.2018	Peerzada Niaz Mustafa Qureshi, Advocate for the petitioner. Mr. Muhammad Naveed Rana, Assistant Attorney-General with Muhammad Rauf Nawaz, Additional Controller of Examination. M/S Sh. Muhammad Rafiq Goreja and Sheikh Jamshed Hayat, Advocates for respondent No.5. Mian Anwar Mubin Ansari, Advocate for the applicant of C.M. No.4541 of 2015 under Order I Rule 10 C.P.C.
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For the reasons recorded in my separate order of even
date passed in connected Writ Petition No.7374 of 2014 titled
*Muhammad Nauman Younas versus Election Commission of
Pakistan and others*, this writ petition stands **dismissed**.

(IBAD-UR-REHMAN LODHI)
Judge

Announced in open Court on 10.05.2018.

Judge