

[C.P.Nos.D-228/2004, 2157/2008, 2576/2009, 2353/2009, 2354/2009, 2355/2009, 2356/2009, 2596/2010, 2559/2010, 218/2010, 104/2011, 2963/2011, 104/2012, 4429/2012, 2252/2014, 2473/2014 & 797/2018]

Mr. Abid S. Zuberi, Advocate for the Petitioner in C.P. No.D-2355/2009 along with Petitioner and Mr. Zaeem Hyder, Advocate.

Shaikh Altaf Ahmed, Advocate for the Petitioner Nos.13 & 14 in C.P. No.D-2157/2008.

Petitioner Saleem Shaikh in C.P. No.D-2157 of 2008, petitioner Asif Ali in C.P. No.D-2354/2009 and petitioner Syed Nawaz Ali Shah present in person in C.P.No.D-218/2010.

Intervenor Muneer Ahmed Sehar in C.P.No.D-2157/2008.

Mr. Mushtaq A. Memon, Advocate for Respondent No.5 in C.P.No.D-2157/2008 along with M/s. Shahid Ansari, Asif Memon and Ishtiaq Memon, Advocates.

Mr. M.M. Aqil Awan, Advocate for the Respondent Nos.6 to 8, 13, 15, 16, 18, 22 to 25, 27, 31 to 37, 40 to 42, 44, 47, 48, 50 to 53, 55, 56, 58, 59, 62 to 64, 68, 77 & 79 in C.P. No.D-228 of 2004 & for Respondent Nos.4, 7 to 18 in C.P No.D-2157 of 2008
Along with M/s. M. Arshad Tanoli & Danish Rasheed, Advocates.

Mr. Bhajandas Tejwani, Advocate for Respondent No. 19 to 33 in C.P. No.D-2157/2008 along with Ms. Nazia Siddiqui, Advocate.

Mr. Neel Keshav, Advocate for the Petitioner Nos.4 to 8 & 10, in C.P. No.D-2157/2008.

Syed Amir Ali Shah Jilani, Advocate for Petitioner No. 14 in C.P. No.D- 2157 of 2008.

Mr. Abdul Salam Memon, Advocate for the Petitioners in C.P. Nos.D-2157/2008, 104/2011, 2963/2011, 104/2012 and 4429/2012
Along with Mr. Amanullah & Ms. Rabia Javed, Advocates.

Mr. Hyder Bux Shar, Advocate for Petitioners in C.P. Nos.D-2596/2010 & 2354/2009 & for Applicants/Intervenors in C.P. Nos.D-2157/2008.

Mr. Ali Ahmed Kurd, Advocate for the Petitioners in C.P. No.D-2353/2009.

Mr. Basil Nabi Malik, Advocate for Petitioners in C.P. Nos.D-2473/2014 & 2252/2014.

Mr. Kazim Abbasi, Advocate for the Petitioner in C.P. No.D-797 of 2018.

Mr. Ahmed Pirzada, Advocate and Mr. Niaz Muhammad Ghumro, Advocate for Petitioner in C.P. No.D-2559/2010.

Mr. Asadullah Magsi, Advocate for Intervenors in C.P. No.D-2157/2008.

Mr. Mukhtiar Hussain Kazi, Advocate for Intervenor Sultan Qureshi in C.P. No.D-2157/2008.

Mr. Abdul Majeed Khoso advocate for Intervener (CMA No. 8114/2016) in C.P. No.D-2157/2008.

Mr. Muhammad Junaid Farooqi advocate for Intervener (M. Muslim Shaikh) in C.P. No.D-2157/2008.

Intervenor Aziz Ahmed Chandio present in person in C.P. No.D-2157/2008.

Mr. Ahmed Pirzada, Advocate for Intervener Abdul Hakeem in C.P No.D-2157/2008.

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Malik Naeem Iqbal, Advocate for the Respondent No.6 & Applicant/Intervenor along with Malik Altaf Javed. M/s. Faizan H. Memon & M. Saleem Khaskheli, Advocates.

Saleem Akhtar in C.P No.D-2157/2008, for Respondent No.3 in C.P. No.D-2252/2014 and for Respondent No.6 in C.P. No.D-228/2004.

M/s. Farhatullah and Talat Hussain Shah, Advocates for the Respondent No.4 in C.P. No.D-2157/2008.

Mr. Khalid Javed, Advocate for Respondent No.15 in C.P. No.D-2157/2008 along with M/s. Munawar Juna, Yousuf & Ms. Farkhanda Shaheen, Advocates.

Mr. G.M. Bhutto, Advocate for Respondent Nos.3, 5 & 6 in C.P. No.D-2157/2008.

Mr. Suhail H.K. Rana, Advocate holding brief for Mr. Shahnawaz M. Sahito, Advocate for the Intervenor Muhammad Ali Unar in C.P. No.D-2157/2008.

Intervenor Amanullah present in person in C.P. No.D-2157/2008.

Mr. Muhammad Yousuf Alvi, Law Officer, SPSC.

Mr. Abdul Jalil Zubedi, A.A.G.

Mr. Sibtain Mehmood, A.A.G and Mr. Jawad Dero, Addl. A.G. along with Mr. DMHmran Khan (internee).

Mr. Yousuf Alvi, Law Officer Sindh Public Service Commission.

Mr. Saeed Ahmed Shaikh, Deputy Secretary (Services) SGA&CD, Government of Sindh.

Muhammad Ali Mazhar, J: The aforesaid Constitution Petitions have been filed to challenge the result of Combined Competitive Examination 2003. The result was declared and published on 10.04.2004 in print media and successful candidates were called upon to appear in viva voce. According to the petitioners, some serious irregularities and illegalities were committed in the examination and due the sheer favoritism, blue-eyed candidates were declared successful and many successful candidates were declared failed.

2. The composite momentary facts are as follows:-

An advertisement was published by Sindh Public Service Commission in the newspapers dated 27.07.2003 for inviting applications to the posts of BPS-16 and 17 through combined competitive examination. The petitioners applied to join the process and appeared in the written test scheduled from

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31.12.2003 to 12.01.2004. Total 2555 candidates appeared in the examination out of which 531 candidates were declared successful. The result was declared and published on 10.04.2004 in print media and successful candidates were called upon to appear in viva voce. The final result was announced on 27.06.2004 by which 77 candidates were declared successful and recommendations were sent to respondent No.1 (Government of Sindh). It is significant to note that Sindh Public Service Commission was silent with regard to the marks obtained by each candidate. Due to hectic efforts the petitioner, Salim Shaikh got the marks certificate on 02.08.2004 after the lapse of two and half months which disclosed that he got 726 marks out of 1150 marks so he should have been declared successful but due to serious fraud and tampering with the record of Sindh Public Service Commission, his name was not included in the successful candidates. He obtained 201 marks in viva voce test out of 250 marks. Somehow or the other, the similar grievances have been brought forward by some other petitioners too who have also alleged serious fraud and tampering in the record and result to favor and give preferentiality to the blue-eyed. In C.P.No.D-2157/2018, SPSC filed the comments and made a request to allow time to scrutinize the result. They expressly admitted that the result of many candidates were manipulated and tampered intentionally. The candidates who failed in one or more subjects were shown qualified and their roll numbers were included in the final result/press release. An enquiry report of the committee, constituted under the direction of chairman, SPSC on combined competitive examination was also submitted. Another inquiry was conducted by Anti-Corruption Establishment based on the FIR No.GO-08/2009 of ACE Hyderabad, lodged against Muhammad Umar Zaur, the then Controller of Combined Competitive Examination of SPSC and others. According to the reports, massive tampering took place and the Controller of Exam was involved in the forgery and alteration in the answer sheets and result 2003-2004. A recast result was submitted vide statement dated 14.01.2015 in C.P.No.D-2355/2009 which shows that all available answer copies of candidates have been rechecked in order to remove discrepancies. The report shown some interpolation in the mark sheets as well as in the final result, therefore the members recommended for fresh interviews.

3. The minutiae of the bunch of petitions do show that various petitioners as an individual or in league challenged the above competitive process and also arrayed various private and official respondents. Virtually, in all these petitions the Combined Competitive Examination 2003 is under challenge. During pendency of these petitions, many miscellaneous applications have been filed under Order 1 Rule 10 CPC for and against by various persons for impleading them proper and necessary parties. The net calculation of such applications available on record is 41. Two applications were dismissed for non-prosecution but the applicants

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filed their applications for restoration. The rudiments of CMAs are as follows:

- (1) CMA No.11973/2009 filed by Saeed Ahmed Bhutto for impleading as Petitioner. (Allowed on 3.11.2010)
- (2) CMA No.10251/2009 filed by Ms.Mamona Shah for impleading her as Respondent. (Allowed on 3.11.2010)
- (3) CMA No.10157/2009 filed by Syed Khalid Muneer for impleading as petitioner. (Dismissed on 30.08.2010)
- (4) CMA No.10009/2009 filed by Aamir Zia for impleading as Respondent. (Allowed on 3.11.2010)
- (5) CMA No.10156/2009 filed by Shoaid Ahmed Kerio for impleading as Respondent. (Allowed on 3.11.2010)
- (6) CMA No.10252/2009 filed by Ahyan Mustafa Bhutto for impleading as Respondent. (Allowed on 3.11.2010)
- (7) CMA No.11404/2009 filed by Nasir Mehmood & 05 others for impleading as petitioners. (Allowed on 3.11.2010)
- (8) CMA No.4115/2010 filed by Azizullah Chandio & another for impleading as petitioners. (Allowed on 3.11.2010)
- (9) CMA No.9779/2010 filed by Ibrahim Memon & 11 others for impleading as Respondents. (Allowed on 3.11.2010)
- (10) CMA No.574/2011 filed by Iftikhar Ali for impleading as petitioner (Not listed).
- (11) CMA No.1692/2011 filed by Riaz Ahmed Dahar & 14 others for impleading as Respondents. (Allowed on 07.04.2011)
- (12) CMA No.2991/2011 filed by Abdul Rehman Khawaja for impleading as petitioner. (Allowed on 07.04.2011)
- (13) CMA No.20684/2013 filed by Zameer Ahmed for impleading as petitioner (Allowed on 18.07.2013) (He has also filed Statement for withdrawal of application)
- (14) CMA No.20824/2013 filed by Imdad Hussain Siddiqui for impleading as petitioner. (Allowed on 18.07.2013)
- (15) CMA No.20826/2013 filed by Imdad Ali Patoojo for impleading as petitioner. (Allowed on 18.07.2013)
- (16) CMA No.22085/2013 filed by Muhammad Asif & 07 others for impleading as petitioners.
- (17) CMA No.33023/2013 filed by Abdullah Hanjrah for impleading as petitioner.
- (18) CMA No.537/2015 filed by Asadullah for impleading as petitioner
- (19) CMA No.33022/2013 filed by Abdul Hakeem for impleading as petitioner.
- (20) CMA No.2636/2014 filed by Saleem Akhter for impleading as petitioner.
- (21) CMA No.3503/2014 filed by Ghulam Mohiuddin for impleading as petitioner.
- (22) CMA No.33443/2014 filed by Muhammad Ali Unar for impleading as petitioner.
- (23) CMA No.34281/2014 filed by Awais Ahmed Talpur for impleading as petitioner.
- (24) CMA No.3190/2015 filed by Salahuddin for impleading as petitioner

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- (25) CMA No.30200/2015 filed by Muhammad Rizwan for impleading as petitioner.
- (26) CMA No.35248/2015 filed by Abdul Sattar Malik for impleading as petitioner.
- (27) CMA No.2476/2016 filed by Ghulam Ali for impleading as petitioner.
- (28) CMA No.8071/2016 filed by Muhammad Amin for impleading as petitioner.
- (29) CMA No.8114/2016 filed by Abdul Sattar Malik for impleading as petitioner.
- (30) CMA No.6379/2017 filed by Zeeshan Ahmed Phulpoto for impleading as petitioner.
- (31) CMA No.5768/2017 filed by Aurangzeb Mughal for impleading as petitioner.
- (32) CMA No.6706/2017 filed by Muneer Ahmed Seehar for impleading as petitioner.
- (33) CMA No.23165/2017 filed by Abdul Hafeez & Ghulam Abbas for impleading as petitioners.
- (34) CMA No.25202/2017 filed by Muhammad Muslim Shaikh for impleading as petitioner
- (35) CMA No.17123/2018 filed by Sultan Qureshi for impleading as petitioner
- (36) CMA No.36936/2018 filed by Sarfraz Ahmed Lakho for impleading as petitioner.
- (37) CMA No. 27219/2013 filed by Faqir Muhammad for impleading as petitioner in CP.No.D-2354/2009
- (38) MA No.481/2006 filed by petitioner to implead Ghulam Murtuza as respondent in CP.No.D-228/2004
- (39) MA No.608/2009 filed by petitioner to implead Muhammad Nawaz Soho as respondent in CP.No.D-228/2004
- (40) CMA No.4876/2010 for restoration of Order 1 Rule 10 CPC application filed by Shabbir Ahmed Awan
- (41) CMA No.7565/2011 For restoration of Order 1 Rule 10 CPC application filed by Syed Khalid Munir.

4. The multifactorial upshot of arguments move forward by the learned counsel for the petitioners and the petitioner Salim Shaikh in person is that in the competitive examinations conducted by the Sindh Public Service Commission/respondent No.4, the results were manipulated to favour some candidates and deprived the petitioners from selection on merits. The candidates who had passed the examination were shown to have failed and candidates who failed were shown to have passed the examination, therefore the appointments made on the forged examination results be declared null and void. The learned counsel referred to the Enquiry Report dated 25.7.2009 submitted by SPSC with the comments filed in C.P. No.D-2157/2008 and also admitted the manipulation in

the result. The gist of the inquiry report explicates that after carrying out physical scrutiny of each and every answer sheet of all subjects of 75 candidates, the committee observed that almost 57% of the result of the combined competitive examination, 2003 was tampered. It was further stated that colossal and capricious tampering has been made in the paper of History of Sindhi Literature and the marks of 13 selected candidates were altered which upset the merit. The committee concluded that out of 77 selected candidates, after scrutinizing each and every copy of answer sheets of 75 candidates, the tampering with mark sheets, face sheets and result sheets in case of 47 candidates was found which almost 57% of the final result. The large scale tampering was done intentionally and deliberately. The learned counsel also relied on paragraph 33 of the report and argued that based on the above report, FIR No.GO-08/2009 was lodged against the culprits and an Enquiry report was compiled by the Anti-Corruption Department.

5. It was further averred that the beneficiaries were appointed in violation of merit and the petitioners and other qualified individuals were denied their right to be appointed on merits. They relied on the judgment of Apex Court (2014 SCMR 949) rendered in the case of illegal appointments in EOBI whereby an internal fact finding committee was formed which submitted its report highlighting illegal appointments. The court held that unanimous report speaks volumes about the mismanagement, corruption, nepotism and politicizing of the disputed appointments in a mala fide manner, thereby crushed the merit criteria in a public owned establishment of the Government. It was further held by the apex court that if petitions are allowed substantial hardship is likely to be caused to many of the appointees who will lose their jobs because of the illegalities in their respective appointments committed by EOBI, but the fact remains that such ill-gotten gains cannot be protected

under any cannon of law or even on humanitarian considerations, such gains availed by the illegal appointees were at the cost of other deserving candidates who had applied for these posts with a legitimate expectation that they would be able to seek appointment on the basis of their eligibility-cum- merit criteria. Moreover, the hon'ble Supreme Court in another case reported in 2017 SCMR 637 found that the SPSC had committed large-scale illegalities in conducting the examinations of 2013 and held that the results of the said test were not free, fair or transparent and therefore set aside the result. The illegal appointees filed a review against the said decision, which was dismissed and order in review is reported in 2017 SCMR 1519. In the said review application, the appointees took the stance that a vested right accrued in their favour, they should not to be penalized for the wrong doings of the SPSC and by virtue of the de facto doctrine their appointments are protected. However, such stances were rejected by the Supreme Court and the court held that *"The question before this Court is not whether one or the other set of candidates had resorted to unfair means and illegal acts in order to gain employment, the real question relates to fairness, integrity and transparency of the process and procedure adopted by the Chairman and Members of the Commission to undertake the selection process. This Court has found serious flaws in the process of selection which point towards lack of transparency to facilitate nepotism and favoritism that cannot be condoned or countenanced. We are not persuaded by the argument of the learned counsel that the de facto doctrine is attracted to the facts and circumstances of this case, which suggest that the very appointments of the Chairman and Members of the Commission suffered from serious defects and flaws. However, the matter did not end there. The process and procedure adopted by the then Chairman and Members for undertaking the exercise of selection was replete with illegalities, departure from recognized*

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norms and deviation from the law, rules and procedure which we have found hard to overlook or sidestep.”

6. It was further contended that the apex court held in 2006 SCMR 1876 that individuals so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer, therefore not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It was further averred that it is a settled principle of law that no person can claim a right obtained in violation of law. [PLD 2013 S.C. 829; 2011 SCMR 408] Similarly if the order is illegal, perpetual rights cannot be created [2000 SCMR 907]. The hon'ble Supreme Court in the past in particular with regards to the issue of police promotions in violation of law demoted such police officials despite them having rights. [2013 SCMR 1752; 2015 SCMR 456]. Hence, the beneficiaries of such fraudulent and manipulated exams are not entitled to retain their respective posts as no right has accrued in their favour. So far as plea of laches from other side, the learned counsel argued that plea of laches would not be applicable in case of recurring cause of action or if it defeats the ends of justice. The Supreme Court in its judgment reported in PLD 2013 SC 268 held that *“No Court would dismiss a lis on the ground of laches if it defeats the cause of justice and thereby perpetuates an injustice. Even otherwise, bar of laches cannot be over emphasized in the cases where the relief claimed is based on recurring cause of action.”* It may be noted that the petitioners filed petitions in this court in relation to the fraud in the Combined Competitive Examinations, 2003. During the pendency of such proceedings, the respondent No.1 constituted a three members committee for purposes of investigating the Combined Competitive Examinations, 2003. There are three reports on record i.e. the inquiry report, the

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re-cast result and the inquiry report by Anti-Corruption that confirm widespread illegalities and tampering committed in the result.

7. The learned counsel for the private respondents in nutshell argued that the petitions suffer from laches and liable to be dismissed on this account alone. The process of Combined Competitive Examination was started by publication in newspaper on 27.07.2003, the final result was announced on 27.06.2004 and the successful candidates were appointed and posted in 2004. The functions of the Sindh Public Service Commission cannot be challenged by filing of writ petitions. The petitioners have other alternate adequate remedies available to them under the SPSC laws which they have failed to avail. The petitions are also barred in view of the Sindh Public Service Commission Act and the rules and regulations framed thereunder. The new management of SPSC submitted para wise comments against the petition of Saleem Shaikh and in this Constitutional Petition partly admitted the allegations of illegalities/tampering leveled by Saleem Shaikh against the result of Combined Competitive Examination 2003; while it had earlier denied the allegations of tampering/illegalities in 2003 Combined Competitive Examination in CP No.D-228/2004 filed by Nabi Bux Sathio. The partly admission of new management of SPSC in the instant CP is based on mala fide intention. The SPSC Enquiry Report is sheer violation of principle of natural justice inasmuch as the successful candidates were never provided any opportunity of hearing by the new management of SPSC before recommending adverse action against the successful candidates. The SPSC did not enquire examiners who were related to alleged tampering. They only conducted so called enquiry in favour of petitioners to show their so called performance before superior and creating pretext for recasting the result. Moreover, the Committee was constituted without any mandate of law and

composed of such members having no specialty in relevant subjects who unlawfully attempted to re-check, reassess and re-examine the answer copies which were already assessed by subject specialists. The recast result was prepared after conducting enquiry team of five members but it was not signed by all members which rise to strong presumption that other four members did not agree with such report. The selection of private respondents was given effect by the Government of Sindh, therefore, even Government of Sindh is not competent to undo it. The notification of appointments cannot be withdrawn or rescinded after taking legal effect and acted upon. The reliance was placed on the doctrine of locus poenitentiae and referred to the case of Chief Secretary Government of Sindh vs. Sher Muhammad Makhdoom (PLD 1991 SC 973). It was further contended that the suo motu case reported in 2017 SCMR 637 is not applicable in the instant case as suo motu action was initiated by the Supreme Court regarding eligibility of Chairman and Members of Sindh Public Service Commission which was allowed by Supreme Court and appointment of Chairman and Members were held to be unlawful as they were lacking the required eligibility and qualification and the examination conducted by them was also declared as illegal as sufficient record was placed before the supreme Court for adjudication of large scale illegalities and discrepancies committed by the Chairman and its Members while in this case, the eligibility of commission is not under challenge.

8. It was further contended that the petition is hit by doctrine of laches. No legal right has been agitated by petitioner to enforce, particularly after lapse of considerable period. The new management of SPSC partly admitted the allegations of illegalities and tampering in the result of Combined Competitive Examination, 2003, while it had earlier denied the same allegations. Under the

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SPSC Act and its rules, the role of SPSC is to conduct test and examination, whereas SPSC initiated enquiry in Combined Competitive Examination, 2003 on its own. The inquiry reports were prepared in violation of principle of natural justice. Some of the private respondents on gaining knowledge of the petition approached for impleading them as party which were allowed but still large number of candidates declared successful are not before this court nor they have been heard. No law authorizes SPSC to recheck, reassess and re-examine the result. Disputed question or factual controversy between SPSC Enquiry report and Recast result report cannot be resolved under constitutional jurisdiction.

9. The learned A.A.G argued that one Nabi Bux Sathio on 19.8.2004 filed C.P.No.D-228/2004 in the Sindh High Court at Circuit Bench Hyderabad against respondent No.1 and 2 for challenging the combined competitive examination 2003-04. The respondent No.2 in its parawise comments supported the successful candidates of combined competitive examination 2003. This petition has been tagged with C.P.No.D-2157/2008. On 26th May, 2008, S.N. Abbasi along with nine other members including Mr.Abrar Hussain Mirza, Mr.Nawaz Ali Leghari and Shah Mansoor Alam were appointed in the Sindh Public Service Commission. After the change of the management of SPSC Mr.Muhammad Saleem Shaikh on 18.10.2008 after lapse of more than four years filed C.P.No.D-2157/2008 although he was in possession of his marks sheet since 2.8.2004. The first para of recasting result states that for the purpose of re-casting result, all available answer copies of the candidates have been re-checked minutely in order to remove every discrepancy that was left over and manipulation and tampering made in previous assessment of answer copies. The task of re-checking of answer copies was entrusted to the members of the Sindh Public Service Commission. There is a difference in

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the number of Answer Books and nearly 1688 answer Books have been misplaced under the control of the Member Examination Mr. Abrar Hussain Mirza thus making the two reports of Respondent No.2 contradictory. The learned A.A.G further argued that the petitions are hit by laches. No case of issuances of writ of mandamus is made out. The petitions do not fulfill the requirements of writ of Quo-Warranto. The enquiry report and recast report were prepared incompetently. He referred to 2004 SCMR 1299, 2014 PLS (CS) 1292, 2017 SCMR 369, 1999 SCMR 2405 and 2005 SCMR 445

10. Heard the arguments. To start with, we would like first to refer to an order dated 26.03.2010 passed by the learned Division Bench of this court in the leading petition (C.P. No.D-2157/2008) which shows that the respondent No.2 (Sindh Public Service Commission) submitted their comments and also sought three months' time for completing the detailed scrutiny of result of Combined Competitive Examination 2003. The learned Division Bench shown displeasure that comments were filed on 12.06.2009, neither detailed scrutiny report was compiled nor submitted in the court. The learned A.A.G. requested for further two weeks' time to make available the scrutiny report in court. The order dated 30.08.2010 echoes that the learned A.A.G. produced a copy of inquiry report in respect of only 70 candidates, whereas the total number of candidates who appeared were more than 700 thenceforth this court returned the report to the A.A.G. with the directions to bring it on the next date of hearing. The order dated 21.08.2013 displays the statement of the learned A.A.G. that pursuant to the directions of this court, the inquiry was duly conducted and reports were submitted in the office. In the same sequence the order dated 27.05.2015 exhibits that A.A.G. was directed to place on record two inquiry reports and supply the

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copies of such reports to the petitioners as well as counsel for the respondents with the right to file objections. We have examined the first inquiry report which unveiled the blatant tampering and mess around the record and data with clear intention of fraud and also smacks sham and dishonesty in the whole examination process, so the entire process was considered as deceptive with further observation that the fabricated result has lost credibility and has been issued without any legitimate basis. For the ease of reference, the recommendations made in inquiry report are reproduced as under:

Recommendations in the Inquiry Report:-

“43. In view of the facts and position elucidated in the forgoing paragraphs and to meet the justice and transparency in selection of 77 candidates for various posts through the Combined Competitive Examination, 2003 it is proposed that:

i) The answer sheets of every candidate must be available in the record room of the (Examinations) branch until and unless accounted for any shortfall by the authorized person in whose custody such is kept. Removal or missing of answer sheets point towards manipulation in the record with ulterior motives. Such candidates must not be declared successful in the final list and should not be recommended for appointment. If recommendation has been done for such candidates, their candidature may be declared ineligible and their recommendation should be withdrawn.

ii) Each answer book must be signed by the actual examiner (where it is required mandatory) else the result of that candidate may be treated as null and void.

iii) The assessment made by the examiner if found tampered, the result on that answer sheet may be treated as null and void.

iv) Overwriting on the face sheet of a candidate is liable to cancellation of result.

v) Award of marks mentioned on the face sheet of answer sheet must correspond with the result sheet. The variation in marks shall render the marks as null and void.

vi) The candidates having less than passing marks in each subject and less than 50% in the aggregate are deemed to be declared fail.

vii) Original assessment should not be tampered failing which result of the selected candidates shall be treated as null and void.

viii) It has been established that the ex-Controller of Examinations Mr.Umar Zaur, Sindh Public Service Commission has played pivotal role while tempering/manipulating with the result of the Combined Competitive Examination, 2003 beyond all stretch of imaginations against whom necessary action shall be taken under Removal from Services (Special Powers) Sindh Ordinance, 2000. However, in case of those who are equally involved in this heinous crime and fraudulent activities shall be dealt with according to relevant Rules/Act.

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44. The above inquiry report clearly establishes the fact that blatant tampering of record and data has been done with clear intention of fraud and smacks of sham and dishonesty in the whole Examination process. As such the entire process should be seen as deceptive and total swindling done with ulterior motives. Such fabricated result has lost credibility and has been issued without any legitimate basis. It would be in the interest of justice and fair play that all subsequent actions that were taken as a result of this bogus process be declared null and void following the legal maxim, "fraud vitiates all subsequent transactions".

11. Similarly, in the report of recast result the Sindh Public Service Commission recommended that the result of Combined Competitive Examination 2003 has been tampered and manipulated which is beyond any stretch of imagination to accept the basis or source of selection of suitable candidates who will run the affairs of Government machinery for future at least the year ending 2040. The Commission also found that the favored candidates were awarded high marks in the interview; therefore, the recommendations were made by the Commission for the fresh interview of the candidates who were declared successful in the recast result afresh. The relevant portions of recast result and the recommendations are reproduced as under:

Recommendations of SPSC on Recast Result.

“(i) The result of C.C.E. 2003 has been tampered and manipulated to such an extent that it is beyond any stretch of imagination to accept it as a basis for source of selection of suitable candidates who will run the affairs of Government administrative machinery for future at least the year ending 2040. Candidates who have entered in Government Service through favoritism shall not discharge public service efficiently and with honesty. The result should be cancelled forthwith.

(ii) This time, the exercise of recasting of the result of CCE, 2003 has not been left to Controller of Examination but it has been done by the Honourable Members. As a result of recasting of C.C.E. 2003, some candidates have qualified the written examination that were previously eliminated through tampering with their marks and were declared as failures. The Commission has also found that the favored candidates have been awarded high rating/marks in the interview, just to give them a lead in overall merit which is another fraud committed at later stage of the examination and is not acceptable. The Commission therefore recommends that fresh interview may be held of all candidates who been declared successful in the recast result afresh and combined final merit may be determined. The Commission should prepare recommendations to the Government for appointment in accordance with the policy already in force.

Sd./-
Member Examination
Sindh Public Service Commission”

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12. The chronicle reflects that the same process was also under investigation by the Anti-Corruption Establishment and their inquiry revealed that approval was sought to prosecute the accused persons such as the then Controller of Examination Service Commission, the then Chairman SPSC, Additional Controller and In charge RC, SPSC, Assistant Controller SPSC and 51 candidates/beneficiaries. For the sake of convenience, the allegations mentioned in the Anti-Corruption Establishment inquiry are reproduced as under:

Investigation Report of Anti-Corruption Establishment

“According to the report of Chairman SPSC that the Sindh Public Service Commission held combined Competitive examination 2003 from 31-12-2003 to 12-01-2004 and result of written examination was announced on 10-04-2004 in which 521 candidates were declared successful. The viva-voce / interviews were held from 27-04-2004 to 02-06-2004 and final result was announced on 27-06-2004 in which 77 candidates were selected for various vacancies in the Sindh Government Departments.

On scrutinizing available answer sheets of the 77 candidates who were declared successful and recommended for appointment, it revealed that tampering with result started when assessment of answer books was in progress and when the answer sheets were being received from various examiners. The act of tampering with the result continued during the course of Viva-Voce examination and speaks volumes of manipulation of the result of the Combined Competitive Examination 2003, in which the then controller of Examination Mr. Umer Zaur played a leading role with the blessings of the then Chairman, Sindh Public Service Commission Mr. Muhammad Hassan Bhutto.

All copies of answer sheets of the candidates namely Mr. Ahyan Mustafa Bhutto Role No. 259/Merit No. 4 and Dr. Nisar Ahmed Leghari Roll No.3664/Merit No.71 are missing and removed intentionally.

It has been found that tampering with marks sheet, face sheet and result sheets in case of 47 candidates has been done, which is almost 57% of the selected candidates in the final result. This large scale tampering was made intentionally, deliberately to accommodate favored candidates related to ranking officers and others due to some money spinning consideration in following manner:-

- (i) Final Result Sheet has been tampered favoring number of candidates.
- (ii) Face Sheets are without the signature of Examiners.
- (iii) Few copies of certain subjects/papers of the candidates are missing and have created doubts that these candidates in fact have failed in such papers and their results have been manipulated by removing their answer sheets.
- (iv) Award lists received from various examiners are missing which otherwise are mandatory to be kept on record for further verification.
- (v) Signatures of Examiners on various face sheets of answer book were different.

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(vi) In certain subjects such as Forestry, Sociology, Criminal Law, Civil Law, Islamic History Paper-I, Indian History and Physiology marks were awarded exorbitantly.

(vii) In certain cases candidates were allotted marks on question on face sheet although they did not actually attempt to answer these questions.

(viii) In Geography paper, one of the selected candidates Mr. Abdul Wahab Sario Roll No.79 Merit No.75, the signature of actual examiner has been forged as it does not tally with the signature of actual examiner. No doubt that this copy was never assessed by the examiner but the Controller of Examination Mr. Umer Zaur has committed this forgery and assigned fabricated marks on the answer copy.

(ix) In number of answer sheet of selected candidates, assessment has been made by the then Controller of Examination Mr. Umer Zaur who has past track record as habitual to amend and change the result of various examinations.

(x) Massive tampering took place in the history of Sindhi Literature paper where marks of 13 candidates were enhanced while manipulating/tampering with the answer sheets including face sheets.

(xi) Heinous Crime was committed by the then Controller of examination Umer Zaur while reducing the marks of 70 successful candidates who appeared in the History of Sindhi Literature paper and secured marks between 74 to 93 below the passing marks and in some cases reduced to ZERO to eliminate them from the mainstream.

(xii) Allocation of seats was also not made in accordance with the laid down procedure/criteria of the Government.

Enquiry has revealed that Mr. Umer Zaur the then Controller of Examination, Mr. Aijaz Jafferri Additional Controller of Examination and entire selection committee were involved in tampering with the result of combined competitive examination 2003, as well as misplacement/missing of answer sheets. Mr. Aijaz Jafferri who was also in charge of Examination Record Cell failed to compile the instruction in letter and spirit as contained in Sindh Public Service Commission letter No.PSC/MEC/2006/4 dated 20-04-2004".

N.B. The ACE recommended that matter may be placed before for seeking approval to prosecute the accused persons under section 420, 465, 471A, 34 PPC R/W Section 5(2) of Anti-Corruption Act along with 51 candidates/beneficiaries after legal vetting.

13. It is further brought on record that one NAB reference has also been filed under Section 18 and Section 24 of National Accountability Ordinance (NAO), 1999 in which also investigation revealed the manipulation of result and illegal appointments. The inquiry was converted into investigation by the Chairman NAB and Reference was filed on the same allegations.

14. The civil service is a communal expression for a segment of government put together predominantly for career bureaucrats recruited on merits. The purpose of holding competitive

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examination by Sindh Public Service Commission was to select and choose most deserving and competent candidates. Wrong selection of blue eyed founded on nepotism, favoritism or for some extraneous consideration or pressure lead to a chaos and turmoil in the civil service structure and also creates unrest and discontent amongst the civil servants with long serious repercussions so in all fairness the merit should be only and sole criteria in the selection process which is an integral part of good governance. The scarcity of transparency or preferential treatment to non-deserving in the appointment process would amount brutal murder of merit and excellence. The appointment process should be see-through and transparent and only competent persons ought to give way to serve rather than incompetent and unskillful persons. The menace of favoritism, nepotism and preferential treatment in the appointment process of civil servants is always cogitated pernicious and devastating. According to acclamation posted at css.com.pk which is a public service web-site, *“civil services have become the key wheels on which the entire engine of the state has to move. Hence the leaders for these services are drawn through the competitive examination. The officers thus appointed are bestowed with solemn responsibilities and are scheduled to hold the highest offices of the country. Pakistan today needs young men and women, with qualities of both head and heart. To choose only such balanced individuals is the purpose of the civil services examination. So if you have intelligence, intellect, team-spirit, leadership qualities, commonsense, originality, communication skills and have a dynamic personality, then Civil Service is waiting for you....”*. Our founder of nation, Quaid-e-Azam Muhammad Ali Jinnah in April 1948 at Peshawar addressed the civil servants as under:-

“The reason why I am meeting you is that I wanted to say a few words to you who are occupying very important positions in the administration of this province. The first thing that I want to tell you is that you should never be influenced by any political pressure, by any political party or any individual politician. If you want to raise the prestige and greatness of

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Pakistan you must not fall victim to any pressure but do your duty as servants of the people and the state, fearlessly and honestly. The services are the backbone of the state. Governments are formed. Governments are defeated. Prime Ministers come and go, ministers come and go, but you stay on. Therefore, there is a very great responsibility placed on your shoulders. You should have no hand in supporting this political party or that political party, this political leader or that political leader. This is not your business.

Whichever government is formed according to the constitution, and who ever happens to be the prime minister or minister, coming into power in the ordinary course, your duty is only to serve that government loyally and morally but, at the same time, fearlessly, maintaining your high reputation, your prestige, your honour and the integrity of your service. If you start with that determination, you will make a great contribution to the building up of Pakistan of our conceptions and our dream, a glorious state and one of the greatest nations in the world.

While impressing this upon you, I wish also to take the opportunity of impressing upon our leaders and politicians in the same way, that if they ever try to interfere with you and bring political pressure to bear upon you, which leads to nothing but corruption, bribery and nepotism which is a horrible disease and for which not only your province but others too are suffering if they try to interfere with you in this way, I say they are doing nothing but disservice to Pakistan.

I hope that each of you will understand his own sphere of duty and responsibility and act with others harmoniously in complete cooperation, keeping in mind that each has to do his duty within the sphere to which he belongs, if on your part start with that determination and enthusiasm and I hope the other side will also realize what a terrible evil they are raising up and how it demoralizes the services to try and influence this department or that departments, this office or that officer and if you stick to your determination you will have done a great service to your nation. Putting pressure on service people is, I know, a very common fault of politicians and those with influence in political parties, but I hope you will now, from today, resolve and determine to act according to the humble advice I am giving you.

May be some of you may fall victim for not satisfying the whims of ministers. I hope it does not happen, but you may even be put to trouble not because you are doing anything wrong but because you are doing right.

Sacrifices have to be made, and I appeal to you, to come forward if need be to make the sacrifice and face the position of being put on the black list or being otherwise worried or troubled. If some of you will give me the opportunity of your sacrifice, believe me we will find a remedy for that very soon. I tell you that you will not remain on the black list if you discharge your duties honestly, sincerely and loyally to the state. It is you who can give us the opportunity to create powerful machinery which will give you complete sense of security.' Ref: <http://www.cssforum.com.pk>

15. In the case of **Tariq Aziz-ud-Din and others (2011 PLC (C.S.) 1130**, the apex court held that action must be based on fair, open and just consideration to decide matters more particularly when such powers are to be exercised on discretion. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power. All judicial, quasi-judicial and administrative

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authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion. Obligation to act fairly on the part of administrative authority has been evolved to ensure rule of law and to prevent failure of justice. Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different Articles including Articles 4 and 25 of the Constitution. Good governance is largely dependent upon upright, honest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to bureaucracy. Civil service is backbone of administration and purity of administration to a large extent depends upon purity of services. Such purity can be obtained only if promotions are made on merit in accordance with law and Constitution, without favoritism or nepotism. Institution is destroyed if promotions/appointments are made in violation of law. (Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622 rel.).

16. The finer points deducible from the gist of judicial precedents cited by the learned counsel for and against are as follows:

A. Principle of Laches

1. No court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice.
2. Bar of laches could not be over emphasized in a case where the relief claimed was based on a recurring cause of action.
3. No exception to the rule that delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if remedy of Constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches.

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4. Laches cannot be equated with limitation and by itself is not a sufficient ground to non-suit a person if the equities are not against him and he has not been sleeping over his right or was not indolent.

5. Question of laches in Constitutional petition is always considered in the light of conduct of the person invoking the Constitutional jurisdiction of High Court. Degree of negligence of petitioner, if any and that if by grant of relief being sought by him, no injustice is caused to the opposite-party, the Constitutional petition should not be dismissed merely on the ground of laches without examining the dictates of justice.

6. Laches was a doctrine where under a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation.

7. Limitation is examined by the Limitation Act, 1908 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 does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the 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. Delay would defeat equity. Equity would aid vigilant and not an indolent.

8. Consideration upon which Court refused to exercise its discretion, where petition was delayed, was not limitation but matters relating to conduct of parties and change in situation.

9. Laches in the simplest form meant failure of a person to do something which should have been done by him within a reasonable time, if remedy of Constitutional petition was not availed within reasonable time the interference could be refused on the ground of laches.

Ref: PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400 (Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others). Constitution of Pakistan.

B. Locus Poenitentiae

1. Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order.

2. Award of benefit to a person in violation of law would not attract principle of locus poenitentiae.

3. Principle of locus poenitentiae was although available to Authorities whereby any order which was made by mistake could be undone yet such order could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of any individual.

4. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.

5. Principle of locus poenitentiae (power of receding till a decisive step taken) is available to Government or relevant authorities. Authority competent to make order has power to undo it. Order, however, cannot be

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withdrawn or rescinded once it has taken legal effect and certain rights created in favour of any individual.

Ref: 2000 SCMR 907 (Abdul Haque Indhar and others vs. Province of Sindh and others), 2011 SCMR 408 (Muhammad Nadeem Arif and others vs. Inspector-General of Police, Punjab, Lahore and others), 2013 SCMR 1752 (Contempt Proceedings against Chief Secretary, Sindh and others), 1997 SCMR 15 (Chairman, Selection Committee/ Principal, King Edward Medical College, Lahore and others vs. Wasif Zamir Ahmad and another), 2011 SCMR 1220 (Chief Secretary, Government of Punjab and others vs. Malik Asif Hayat), PLD 1969 S.C. 407 (Pakistan, through the Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi).

C.Excerpt from Suo Motu Action of Supreme Court judgment on eligibility of Chairman and Members of Sindh Public Service Commission.

(1) A person of integrity and competence who meets the stipulated qualification for appointment as Chairman of the Commission be appointed in terms of Article 242(1B) of the Constitution within two weeks from the date of the announcement of this judgment;

(2) It should be ensured that all Members of the Commission meet the prescribed qualifications;

(3) Persons of integrity and competence possessing the prescribed qualifications should be appointed to the vacant positions of Members of the Commission within four weeks of the announcement of this judgment;

(4) In view of the large scale illegalities/discrepancies committed in the written tests and interviews of CCE-2013 the same are set aside and cancelled. It is, however, clarified that the screening tests results are not cancelled/set aside;

(5) Fresh written tests for CCE-2013 for the posts as advertised be held as soon as possible after the appointment of the Chairman and Members of the Commission and after the verification of the credentials of the existing/remaining Members;

(6) Only the 2,813 candidates who had earlier taken the written tests of CCE-2013 for the 182 posts be permitted to take the fresh written tests even if in the meanwhile they have crossed the stipulated upper age, and without requiring payment of any additional fee/charge;

(7) When the papers of the written tests are sent for checking/marking the identity of the candidates must be kept anonymous/secret;

(8) The marks of the written tests should be publicly displayed on the Commission's website, on the notice board in its premises and in one Urdu, English and Sindhi newspaper; disclosure should be made of the marks obtained in each subject as well as the cumulative total against the candidates' roll numbers;

(9) All those who obtain the prescribed minimum pass marks in the written tests must be invited for the interview;

(10) The marks allocated for the interview must be allocated to the interviewers equally, however, to avoid a fraction the Chairman, or in his/her absence, the senior most Member shall have the higher mark rounded off to avoid a fraction;

(11) The Commission shall keep a separate record of the marks awarded by each interviewer and each interviewer should sign and date the same as well as the combined results;

(12) The results of the interview should be displayed in the same manner as mentioned above in point (8) with respect to written tests;

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(13) The written tests, their checking/marking, interviews and display of results be completed as soon as is practicable since the matter pertains to CCE-2013;

(14) Candidates should be selected for all the advertised posts, unless they don't pass the written tests and the interview; and

(15) The candidates who are selected by the Commission should be offered appointment by the Government as per applicable law, and if any candidate declines the candidate who is next on the merit list be offered the same.

(16) That in the future the Government should provide a list of existing vacancies, which should include a list of posts that may become vacant in the foreseeable future and a list of new posts to the Commission every year and by a specified date. Upon receipt of such lists the Commission should start making arrangements for holding of competitive examinations; for the current year 2017 the said lists should be provided by the Government to the Commission within sixty days, upon receipt whereof the Commission should invite applications from interested individuals by placing advertisements, which should also clearly stipulate the legally mandated reserved seats, including those for women and persons having physical disabilities. It is clarified that the direction contained in this paragraph is not applicable to the examinations for CCE-2013 in respect whereof separate directions hereinabove have been issued.

Ref: 2017 SCMR 637 (Suo Motu Action regarding eligibility of Chairman and Members of Sindh Public Service Commission etc.)

D.Excerpt from Supreme Court Judgment on mismanagement, corruption, nepotism and politicising of the disputed appointments in Employees Old-Age Benefits Institutions (EOBI).

20. The above unanimous report prepared by a six Member high powered committee, constituted by the management of EOBI speaks volumes about the mismanagement, corruption, nepotism and politicising of the disputed appointments in a mala fide manner, thereby crushing the merit criteria in a public owned establishment of the Government.....

21.....

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23. Indeed, if we allow these petitions substantial hardship is likely to be caused to many of the respondents/appointees who will lose their appointment/jobs because of the illegalities in their respective appointments committed by EOBI, but the fact remains that such ill-gotten gains cannot be defended/ protected under any cannon of law or even on humanitarian considerations, as, such gains availed by the illegal appointees were at the cost of other deserving candidates who had applied for these posts, being citizens of this country, with a legitimate expectation that they would be able to seek appointment on the basis of their eligibility-cum- merit criteria to be observed as per the applicable rules and regulations of the EOBI.....

24. Having discussed as above, another important aspect of the case, which needs serious consideration is about the fate of the illegal appointees, which is subject matter of consideration in the present proceedings. If we look at this aspect of the case from the angle of those who have succeeded to get appointments in the manner, as discussed above, some of them may claim that since they met the requisite qualifications for the posts and were thus appointed, they cannot be made to suffer due to illegalities committed by the management of EOBI.....

25.....

26.....

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27. As a sequel of above discussion, both these petitions are allowed and disposed of in the following terms:--

(a) All the illegal appointments, deputations and absorptions made in the EOBI, as detailed in the report of fact finding committee on recruitment/appointment, are declared to be without lawful authority and of no legal effect. Accordingly their services stand terminated forthwith;

(b) All these vacancies and other available vacancies in EOBI shall be advertised and filled afresh strictly in accordance with applicable rules and regulations, subject to prescribed quota, requisite qualifications and merit criteria, for which the Chairman, EOBI shall be personally responsible to ensure transparency;

(c) The matter regarding all the illegal appointments, including the appointment of Raja Azeemul Haq Minhas in the World Bank, shall be investigated by the NAB authorities; the respondents Nos.3 to 7 and all others directly or indirectly involved in the process of such illegal appointments on the basis of corruption, nepotism and political exigencies shall be proceeded against in accordance with law with intimation regarding compliance of these directions to this Court within two months.

(d) Office shall prepare and maintain a separate file for initiating contempt proceedings, under Article 204 of the Constitution and other enabling provisions of contempt laws, against all those who are, prima facie, found guilty of violation of order dated 21-1-2011 in H.R.C. No.48012-P of 2010, particularly in the process of appointment of 238 employees/officials during the period September 2011 to May 2012.

Ref: 2014 SCMR 949 (Syed Mubashir Raza Jaffri and others vs. Employees Old-Age Benefits Institutions (EOBI) and others).

E. Principles governing writ of quo warranto.

1.Principles governing writ of quo warranto. Under Article 199 of the Constitution all the reliefs obtainable under it are purely discretionary and on the principles governing writs of quo warranto the relief under Article 199(2)(b)(ii) is particularly so.

2. Quo warranto is not issued as a matter of course.

The Court can and will enquire into the conduct and motive of the relator.

3. 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.

4. Constitutional jurisdiction of High Court. High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction.

Ref: 2004 SCMR 1299 (Dr. Azim-ur-Rehman Khan Meo vs. Government of Sindh), 2006 SCMR 276 (Col. Shah Sadiq vs. Muhammad Ashiq and others), Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166; Federation of Pakistan v. Muhammad Saifullah Khan 1988 SCMR 1996; Azizur Rahman Chowdhury v. M. Nasiruddin PLD 1965 SC 236; Hari Shankar v. Sukhdeo Prasad AIR 1954 All. 227; M.U.A. Khan v. M. Sultan PLD 1974 SC 228; Salahuddin v. Frontier Sugar Mills and Distillery Ltd. PLD 1975 SC 244 and M.U.A. Khan v. M. Sultan 1981 SCMR 74 ref.

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F. Suitability for appointment

1. **Assessment of suitability for appointment being subjective assessment exclusively falls within the jurisdictional domain of appointing authority which cannot be compelled to make any appointment.**
2. **The exercise of discretion, if it is fair and transparent cannot be justiciable in the absence of any mala fide which though was alleged but could not be substantiated by producing any cogent and concrete evidence.**

Ref: 2005 SCMR 445 (Asadullah Mangi and others vs. Pakistan International Airlines Corporation and others).

17. Though the respondents have taken a plea that the petitions are hit by doctrine of laches but it is also a ground reality that the entire 2003 competitive process was considered sham and doubtful and as a result thereof an inquiry was conducted by SPSC. The inquiry report and recast results were also submitted in the court. Anti-Corruption department also conducted inquiry and case was registered and further NAB has also filed a reference against the persons considered to be responsible for fraud and maneuvering in the result process to benefit their blue-eyed persons. After such material produced on record, it would be in the advancement of justice and dictates of justice also demand that some action should be taken rather than non-suiting the petitioners on the ground of laches when SPSC itself submitted the inquiry report and also made recommendations in the recast result.

18. It is also a ground reality that the aforesaid petitions remained undecided unfortunately for number of years and during the pendency, much water has flown under the bridge which means it is too late and pointless to change the past. Many persons have filed their applications under Order I Rule 10 C.P.C. Some of them are opposing the petitions or want to become respondents, whereas, some of them in order to support the petitions have filed their applications for becoming petitioners. Many applications under Order 1 Rule 10 C.P.C were allowed at different point of time and some applications are still pending including two applications filed

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for restoration of two earlier dismissed applications moved under Order 1 Rule 10 C.P.C. It is also a ground reality that those persons who were declared successful and appointed though in a nontransparent and fraudulent manner have already served number of years since the date of the appointments and in the earlier inquiries they were not provided any opportunity or right of audience to defend the inquiry/allegations. During the proceedings, it was also intimated to the court that various persons from their original post have travelled too long and got promotions according to their venue of progression and some of them are at the verge of their retirement. Fact remains that the inquiry was conducted by SPSC, recast result was also manifesting some fraudulent deeds, Anti-Corruption conducted inquiry and the NAB reference is also pending but all these proceedings so far have not been culminated with a verdict to charge the responsible persons with some conviction/penalty. In our considerate view, the Government should have taken some action at the relevant time when the complaints were lodged against the sham competitive process and the members of the SPSC themselves held that the process was not transparent but it is very sorry state of affair that no action was taken to scrap the entire competitive process at relevant time and to call upon the candidates to appear in the process afresh which was the dire need to resolve the issue and to maintain the transparency, propriety and decorum which was essential for revamping and restoring the confidence of general public in order to save the sanctity and sacredness of SPSC as an institution of well repute. The respondents have also taken a plea of locus poenitentiae but it is well settled principle of law that award of some benefit to a person in violation of law would not attract principle of locus poenitentiae. At the same time, it is well settled exposition of law that disputed question of fact or factual controversy cannot be resolved in the writ jurisdiction of this court and after serving long

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time by the persons who were declared successful though through a sham and fraudulent process but the fact remains that they were appointed and continuing their job and according to their venue of progression, some of them have also got promotions by efflux of time. So in all fairness, instead of scrapping entire process after such a long time, this would be in the advancement of justice to evolve a strategy and mechanism so that the injustice, if any done with the petitioners or other qualified candidates or those who have been declared successful through fraudulent means under the garb of favoritism should be provided an equal opportunity for showing cause whether they were appointed on merits rather than Sifarish/favoritism. In the replies/counter affidavits even in the arguments made on behalf of petitioners and the respondents, various factual controversies were raised with the name of different persons, papers and marks that could not be scrutinized in these petitions but a commonsensical mechanism should be evolved so that the credentials and antecedents of each petitioner and the private respondents including those persons who were declared successful but they are not arrayed as respondents in these petitions should be provided right of audience to submit their replies before the inquiry committee or the inquiry commission and after deliberating the entire facts and circumstances, the inquiry commission should give their findings for further actions by the competent authority on case to case basis.

19. In the suo motu action regarding the eligibility of the Chairman and Members of SPSC, the hon'ble Supreme Court found large scale illegalities/discrepancies committed in the written test and interview of CCE-2013, therefore, results were set aside, however, the screening test results were not cancelled with further directions to hold fresh written test for CCE-2013 as advertised earlier and only the candidates who had already taken the written test were

permitted to take fresh written test. At this juncture the position is slightly distinguishable and not at par. Here the competitive examination of 2003 is under challenge when numerous persons were declared successful and appointed and performing their jobs, it is not a case in which they only appeared in the written examination but before the appointment their results were cancelled or declared null and void with further option to appear in fresh 2003 competitive examination. At this stage, reversion to the status quo ante is not possible but at the same time the illegalities in the process cannot be overlooked and disregarded. In the case of Syed Mubashir Raza Jafferri and others vs. Employees Old Age Benefit Institute (EOBI) and others, the Supreme Court held that the unanimous reports prepared by High Powered Committee constituted by the management of EOBI speaks volume about the mismanagement, corruption, nepotism and politicizing with the disputed appointment in a mala fide manner thereby crushed the merit criteria, therefore, all the illegal appointments were declared to be without lawful authority. We are revitalized by the dictum laid down by the hon'ble Supreme Court but here also a noticeable feature which cannot be overlooked that before the Apex Court there was unanimous report of High Powered Committee constituted by the EOBI management but in the case in hand when the illegalities and wrongdoings came into the knowledge of Government of Sindh, no High Powered Committee was constituted to examine and unearth the illegalities committed by the officials of SPSC in the competitive examination process 2003 even learned counsel for the respondents cast aspersion against the inquiry report of SPSC with the plea that they had no authority to inquire into the matter even some of them also questioned the recast result. A criminal case and the internal or departmental/domestic inquiry conducted by the competent authority to see-through the appointment process have two distinct

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features and characteristics which neither overlapped nor having any overriding effect. In case of misconduct, the Government of Sindh may initiate a disciplinary proceeding against any employee under E&D Rules. At the same time, if any such incumbent is found to have committed any offence, they also set in motion the criminal law and institute separate criminal proceeding. We have noticed that no action was taken to culminate the matter in view of the Anti-Corruption inquiry report and the NAB reference is also pending against SPSC officials and others but Government of Sindh had not taken any action so far nor endeavored to probe whether the process was transparent or not. Without proper investigation and fact-finding to the illegalities and dishonesties by the duly constituted High Powered Inquiry Commission and without providing opportunity of hearing to all concerned, it would be unjust and unfair to take any drastic action that would amount to violation of natural justice and fundamental right of fair trial enshrined and envisioned under Article 10-A of Constitution of Islamic Republic of Pakistan. In unison an inquiry is also required to be conducted to ventilate and assuage the anguish and distress of those who qualified the competitive examination but by hook or by crook they were declared unsuccessful to favour and accommodate blue-eyed candidates, therefore, we are also of the firm view that a High Powered Commission should be constituted to examine and scrutinize the entire process, fix the responsibility and propose proper action to the competent authority to conclude the matter at some logical end.

20. The bottom line streaming from the ratio decidendi of the judicial precedents make this luminous that no court can dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice or the relief claimed is based on a recurring cause of action. The Constitutional petition should not be

dismissed merely on the ground of laches without examining the dictates of justice. Whereas the locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order. Award of benefit to a person in violation of law would not attract principle of locus poenitentiae. So far as the genre of writ of quo warranto is concerned, it is not necessary that a person must be aggrieved 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.

21. The honourable Supreme Court has already held that a person of integrity and competence who meets the stipulated qualification for appointment as Chairman of the Commission should be appointed; to ensure that all Members of the Commission meet the prescribed qualifications and persons of integrity and competence possessing the prescribed qualifications should be appointed to the vacant positions of Members of the Commission. (Ref: 2017 SCMR 637). The credibility of any institution cannot be maintained unless their officers are appointed on merits and if they are appointed on sifarish or on the basis of favoritism then in return they will do the same and surrender/submit to the wishes of their master in the appointment and selection process that would tantamount to massacre and slay the concept and credence of criteria of merit alone.

22. As a result of above discussion, the petitions are disposed of in the following terms:-

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- i. The Chief Secretary, Government of Sindh is directed to constitute an Inquiry Commission, consist of three members i.e. senior member SPSC, Secretary, Service General Administration & Coordination Department (SGA&CD) and Secretary Law, Government of Sindh.
- ii. The Chief Secretary shall notify the Inquiry Commission with the names of its members within fifteen days.
- iii. The venue of inquiry shall be the office of Secretary, SGA&CD, Government of Sindh.
- iv. The Inquiry Commission shall examine the entire competitive examination 2003 process and also summon the relevant record including the inquiry report and recast result.
- v. The Inquiry Commission shall also summon all the petitioners, private respondents including those who have filed applications under Order I Rule 10 CPC for impleading them in the petitions either to support or oppose and the persons who participated in the process and declared successful but not made party to the aforesaid petitions. The Inquiry commission shall vet the list of successful candidates also so that equal opportunity should be provided to all concerned persons. The Inquiry Commission shall provide ample opportunity of hearing to all concerned. The first date of inquiry shall be communicated in writing at least ten days before the first inquiry session.
- vi. The Inquiry Commission shall take stock of illegalities committed in the appointment process of 2003 competitive examination that how incompetent or unsuccessful candidates were appointed and deserving candidates were declared failed, the Inquiry Commission shall submit the comprehensive report with practicable and rational recommendations to the competent authority. It was also addressed to us during course of hearing that some of the candidates who were declared failed by fraudulent means are already in Government jobs through different process even so in a different service structure and they have also claimed the treatment at par with those who were appointed in 2003 process on account of favoritism and nepotism. The recommendation of the inquiry commission shall also take account of equable pathway for those candidates if proved that they appeared in the process and passed the examination but declared failed by hook or by crook and were deprived and left out despite merit then what is most possible venue of progression commensurate to their existing jobs for ventilation and alleviation of sufferings, injustice and long-drawn-out distress.
- vii. The Inquiry Commission shall conclude the proceedings within six months and Secretary Law, Government of Sindh shall submit the report duly signed by all inquiry commission members to the Chief Secretary, Sindh.
- viii. The competent authority shall consider the recommendations and pass necessary orders within one month without any discrimination or favor or bias and communicate the outcome to all concerned. However, no adverse action shall be taken against any person without serving show cause notice and providing a fair right of personal hearing.
- ix. Since we have already provided right of audience by the Inquiry Commission to all petitioners and private respondents including

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those who applied under Order 1 Rule 10 C.P.C by their separate applications to become party in the above petitions so we also deem them proper and necessary party consequently, they are impleaded and all the pending applications filed under Order 1 Rule 10 C.P.C are disposed of accordingly. The amended title may be filed by the petitioners in the concerned petitions.

x. The compliance report shall be submitted by the Chief Secretary Sindh through Advocate General Office.

xi. In the end, we also feel it our utmost sense of duty to direct Sindh Public Service Commission to uphold transparency, fairness and impartiality in all examinations conducted by them in future and make selection on merit alone which is keystone and foundation for maintaining their integrity and uprightness as an institution of repute.

xii. Copy of this judgment may be transmitted to the Chief Secretary Sindh, Chairman SPSC, Secretary, Service General Administration & Coordination Department (SGA&CD), Secretary Law, Government of Sindh and learned Advocate General Sindh for compliance.

Karachi:-

Dated. 13.02.2020.

Judge

Judge