

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
 HYDERABAD**

CP. No. D- 1136 of 2025

[Muhammad Yaqoob v. Province of Sindh & others]

BEFORE:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Yousuf Ali Sayeed

Petitioner : Through Barrister Faizan H. Memon, Advocate

Respondent-3: Through Mr. Ayaz Hussain Tunio, Advocate

Respondent-4: Through Mr. Muhammad Sajjad Soomro, Advocate.

Respondent-5: Nemo.

: M/s. Allah Bachayo Soomro, Addl. A.G. & Abdul Jalil A. Zubedi, Assistant A.G. Sindh, along with Secretary Universities and Boards (Muhammad Abbas Baloch) and Deputy Secretary (Farhan Akhtar)

Mr. Israr Hussain, Law Officer, Universities @ Boards

Syed Muhammad Saulat Rizvi, advocate for the interveners (Chairman/Secretary), Boards of Intermediate and Secondary Education, along with Syed Muhammad Mehdi Raza and Syed Ali Qasim Rizvi, advocates.

Dates of hearing: 07.07. 2025 and 10.07.2025

Date of Decision: 04.08.2025

J U D G M E N T

ADNAN-UL-KARIM MEMO, J. - Petitioner through this Constitutional Petition prays as under:-

- i. Declare the Respondents' decision to appoint Chairmen of the BIE Karachi, BISE Hyderabad and BISE Mirpurkhas from the waiting list as ultra vires, unlawful, and void ab initio, being in contravention of the provisions of the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972, and the Search Committee Act, 2022;
- ii. Set aside the recommendation and/or selection of Respondents No.3 to 5 as Chairmen of BIE Karachi, BISE Hyderabad, and BISE Mirpurkhas, respectively, being unlawful, arbitrary, and made in violation of the principles of transparency, accountability, and good governance;

- iii. Direct Respondents No.1 and 2 to initiate a fresh selection process through public advertisement, allowing open competition and merit-based selection, in accordance with the provisions of the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972, within the shortest possible time;
- iv. Grant a permanent injunction against the Respondents from taking any further action pursuant to the impugned decision, including but not limited to issuing notifications, making appointments, or taking any other steps to implement the unlawful decision;
- v. Pass any other order or direction that this Honorable Court may deem fit and proper in the circumstances of the case; and
- vi. Grant costs of this petition.

2. Petitioner is claiming to be serving as Principal, Government S.S. Arts & Commerce College, and he holds positions as Secretary of Theosophical Society, Hyderabad, and Member of Senate of the University of Sindh. He challenges the Decision of the Chief Minister of Sindh, dated June 6, 2025, which appoints the Chairman of the Boards from the waiting list of candidates. Per petitioner, this decision is arbitrary, unjustified, and against the principles of transparency, fair competition, and merit-based appointments; as such, all subsequent actions are deemed illegal and void. For convenience's sake, an excerpt of the Summary and order passed thereon by the Chief Minister Sindh is reproduced as under:-

“45. Para 31 refers. Earlier on, it was decided to go for fresh recruitment, but considering the fact that it will again take long, the proposal at para 43 is recommended. The Committee should consider the candidates in order of merit and share its recommendations, Board-wise.”

“As at Para 45”

6/6/2025

3. The Secretary, Universities & Boards, briefed us on the subject case with the narration that, with the approval of Chief Minister Sindh an advertisement was published for vacant positions of Chairman, Secretaries, Controllers of Examinations, and Audit Officers in all Boards under the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972. Approximately 300 applications were received for Chairman, 119 for Secretaries, 140 for Controllers, and 69 for Audit Officers. Initially, written tests (60% weightage) via IBA Karachi and interviews (40%) were planned, with a panel of three candidates per position to be submitted for approval. However, this Court's restraining order of November 1, 2024, in Civil Suit No. (-1587 of 2024), Postponed the written test scheduled for November 7, 2024. Subsequently, on November 14, 2024, this Court mandated Cabinet approval for the written test and all further steps. The Cabinet, after

questioning the relevance of written tests for administrative roles, was informed that the Court had referred the policy decision to them. The Cabinet concluded that the Search Committee was capable of shortlisting suitable candidates and directed it to focus on assessing leadership competence for Chairman positions. Ultimately, the Cabinet ordered the department to proceed with interviews only for Chairman candidates conducted by the Search Committee with two Chief Minister's nominated experts. The Secretary further submitted that following the dismissal of petitions, appointment orders for seven Educational and Technical Board Chairmen were issued on April 3, 2025, except BISE Sukkur due to a contempt notice. However, five appointees accepted their positions, but one, Muhammad Misbah Tunio (BIE Karachi), and Dr. Rafiq Ahmed Chandio (BISE Hyderabad) declined. Additional charges were assigned for these boards. On May 16, 2025, one candidate, Mansoor Rajput (BISE Mirpurkhas) resigned due to family and health issues. After further dismissals of the petitions, the Chairman for BISE Sukkur, Dr. Zahid Ali Channar, was appointed on May 22, 2025, and assumed charge. This leaves three vacant Chairman positions: BIE Karachi, BISE Hyderabad, and BISE Mirpurkhas. He added that to avoid future delays like those caused by previous litigation, a waiting list of candidates had already been approved by the competent authority, i.e. Chief Minister of Sindh. However, it was proposed to terminate the candidate Mansoor Rajput's contract effective as of June 16, 2025. Furthermore, it was recommended that a three-member committee (Chairperson, Sindh HEC / Search Committee; Secretary, College Education Department; and Secretary, Universities and Boards Department) interview candidates from the approved waiting list for the three vacant posts to assess their suitability. The Chief Minister approved this proposal, instructing the committee to make board-wise recommendations. Consequently, appointments of private respondents were made on July 1 and 2, 2025, and now they are serving as Chairman of the BISE Karachi, BISE Hyderabad, and BISE Mirpurkhas, respectively.

4. Mr. Faizan H. Memon, learned counsel for the petitioner, argued that the appointment process was unlawfully delegated to the Search Committee, bypassing the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972, which grants appointment authority solely to the Government of Sindh. He pointed out that the Search Committee Act, 2022, is explicitly limited to university appointments and does not apply to educational boards. He also noted that the concept of "waiting list" is neither mentioned nor authorized by the 1972 Ordinance or the 2022 Act; therefore, appointments made from such a list are ultra

vires and unlawful, effectively excluding qualified candidates and suppressing fair competition. He further argued that the respondents' actions, including the flawed initial recruitment process and the subsequent decision to use a previously deemed unsuitable waiting list, are arbitrary, whimsical, and lack merit and fair competition. He highlighted that forming another committee to "cherry-pick" from the waiting list underscores the lack of transparency and the risk of bias. He maintained that the process breaches the fundamental principles of transparency, accountability, and good governance, which are vital for ensuring fairness and equal opportunity. He emphasized that the Chief Minister's approval of appointments from waiting list, without Cabinet approval, flagrantly violates the Mustafa Impex judgment, which clarifies that "Government" refers to the Cabinet, not an individual. He further argued that the respondent-Boards' malicious intent is evident through their inconsistent recommendations and the creation of a committee to select from a waiting list not authorized by law. He added that the petitioner has been unjustly deprived of a fair opportunity to compete for these positions because of the unlawful use of a waiting list instead of a new publicly advertised merit-based selection process. In conclusion, he claimed that the respondent Board has acted in gross violation of the law, setting a dangerous precedent, and therefore, he seeks redress through the Court's constitutional jurisdiction. Learned counsel heavily relied upon the case of Munir Hussain v. Province of Sindh (2022 SCMR 650), and argued that the Supreme Court affirmed principles from the Musa Wazir v. NWFP Public Service Commission (1993 SCMR 1124) case that all competitive examination vacancies must be filled in one go as part of a single recruitment process. Vacancies arising from a lack of suitable candidates, non-joining, or quitting must be re-advertised for open competition. He added that the Supreme Court further held that waiting lists are only permissible in exceptional cases if rules allow, for maximum of three months, and strictly by merit, to fill urgent vacancies. We confronted him with various judgments of the Supreme Court on the subject issue that, in exceptional circumstances, if laws and rules expressly permit it. This exercise can be undertaken as reiterated by the Supreme Court in the case of Ayaz and others v. Mustafa Saeed and others (2024 SCMR 101). However, learned counsel cited the order dated 10.3.2021 passed by the Supreme Court of Pakistan in Civil Petition No.376-K of 2020 and 08 others and unreported judgment of this Court dated 07.04.2020 passed in CP No.D-1194 of 2020 and 02 others and requested that the petition be allowed.

5. Learned Additional and Assistant Advocate General, assisted by the counsel for private parties and interveners, unequivocally argued that the petitioner lacks *locus standi* to file this petition, as it is based on presumptions and conjectures without any demonstrable legal injury or enforceable right. They emphasized that the petitioner neither holds a position on the relevant Boards nor is a candidate for any such post, thus lacking any vested right to invoke Article 199 of the Constitution. They contended that Section 12 of the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972, grants the Controlling Authority the exclusive prerogative to make these appointments, negating any statutory right for the petitioner. Furthermore, Sections 14(2) and 15(2) of the Ordinance empower the Controlling Authority to make interim or acting arrangements. They pointed out that it is a well-established principle that Courts refrain from interfering in policy or administrative matters unless *mala fide*, arbitrariness, or abuse of discretion is proven, which the petitioner has failed to do. They asserted that the recruitment/appointment process was duly conducted under the supervision and approval of the competent authority, following proper procedures with the assistance of a Search Committee to ensure transparency and merit. Finally, they stated that appointments have already been made to most Boards. All appointments for Chairman of Education / Technical Boards were processed under Section 14 of the 1972 Ordinance, according to Provincial Cabinet decisions and directions from this Court's orders, specifically reported in 2016 PLC (CS) 787 and the unreported order dated April 3, 2025, in C.P. No. D-396/2025. In support of their contentions, they relied upon the following cases and prayed for the dismissal of the petition. **PLD 2025 Sindh 138** (*Salahuddin v. Province of Sindh*); **2018 PLC (CS) Note 129** (*Muhammad Imran Khan Chishti v. Province of Sindh*); **2004 SCMR 649** (*Islamia University Bahawalput v. Muhammad Hameed Bhatti*); **2016 CLC 1861** (*Dr. Masroor Ahmed Zai v. Province of Sindh*); **2016 PLC (CS) 787** (*Abdul Sami Soomro v. Province of Sindh*); **2018 PLC (CS) Note 108** (*Prof. Abdul Razzaque Shaikh v. Province of Sindh*); **1993 SCMR 1124** (*Musa Wazir v. NWFP Public Service Commission*); **2022 SCMR 650** (*Munir Hussain v. Province of Sindh*); **2009 SCMR 382** (*Government of NWFP v. Qasim Shah*); **2023 PLC (CS) 763** (*Government of Punjab v. Asad Abbas*) and **2021 SCMR 1433** (*Secretary Local Government, Election Rural Development v. Muhammad Tariq Khan*).

6. We have heard learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

7. Under the circumstances, it falls on this court to determine whether a successful waiting list candidate for Chairman of BIE Karachi, BISE Hyderabad, or BISE Mirpurkhas can be appointed if a selected candidate does not join, and such a petition is maintainable under Article 199 of the Constitution?

8. Under the Sindh Boards of Intermediate and Secondary Education (Amendment) Act, 2025, the Chief Minister Sindh, or a nominated Minister, serves as the controlling authority for the Boards. This authority is empowered to appoint the Board Chairman through a "Search Committee," a process affirmed by the Supreme Court in the case of *Abdul Sami Soomro v. Province of Sindh* (2016 PLC (C.S.) 787). In April 2025, private respondents were appointed to positions after participating in a competitive process (advertisement and interview) and being shortlisted. While initially not selected due to limited positions, they were later appointed after the previously nominated candidates left their posts. This Court previously dismissed both petitions, i.e., C.P. No. D-396 of 2025 and C.P. No. D-494 of 2025 on April 3, 2025, which challenged the subject recruitment process/ appointments in the Boards, ruling that such matters fall under government policy and are outside writ jurisdiction. Now, this recruitment process/ fresh appointments are being challenged again by a different individual. The court must determine if this new case is barred by res judicata under Section 11, CPC, as the issues were "directly and substantially decided" in previous constitutional petitions involving essentially the subject matter. The Supreme Court, in the recent judgment, has held that the doctrine of res judicata ensures finality in litigation, preventing endless lawsuits and saving parties from protracted proceedings. Once a cause of action is finally decided on its merits, it cannot be re-litigated. This "claim preclusion" requires a valid and final judgment between the parties on the same issue. Essentially, res judicata prevents repetitive, frivolous, and vexatious litigation, which often stems from malicious intent. It also eases the burden on courts by eliminating time-consuming and meritless cases. The core idea is that one judicial contest is enough for litigants to resolve their claims. Section 2 (2), CPC, provides that a Decree is final when such adjudication completely disposes of the suit, and it may be partly preliminary and partly final; therefore, the case of the petitioner prima facie falls in that doctrine.

9. To deal with the other proposition so put forward by the counsel for the petitioner as discussed supra, we have come across with a decision rendered by the Supreme Court in the case of *Government of Punjab vs. Assad Abbas* (2023 PLC CS 763), upheld the appointment of a candidate from a waiting list. For four Sub-

Inspector posts, due to selected candidates declining or resigning, vacancies arose. The respondent, initially at Serial No. 8 and eventually No. 3 on the seniority list after others dropped out, was denied appointment despite vacancies and another waiting candidate (Serial No. 5) being appointed. The Supreme Court found this denial violated Article 25 of the Constitution (equality before the law). It ruled that departmental fault (failing to request a substitute from the Commission in time) should not penalize the candidate. The decision referenced Government of NWFP v. Qasim Shah (2009 SCMR 382), which held that vacant posts due to non-joining candidates should be filled by remaining eligible candidates from the waiting list, rather than kept vacant until new recruitment.

10. The respondent Boards and Universities cited Sections 4(v) and (vi) of the Constitution of the Search Committee Act, 2022, which governs the appointment and performance evaluation of Vice Chancellors and other officers in Sindh's public sector universities. They interpreted this law to mean the Search Committee could recommend three suitable candidates (in alphabetical order) to the Chief Minister. The Chief Minister could then select one, interview them, or, if no candidate was suitable, return the list for a new panel or re-advertisement of the post. In this case, after the initial three selected candidates declined the positions, the Search Committee recommended the private respondents from the waiting list of previously shortlisted candidates. These respondents were already part of the competitive process.

11. The petitioner's argument against "waiting list" appointments, claiming the 1972 Ordinance or the 2022 Search Committee Act does not recognize them, is misguided. The principle of "what is not prohibited is permitted" applies. Furthermore, while waiting lists are more common for qualifying exams, these appointments were made through a transparent process, including interviews conducted by the Chief Minister based on the Search Committee's recommendations, as mandated by this Court in an earlier round of litigations. Thus, the "waiting list" argument is moot. Additionally, the petitioner's challenge to the selection process is unacceptable because he failed to apply for the positions despite public notice. He filed this petition on June 21, 2025, after the selection was completed on June 6, 2025, arguing that appointments from a waiting list are illegal. However, the private respondents were appointed on July 1 and 2, 2025, while this petition was pending. The vacancies arose because some initially appointed Chairmen declined or resigned (e.g., BIE Karachi, BISE Hyderabad, BISE Mirpurkhas). To avoid delays, a committee, with the Chief Minister's

approval, interviewed candidates from an existing, approved waiting list, leading to the private respondents' appointments. The petitioner's counsel's argument about procedural irregularities in the selection is weak. Legal precedent holds that minor procedural errors should not override a just and fair outcome, meaning substantive justice takes precedence over minor process deviations.

12. The Supreme Court in unreported case of Niamatullah and others v. Service Commission dated 05.10.2010, somewhat modified the strict view of Musa Wazir v. NWFP Public Service Commission (1993 SCMR 1124), particularly concerning the maintenance of "waiting lists" in competitive examinations conducted by Public Service Commissions and Dr. Faizur Rehman and others v. N.-W.F.P. Public Service Commission Peshawar and others (1996 SCMR 589), allowing for a balance where vacancies created by non-joiners can be filled from the merit list for a specified period, typically until the commencement of training for the current batch or for a few months where no training is prescribed. This allows for efficiency while still preventing indefinite waiting lists. Moreover, the present case involved an existing "waiting list" from which qualified candidates were selected.

13. The Supreme Court in the case of Dr. Sumera Tabassum vs F.P.S.C. and others (2016 SCMR 196), held that the High Court dismissed the petition, relying on the *Musa Wazir case supra*. However, it was further held that *Musa Wazir* involved a combined competitive examination, while the current case concerns a qualifying examination by the Federal Public Service Commission. Even so, *Musa Wazir* does not mandate re-advertisement when a selected candidate does not join; it merely advises it. It allows for alternate nominations from a reserve list in exceptional circumstances, provided it does not infringe on other candidates' rights. This was affirmed in Province of Sindh and others v. Ghulam Hassan Bughio (2014 SCMR 643), which permitted alternate nomination for a non-occupied post. Crucially, the High Court overlooked a key principle from *Musa Wazir*: waiting lists are for qualifying examinations, whereas all vacancies in competitive exams are filled simultaneously. This oversight led to the petition's dismissal.

14. The Supreme Court and High Courts have consistently emphasized the importance of transparency, merit, and equal opportunity in public sector appointments. If the appointments were indeed "transparent" and based on "recommendation of the Search Committee under the Court mandate," this strengthens the respondents' case. It is a well-settled principle that Acts done by

public functionaries are presumed to be done correctly and according to law, unless proven otherwise. The burden of proof lies heavily on the petitioner to demonstrate illegality, *mala fides* (bad faith), or a clear violation of rules, as Courts generally exercise restraint in interfering with administrative decisions, especially in matters of public appointments, unless there is a clear breach of statutory rules, constitutional provisions or a demonstration of arbitrariness, discrimination, or *mala fides*. Which factum is missing in the present case? As the petitioner's counsel admitted that there is no inherent disqualification in the private respondents' candidature, if this is the position of the case in such circumstances, a writ of quo warranto cannot be issued against the private respondents.

15. The 2024 selection process for the department seems to be transparent and fair, with all posts filled by qualified candidates. The petitioner did not participate. The department's decision to use a waiting list, rather than re-advertise, was/is a valid exercise of discretion by the competent authority, free from malice. Therefore, this Court would not interfere with this lawful decision. Primarily, our view is further strengthened by the decision of the Supreme Court, rendered in the case of the Secretary, Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others (2019 SCMR 124).

16. Progressing further, this petition, primarily of two folds, one a Writ of Quo Warranto filed under Article 199(1)(b)(ii) of the Constitution, challenges the appointments of respondents No.3 to 5 as Chairmen of BIE Karachi, BISE Hyderabad, and BISE Mirpurkhas. The petitioner seeks to have these appointments declared "ultra vires, unlawful, and void ab initio," and to "set aside" their selection.

17. The essence of writ of Quo Warranto, as per Article 199(1)(b)(ii), is to compel a person holding public office within the Court's jurisdiction to demonstrate the legal authority under which they claim that office. This directly supports the petitioner's objective of invalidating the aforementioned appointments by questioning their procedural basis for selection. A key characteristic of a Quo Warranto petition is that the applicant generally does not need to prove personal grievance or "locus standi", as its overarching purpose is to ensure that all public offices are held by legitimate authority. However, the petitioner's counsel admitted that the petitioner's case is confined to the issuance of a writ of Mandamus and not Quo warranto. If this is the stance of the petitioner, we will not

travel into that aspect of the case in terms of Article 199-A of the Constitution which explicitly states: "The High Court shall not make an order or give direction or make a declaration on its own or in the nature of suo moto exercise of jurisdiction beyond the contents of any application filed."

18. In the secondary prayer, the petitioner is seeking direction to the respondents to initiate a fresh selection process," is in the nature of Mandamus under Article 199(1)(a)(i) of the Constitution, which compels a public authority to perform a legal duty. Article 199(1)(a)(i), which states: "On the application of any aggrieved party, make an order— (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do;" This sub-clause empowers the High Courts to issue directions to public functionaries to perform a duty that they are legally bound to do, or to refrain from doing something they are not permitted by law to do. It is an order to compel the performance of a public duty. Unlike a Writ of Quo Warranto (which generally does not require the petitioner to be an "aggrieved person"), a Writ of Mandamus generally requires the applicant to be an "aggrieved party" and to demonstrate a clear legal right to the performance of the duty sought to be enforced. Thus, the petition's main objective is to challenge existing appointments, with a Mandamus component for subsequent action.

19. From the aforesaid legal position of the case, this Court's scope is confined to the prayer clauses of the petition in terms of Article 199(1A) of the Constitution. However, in the present case, the petitioner's counsel explicitly asserts that the petition is primarily a Writ of Mandamus; if this is his stance, then the requirement for the petitioner to demonstrate "*locus standi*" becomes paramount. For that, counsel for the petitioner contends that the petitioner, an academician and aspiring candidate, has been unfairly excluded from the competition for the Chairman positions of the Boards. He argues that the respondents' decision to fill these vacancies from an existing "waiting list" is unlawful. Instead, the counsel asserts that a fresh and open selection process, initiated through public advertisement, should have been conducted to ensure transparent competition and the appointment of the most suitable candidate based on merit.

20. The jurisdiction of this Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required

by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

21. We are of the considered view that the entire procedure and directives of this Court vide judgment dated 03.4.2025 passed in CP. No.396 and 494 of 2025 were complied with. We find no transgression that would warrant interference through constitutional jurisdiction. The petition *prima facie* appears to have been filed with ulterior motives, therefore, deserves dismissal. Consequently, for the reasons stated above, this petition is dismissed along with pending application(s).

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Karar Hussain/PS*