

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

C.P. No.D-1917 of 2025
[Ubaidullah Khan v. Government of Sindh & others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

M/s. Noor-ul-Haq Qureshi & Saad Salman Ghani, Advocate for the petitioners.

M/s. Abdul Rahim Chandio & Abdul Samee Chandio, Advocate for intervener(s).

Mr. Rafique Ahmed Dahri, Assistant Advocate General, Sindh.

Date of Hearing
& Decision : 22.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J . - The petitioner prayed that this Court:

- a. Declare the impugned notification bearing No. REG(HD)/1- 523/2018 dated 22-10-2025 as unlawful, void, without lawful authority, and *coram non judice*;
- b. Direct the respondents to allow continuity of the petitioner's appointment as Presiding Officer, Anti-Terrorism Court-I, Hyderabad, in terms of notification dated 30-01-2024, with effect from 08-03-2024, until completion of his lawful tenure of two and a half (2½) years;
- c. Restrain the respondents from issuing any further notification or creating any third-party interest against the petitioner's post during the subsistence of his tenure;
- d. Suspend the operation of the impugned notification dated 22-10-2025 during the pendency of the present petition;
- e. Grant any other relief(s) deemed just and proper in the circumstances of the case.

2. The case of the petitioner is that he commenced his judicial career in 1993 as a Civil Judge through a competitive process and served at various stations across the Province of Sindh. Owing to his competence and unblemished service record, he was promoted as Senior Civil Judge in 1998, Additional Sessions Judge in 2002, and Sessions Judge in 2007, from which post he retired in 2019. He submitted that

throughout his career, he faced no adverse remarks or disciplinary proceedings. In view of his spotless service, he was appointed as Presiding Officer of the Anti-Terrorism Court under Section 14 of the Anti-Terrorism Act, 1997, vide notification dated 30-01-2024, and assumed charge on 08-03-2024 after completion of the tenure of his predecessor. He submitted that Section 14 of the Act provides statutory safeguards, including a fixed tenure of two and a half years and protection against removal before completion of tenure except after consultation with the Honourable Chief Justice of this Court. While the petitioner continues to discharge his duties diligently, he came to know through unofficial sources and via WhatsApp of an impugned notification bearing No. REG(HD)/1-523/2018 dated 22-10-2025 issued via curtailing his period of tenure abruptly, which was never communicated through any lawful or official channel, thereby giving rise to the present cause of action to file the captioned petition for enforcement of his fundamental right. He submitted that this court direct the respondents to allow continuity of his appointment as Presiding Officer, Anti-Terrorism Court-I, Hyderabad, in terms of notification dated 30-01-2024, with effect from 08-03-2024, until completion of his lawful tenure of two and a half (2½) years. An excerpt of the impugned Notification dated 22.10.2025 is reproduced as under:-

NOTIFICATION

No.REG(HD)/1-523/2018:- With the approval of Competent Authority i.e. Chief Minister Sindh, the following Judges / Presiding Officers shall cease to hold the office as mentioned below in pursuance of the proviso of Section 14(02) OF Anti-Terrorism Act, 1997 (as amended) with immediate effect.

SR.	Name of Presiding Officer	Place of posting	Remarks
01	Syed Zakir Hussain	ATC-1, Karachi	On attaining the age of (95) as provided under Section 14(02) of Anti-Terrorism Act, 1997 (as amended)
02	Mr. Muhammad Yameen	ATC-IV, Karachi	
03	Mr. Ubaidullah	ATC-I, Hyderabad	

3. Learned counsel for the petitioner contended that the impugned notification dated 22-10-2025, issued with the approval of the so-called “competent authority,” seeks to terminate the petitioner’s appointment as Presiding Officer, Anti-Terrorism Court-I, Hyderabad, on the alleged ground of attaining the age of sixty-five (65) years under Section 14(2) of the Anti-Terrorism Act, 1997, as amended. He submitted that a plain reading of the Anti-Terrorism (Sindh Amendment) Act, 2025, demonstrates that the legislative scheme was not followed, as the amended law neither provides for retrospective application nor invalidates appointments that had already attained finality before its enactment. He argued that it is a settled principle

of law that statutes affecting substantive and vested rights operate prospectively. Since the amendment adversely affects the petitioner's vested tenure rights, it cannot lawfully be applied retrospectively therefore the notification is liable to be struck down being ultravires to the provision of the constitution. He further submitted that the amended Section 14 introduces a new mode of appointment, and the proviso relating to cessation of office upon attaining the age of sixty-five (65) years applies only to appointments made under the amended provision and not to appointments made under the unamended law. Learned counsel emphasized that the impugned notification unlawfully rescinds a valid and subsisting appointment duly endorsed by the Chief Justice of this Court, and in violation of the doctrine of *locus poenitentiae*. He further submitted that both Section 4(d) of the Amended Act and Section 14(4) of the original Act mandate consultation and concurrence of the Honourable Chief Justice of this Court for removal before completion of tenure, which admittedly was not obtained in the present case. Consequently, the impugned notification is illegal, void ab initio, and without lawful authority. He further argued that executive authority vests collectively in the Cabinet, and the Chief Minister, acting individually, lacks jurisdiction unless expressly empowered by statute. Therefore, the impugned notification, purportedly issued through the office of the Chief Minister, Sindh is *coram non judice* and of no legal effect. He concluded by saying that the secretive issuance of the notification without due process of law reflects mala fide intent and an unlawful attempt to dislodge the petitioner, without approval of the Chief Justice of this Court and prayed that the petition be allowed.

4. Learned counsel for the intervener in MA No. 8087 of 2025, adopted the arguments of counsel for the petitioner and prayed for allowing the application and the relief as sought in the main petition.

5. During the hearing, the petitioner sought amendment of the prayer by challenging the vires of the law as ultra vires under Article 264 of the Constitution of Pakistan and Section 6 of the General Clauses Act; consequently, notice under Order XXVII-A CPC was issued to the learned Advocate General to assist the Court.

6. Learned AAG opposed the petition, asserting that the impugned notification dated 22-10-2025 was issued strictly in accordance with law and carries a presumption of constitutionality. The Anti-Terrorism (Sindh Amendment) Act, 2025 was validly enacted by a competent legislature and remains binding unless declared unconstitutional. Mere allegations of illegality or violation of vested rights cannot invalidate a statutory amendment or action taken thereunder. It was contended that the petitioner has no vested right to continue in office as Presiding Officer, contrary to an express statutory provision. Fixation of an upper age limit of 65 years under amended Section 14(2) is a matter of legislative policy and does not amount to

removal or punitive termination. He submitted that cessation of office upon attaining the prescribed age is automatic by operation of law. He submitted that the amendment has been applied prospectively, as the petitioner attained the age of 65 years after it came into force. It governs continuance in office and does not affect the original appointment; however, 65 years age is cap as such the Petitioner cannot continue after 65 years age as the Petitioner and the intervenor had already attained the age of 65 years; therefore, the amendment brought is valid piece of legislation and cannot be circumvented by any imagination as portrayed by the Petitioner and intervenor. He submitted that the amended provision applies uniformly to all incumbents, as no saving clause exists for existing office-holders. He emphasized that the amendment does not change the mode of appointment but merely rationalizes tenure in the public interest. The doctrine of *locus poenitentiae* is inapplicable, as the notification implements a statutory mandate, leaving no discretion to anyone. He argued that consultation with the Honourable Chief Justice was/ is not required, since the petitioner's office stood vacated by operation of law and the notification does not amount to removal with any stigma. The Chief Minister acted within authority under the Rules of Business, and no Cabinet approval was legally required in such circumstances as portrayed by the Petitioner in terms of Mustafa Impex case (PLD 2016 SC 808). He added that allegations of mala fide are vague and unsubstantiated, thus petitioner cannot prove it through the Constitutional Petition. He submitted that lawful implementation of a statute cannot be termed mala fide merely because it affects an individual / Petitioner / intervenor, as they have already completed the age of 65 years and even if the Petition is allowed they cannot continue to be Presiding Officer of the ATC Court after 65 years. He submitted that the courts do not interfere in legislative policy Decision, absent constitutional violation which has not been pointed out, merely challenging the vires through statement does not cover the case of the Petitioner / intervenor. Accordingly, learned AAG prayed for dismissal of the petition, declaration of the impugned notification as lawful.

7. Heard learned counsel for the parties and perused the record with their assistance.

8. The arguments advanced on behalf of the petitioner, though forcefully presented, do not withstand judicial scrutiny. It is well settled that appointment to, and continuation in, a statutory office is governed strictly by the law as it exists from time to time. The Anti-Terrorism (Sindh Amendment) Act, 2025, having come into force validly, clearly prescribes the upper age limit of sixty-five (65) years for a Presiding Officer of an Anti-Terrorism Court. The petitioner and intervenor admittedly had attained the said age of 65 years on the date of issuance of the impugned notification. Once the statutory disqualification occurred by operation of

law, the petitioner / intervenor ceased to hold the office automatically, and no vested or accrued right survived thereafter.

9. The contention that the amendment cannot be applied to the petitioner/intervenor on the ground of retrospectivity is misconceived. The impugned notification does not operate retrospectively nor does it take away any finalized or completed act; rather, it merely gives effect to the existing legal position governing discontinuation in office after 65 years as the petitioner and intervenor have crossed the said age; as such no indulgence in the matter is required in terms of Article 199 of the Constitution. It is a settled principle that no person has a vested right to continue in public office contrary to an express statutory provision. It is well settled that conditions of service, including tenure and age, are always subject to statutory control and can be altered by the legislature prospectively, even if such alteration incidentally affects existing incumbents. However, in the present case the impugned notification explicitly show that in pursuance of proviso of Section 14(2) of the Act 1997 the Presiding Officer cease to hold office and primarily Petitioner and intervenor have crossed the age of 65 years when the subject notification was issued on 22.10.2025.

10. The argument regarding fixed tenure under Section 14 of the Anti-Terrorism Act is also without merit. A fixed tenure is always subject to statutory qualifications and disqualifications, including age limits. Once the law itself mandates cessation upon attaining a specified age, the question of removal before completion of tenure or consultation with the Honourable Chief Justice does not arise. The cessation in the present case is not punitive or discretionary but is automatic by operation of law. It is well settled that where cessation from office occurs by efflux of time or statutory disqualification, no inquiry, hearing, or consultation is required as portrayed by the counsel for Petitioner that no opportunity of hearing was given to the Petitioner and intervenor.

11. The plea that the impugned notification is void for want of approval by the Cabinet or for having been issued through the office of the Chief Minister is equally untenable. It is well settled that executive actions taken in implementation of statutory mandates do not require separate cabinet approval unless the statute so provides; thus reliance on the Mustafa Impex case is misapplied in the present case. The notification merely reflects the legal consequence flowing from the statute and does not constitute an independent executive decision. It is well settled that where an authority acts to give effect to a statute, such action cannot be invalidated on technical objections relating to internal executive procedure; as such, challenging the vires of the law is also misconstrued by the Petitioner on the touchstone of Article

264 of the Constitution and Section 6 of General Clauses Act as *prima facie* no such principle of *locus poenitentiae* is attracted in the present case.

12. As regards the alleged *mala fides* and secretive issuance of the notification, no material has been placed on record to substantiate these assertions. *Mala fide* must be pleaded with particulars and proved through cogent evidence, which is conspicuously absent in the present case. Mere allegations, suspicions, or conjectures are insufficient to invoke issuance of writ of *mandamus* / *certiorari*. It is well settled that *mala fide* is a serious allegation and must be established by clear and convincing evidence, which *factum* is missing in the present case

13. The application filed by the intervener under Order I Rule 10 CPC is misconceived as the intervener has failed to demonstrate any direct, legal, or enforceable right after reaching the age of 65 years in terms of Section 14(2) of ATA Act (as amended). Moreover, as the main petition itself has already been dismissed, the present application cannot be entertained on the same plea. Accordingly, the application (MA No. 8088 of 2025) deserves to be dismissed and is dismissed accordingly.

14. For the foregoing reasons, the petition is devoid of merit and is hereby dismissed. The application under Order I Rule 10 CPC is also dismissed being not maintainable. All pending applications stand disposed of.

15. These are the reasons for our short order dated 22.12.2025, whereby the instant constitutional Petition along with pending application was dismissed.

JUDGE

JUDGE

Karar_Hussain/PS*