

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 860 of 2023
(Amir Ali v. the Province of Sindh and 03 others)

Date Order with Signature(s) of Judge(s)

Fresh Case

1. For order on Misc No.3974/2023 (u/a)
2. For order on office objection no.21
3. For order on Misc No.3975/2023 (exp.)
4. For hearing of main case

14.02.2023

Mr. Faisal Ahmed M. Memon, advocate for the petitioner

This is the petition for the issuance of the writ of quo warranto under Article 199 (1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, filed by Amir Ali against respondent No.2 under what law and authority he is currently holding the post.

At the outset, we asked the petitioner, how this petition is maintainable against the appointment of respondent No.2 when in the earlier petition bearing No.D-1221/2022 a similar question was raised and this Court vide order dated 27.7.2022 dismissed the petition as not pressed along with pending applications and the petitioner has repeated the same request through the instant petition.

Mr. Faisal Ahmed M. Memon, learned counsel for the petitioner, replied to the query and submitted that the private respondent does not hold the qualification to be appointed on any post on the purported plea of qualifying for the competitive examination 2003 on the plea of the recasting of result, besides there is no recommendation of the Sindh Public Service Commission for his appointment as Section Officer, thus his initial appointment, as well as promotion in BPS-18, is illegal, void and against the provisions of the Constitution; that respondent No.1 is hand and glove with the respondent No.2. He further submitted that in the earlier petition, the parties compromised outside the Court on extraneous reasons and the illegality of the appointment of the respondent No.2 remained unadjudicated by this Court, therefore, this petition is maintainable under Article 199 of the Constitution. Learned counsel referred to the grounds raised in the instant petition and argued that respondent No.2 has illegally been receiving salary since his purported appointment based on the alleged recasting of results and causing colossal loss to the public exchequer, being not qualified for the post, which is to be made through a competitive process. Learned counsel submitted that his

appointment is based on the consent given by Advocate General Sindh which was illegally acted upon by the Government of Sindh for extraneous consideration, therefore, this petition under the writ of quo warranto is liable to be allowed to save the public exchequer from being wasted as the private respondent is holding the post without lawful authority.

We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the material available on record.

Since the issue relates to the initial appointment of the private respondent based on the alleged disqualification and the petitioner has to substantiate through cogent material, which could only be threshed out by the competent authority of the Government of Sindh and we at this juncture are not in a position to say for and against the initial appointment of the private respondent until and unless certain material is placed on record, therefore, without touching the merits of the case, leave the petitioner to approach the competent authority of the Government of Sindh, for redressal of his grievances for the simple reason that the issue of eligibility of the private respondent to hold the post is to be looked by the competent authority first and if the decision goes against the petitioner he is at liberty to call in question vires of the order before the appropriate forum.

This petition stands dismissed in *limine* together with the listed applications, in the above terms.

JUDGE

JUDGE