

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Faisal Kamal Alam

Mr. Justice Jawad Akbar Sarwana

C. P. No.D – 1279 of 2025

Petitioner No.1:	Dost Muhammad Laghari s/o Khair Muhammad,
Petitioner No.2:	Karam Illahi s/o Muhammad Usman, and
Petitioner No.3:	Tufail Ahmed s/o Muhammad Iqbal, through Mr. Ahmed Ali Ghumro, Advocate.
	v.
Respondent No.1:	Province of Sindh, through Secretary, Agriculture, Supply & Prices Department. Nemo.
Respondent No.2:	Director General, Agriculture Extension Sindh, Hyderabad Marketing Sindh. Nemo.
Respondent No.3:	Market Committee Karachi, through its Secretary. Nemo.
Respondent No.4:	Muhammad Ali Dayo. Nemo.
Date of Hearing:	26.03.2025.
Date of Announcement of Order:	08.05.2025

ORDER

JAWAD AKBAR SARWANA, J.: The Petitioner Nos. 1, 2, and 3 are employees of the Market Committee Karachi, in posts BPS-13, BPS-10 and BPS-11, respectively. They allege that the actions of the Secretary to Government of Sindh (Respondent No.1) to transfer one Mr. Muhammad Ali Dayo (in BPS-11)(Respondent No.4) from the Market Committee Larkana (not impleaded in the petition) to the Market Committee Karachi (Respondent No.3) vide impugned Order dated 06.02.2025,¹ prior to Respondent No.4's retirement in a few months from the date of filing of this Petition constitutes a violation of

¹ Order No.SO(A.M.)5(177)2007/630 dated 06.02.2025 is available on page 31 of the Petition.

Article 199(1)(b)(ii) for the reasons that the transfer of post-retirement funds such as pensionary benefits, monthly pension, gratuity, commutation, leave encashment and other dues which are to follow have yet to be transferred by the Market Committee Larkana to the Market Committee Karachi (Respondent No.3) and consequently the latter is likely to be unduly financially burdened with the pay out of Respondent No.4's post-retirement dues which may have to be paid from the funds of the Market Committee Karachi.

2. We have heard Counsel and perused the records. Under Rule 14(1) of the Sindh Market Committee Unified Grade Service Rules, every Market Committee must have a separate pension fund and maintain an account under the title "Pension Fund Account of Market Committee" for the members of service. Under Rule 14(4)(ibid), where a member of service retires, the Market Committee concerned shall be responsible for payment of all post-retirement benefits to the Member by collecting the outstanding amount of the pension fund, if any, against the other Market Committee. Rule 14(6) (ibid) states that on transfer of a member of service, the relieving Market Committee shall also transfer his pension fund contribution to the successor Market Committee for the period he has rendered his services in the said Committee.

3. It is a trite principle that the remedy under Article 199(1)(b)(ii) may be sought on one of the following grounds:

- (A) That the law under which the Respondent holds office is constitutionally invalid or is ultra vires.
- (B) That the respondent was not eligible for the office, i.e. he did not possess the qualifications prescribed by law.
- (C) That he was eligible for the office but subsequently became disqualified to hold it.

(D) That he was appointed by a person not competent in law to appoint him.

4. None of the above grounds (A) to (D) are made against the Respondent Nos.3 and 4. As per the Sindh Market Committee Unified Grade Service Rules, it cannot be argued that Respondent No.4 has no authority to hold public office in the Market Committee Karachi in BPS-11. Nor can it be argued that Respondent No.1 and the Market Committee Larkana did not have the authority to transfer Respondent No.4. This is not articulated in the Petition. It is also not the case of the three (3) Petitioners that Respondent No.4 was not eligible for the office or that he has subsequently become disqualified or that he was appointed by a person not competent in law to appoint him. The three (3) aggrieved Petitioners have not challenged the holding of public office of Respondent No.4 in itself. It is the Petitioners' case that they are only aggrieved that the Market Committee Larkana has not transferred the post-retirement funds to the Market Committee Karachi along with the transfer of the Respondent No.4. But such contention is not part of the pre-conditions or the pre-requisite of transfer of members from one Market Committee to another. It is not set out in the Rules (ibid). At best, it may be argued that eventually the post-retirement benefits ought to be transferred to the successor Market Committee as per Rule 14(6) but the timing of such transfer is not mandated by the Legislature to be simultaneous with the transfer of the personnel in question. Therefore, no illegality is associated with the impugned Order dated 06.02.2025. No relief can be made out when the Petitioners' grievance does not fall within the four corners of a quo warranto.

5. Interestingly, the party which will be allegedly burdened by the financial obligations of the Respondent No.4, is the Market Committee Karachi. However, the transfer of Respondent No.4 does not appear to have aggrieved the Market Committee Karachi (Respondent No.3). They have not filed this Petition and no

documentary evidence is available that would demonstrate that the Marketing Committee Karachi has resisted or opposed the impugned Order of transfer of Respondent No.4. It is the three (3) Petitioner employees of Respondent No.3 who are aggrieved.

6. The filing of this Petition also appears to be pre-mature based on supposition and surmises that the Market Committee Larkana will not (a future event, which has yet to take place) transfer the post-retirement funds of Respondent No.4 to the Market Committee Karachi (Respondent No.3). This remains to be seen. In other words, no cause of action accrued when the Petitioners filed CP No.D-1279/2025 on 25.03.2025. The Respondent No.4 has neither retired nor based on the record available in the Petition, triggered and/or apparently invoked retirement from service on attaining the age of superannuation as of the date of filing of this Petition. The event apprehended may or may not occur. No documentary evidence is available in the petition that such event has already occurred. The petition cannot be maintained on mere apprehensions of the Petitioners on the likelihood of happening of a future event. Arguably, even if it were the case that after the filing of the Petition, the post-retirement of the Respondent No.4 became due and payable, this would still be a subsequent event which would have occurred during the hearing and not when the Petition was filed. The point is that no lis can be sustained in law when no cause of action accrued at the time of filing the Petition. Notwithstanding certain exceptions, a lis filed on a future cause of action cannot be brought to life after its filing due to the cause of action subsequently arising during its pendency. While a Court may take judicial notice of the changed situation and circumstances and can also mould and modify the relief,² yet in the facts and circumstances of the case, we find no exception for this bench to exercise its discretion and save the petition, especially one which is entirely misconceived for the reasons articulated in this judgment. It is also a well-settled proposition of law that the relief of quo warranto is a discretionary relief, and, if the subject-matter of the

² *Dr. Iqbal Jan and Others v. Province of Sindh and Others*, 2014 PLC (C.S.) 1153, 1160 (paragraph 9)

Petition falls outside the scope of Article 199(1)(b)(ii) of the 1973 Constitution, then such matter is also not a fit case for the exercise of discretion in favor of the Petitioners and/or against the Respondents.

7. Finally, that the three (3) Petitioners have not impleaded the Market Committee Larkana in the array of Respondents is pertinent too. Under Rule 14(6) (ibid), the Market Committee Larkana must transfer funds to the Market Committee Karachi. As discussed above, the three petitioners have challenged the transfer made by the Market Committee Larkana in this context. But the Market Committee Larkana has not been made a party. This bench is not inclined to exercise its discretion against a party, i.e. the Market Committee Larkana, that the Petitioners themselves have elected not to implead in their lis, when they clearly should have made it a party.

8. Given the above discussion, in the facts and circumstances of the case, no grounds for quo warranto are made out, and this Petition is dismissed in limine.

JUDGE

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