

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-2306 of 2024

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Syed Usman Ali Shah S/o Koural Shah,
through Mr. Alam Sher Khan Bozdar,
Advocate.

Respondents 1to8 : Province of Sindh and others,
Through Mr.Shahryar Imdad Awan,
Assistant, Assistant Advocate General
Sindh.

Respondent No.9. Muhammad Amin through Mr. Achar
Khan Gabol, Advocate

Date of Hearing : **06.05.2025.**

Date of Judgment: **06.05.2025.**

J U D G M E N T

Abdul Hamid Bhurgri, J, Through this Constitutional Petition, the
petitioners seek the following relief:-

- a) *That this Honourable court may be pleased to direct the official respondents to conduct inquiry in connection of offer, Appointment and Medical Fitness certificates of respondent No.9 through Anti-Corruption Establishment.*
- b) *That this Honorable Court may be pleased to direct the officials to get back/recover salaries obtained by the respondent No.9 after conducting inquiry and same would be proved against the respondent No.9.*
- c) *To grant any other relief which deem fit and proper under the circumstance case.*

2. The petitioner has averred that he is a social worker committed to promoting good governance and the upliftment of local and provincial institutions. He has alleged that Respondent No. 9, in collusion with certain officials of the Local Government Department, managed to procure an appointment order for the post of Junior Clerk (BPS-07) without any public advertisement or adherence to requisite formalities. It has been contended that bogus offer order in favour of Respondent No.9 was issued on

20th July 2010, and after a lapse of four months, an appointment order dated 21.12.2010 was issued, purportedly through the Section Officer, with a posting at Union Council-7, Mirpur Mathelo. The petitioner has further submitted that, after this lapse, Respondent No. 9 procured a fabricated medical certificate dated 26.01.2011 from the Medical Superintendent of Services Hospital, Karachi.

3. Following this, Respondent No. 9 formally joined his post on 05.02.2011 before the Administrator of UC-1, Mirpur Mathelo. Since his appointment, he has been transferred from Union Council Mirpur Mathelo to Union Council Ali Mahar, Taluka Khanpur, District Ghotki, and has been serving there since 2016. The petitioner has further stated that he approached the Anti-Corruption Authorities requesting them to investigate the illegalities in the appointment order and forged medical certificate of Respondent No. 9. However, the authorities expressed their inability to proceed against Respondent No. 9, allegedly due to his close affiliation with a senior member of the Anti-Corruption Establishment. The petitioner, having exhausted all available remedies by approaching the concerned authorities, has been compelled to invoke the extraordinary constitutional jurisdiction of this Honourable Court.

4. Learned counsel for the petitioner contended that the appointment of Respondent No. 9 is patently illegal and void ab initio, having been made without any advertisement, which is a mandatory prerequisite under the law. He submitted that no codal formalities were observed, and the appointment was effected through extraneous influence. He further submitted that the petitioner, being a social worker striving for transparency in public recruitment, has moved this petition to ensure that fair procedures are adopted in government appointments so as to provide equal opportunities for all eligible candidates to participate in competitive examinations. Selection, he argued, must be merit-based and not influenced by arbitrary pick-and-choose practices.

5. In conclusion, the petitioner prayed that an inquiry be initiated into the appointment order and medical certificate of Respondent No. 9, and that the matter be referred to the Anti-Corruption Establishment. It is further prayed that, should the appointment be proven bogus and unlawful, the

salary and benefits drawn by Respondent No. 9 be recovered and he be removed from service.

6. We have heard the learned counsel for the petitioner and perused the material available on record.

7. During the course of arguments, we specifically asked learned counsel whether he possessed any documentary proof to substantiate that the appointment of Respondent No. 9 was indeed fabricated and effected without observance of codal formalities. The learned counsel failed to provide a satisfactory response.

8. We further queried whether the petitioner, who claims to be a whistleblower and social worker, had laid any formal complaint before this Court at the time of the original appointment. The reply was that someone came to him and laid the matter before him much later.

9. This Court finds such an explanation to be unconvincing and notes that the petitioner appears to be acting as a proxy rather than a genuine whistleblower. The petition, which seeks a writ of quo warranto, is discretionary in nature, and this Court is inclined to scrutinize the bona fides of the petitioner before granting such relief.

10. Upon perusal of the petition, it is evident that the petitioner failed to disclose that he came to question the validity of the appointment after a lapse of more than 14 years. While we are cognizant of the seriousness of allegations involving bogus appointments, this Court cannot shut its eyes to the conduct of the petitioner, whose belated intervention and selective outrage undermine the credibility of the cause advanced.

11. The petition has been filed after lapse of fourteen years from the date of respondent No.9's appointment in 2010, raising such a belated objections to the legality of such appointment on the alleged ground of non-observance of codal formalities. This court finds the petition not only hopelessly delayed but also tainted with malice. The petitioner has failed to demonstrate any bonafide public interest or continuous effort to raise the voice at the relevant time. It appears that petitioner is not acting as a vigilant citizen or a whistleblower, but rather as a proxy set in a motion to

achieve collateral objectives. The extra ordinary jurisdiction of this Court under Article 199 of the Constitution cannot invoke to serve personal vendetta or to settle scores under the guise of public interest. The delay, coupled with lack of bonafide interest, renders the petition as an abuse of process and liable to be dismissed with strong disapproval. The inordinate delay of fourteen years in challenging the respondent's appointment cast serious doubt on the petitioner's motives. A writ of quo-warranto is an extraordinary remedy intended to uphold the sanctity of public office, not to gratify private grievances or political rivalries. The petitioner's silence over a decade and sudden awakening in 2024 suggests that the petition is not rooted in public interest but rather in *mala fide* intentions. The conduct indicates that the petitioner is acting at the behest of undisclosed interests, attempting to use the writ jurisdiction of this Court as a tool for harassment. Courts are duty bound to guard against such disguised attempts that undermine both judicial process. Procedural irregularities raised after an unreasonable lapse of time do not warrant Judicial interference. Writ of quo-warranto lies only when a clear violation of law is shown, and not on mere procedural irregularities raised belatedly. It is settled principle that the writ of quo-warranto is not to be issued as a matter of course, particularly where the challenge is marred by undue delay and *mala fide* intents. Reliance is placed on the case of *Zafaran Khan vs. Nizamullah* (PLD 2023 SC 371).

12. This Court is fortified by the case law reported in PLD 1969 SC 42, where the Honourable Supreme Court held that the grant of relief in writ jurisdiction is a matter of discretion, it was a quite legitimate on the part of the Court to test bonafide of the relator to see if he has come in the Court with clean hands. A writ in the nature of quo warranto in particular is not to issue as a matter of course, on sheer technicalities on a doctrinaire approach.

13. In the case of *Ghulam Shabir v. Muhammad Munir Abbasi and others* reported in (PLD 2011 SC 516), the apex court has held as under:-

“Insofar as maintainability of the Petition is concerned it would be seen that per settled law a writ of quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the Court in granting or refusing the same and each aspect of the case is to be considered. There is also no cavil with the argument that in

such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the Court with ulterior motive, mala fide intention etc. relief can be declined.”

14. In view of the foregoing discussion, the petition is found to be hopelessly barred by delay and tainted with *mala fide* motives. It constitutes an abuse of the extra ordinary jurisdiction of this Court and is accordingly dismissed along with listed applications, if any.

Judge

Judge

ARBROHI