

IN THE HIGH COURT OF SINDH AT KARACHI

(Constitutional Jurisdiction)

Presented on

25-2-2020

Constitution Petition No. D-1472

of 2020

1/2

ARBAB

s/o Khawand Dino

(An Ex-employee of Zakat & Ushur

Committee Naushero Feroze,

Muslim, adult, resident of

District Naushehro Feroze

Noorpur Goth, Near Telephone Exchange.....PETITIONER.

VERSUS

1. Province of Sindh

Through its Chief Secretary

Government of Sind,

Karachi.

2. Chairman,

Department of Zakat & Ushr Committee, (Sindh)

Sindh Sectt. Karachi.

3. Muhammad Nawaz Shaikh

Secretary Zakat & Ushr

Sindh Sectt. Karachi.

4. Muhammad Kashif Siddiqui

Senior Accounts Officer

Sindh Sectt. Karachi.....RESPONDENTS

PETITION UNDER SECTION 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.



2

THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-1472 of 2020

Present: Mr. Justice Salahuddin Panhwar
Mr. Justice Jan Ali Junejo

Petitioner: In person
Respondent Nos.1 & 2: Through Mr. Jan Muhammad Khuhro,
Province of Sindh: Additional Advocate General alongwith Mr. Raza Ali Shah, AD (Law-II), I&C and GA Wings, SGA & CD
Respondent No.4: Through Dr. Farugh Naseem, Advocate
Date of Hearing: 03.02.2025
Date of Decision: 03.02.2025

J U D G M E N T

SALAHUDDIN PANHWAR, J:- The Petitioner, a former Zakat clerk at the District Zakat & Ushr Committee, Naushero Feroze, alleges corruption, financial mismanagement, and unlawful appointments within the Zakat & Ushr Department, Government of Sindh. The petitioner claims that Respondent No. 4, in collusion with others, embezzled funds meant for the poor by misusing Sindh Bank ATM cards issued to Zakat beneficiaries. Allegedly, money was fraudulently withdrawn between 2015 and 2018. Respondent No. 4 was allegedly illegally appointed and given multiple senior positions, violating merit-based appointment rules. Despite a 2017 High Court Order, officials allegedly failed to provide financial records for accountability. A special audit for 2017-18 was obstructed. After raising complaints, the petitioner alleges that Respondent No. 4 and associates threatened him and his family. Despite complaints to the Chief Secretary, Sindh High Court, and Auditor General of Pakistan, no action has been taken against the alleged wrongdoers. The petitioner asserts that the case is filed purely in public interest to prevent further misappropriation of Zakat funds. Due to the lack of alternative remedies, he seeks the intervention of this Court. Lastly, the Petitioner prays for the following reliefs:

- i. Direct the Respondents Nos. 1 and 2 to transfer the Respondent No.4 to his original destination of posting Zilla Council, of Zakat & Ushr.
- ii. Direct the Respondents Nos.1 and 2 to withdraw the additional charges assigned to Respondent No.4 with immediate effect.



- iii. Direct the Respondents Nos. 1 and 2 to initiate departmental inquiry against the Respondent No.4 and to his other wrongdoer companions, with the acknowledgement of this Honourable Court.
- iv. Direct the Respondents to act in accordance with law.
- v. Restrain the Respondent No.4 from performing his duties on the aforesaid all the charges whether additional or actual and depute him on his actual posting, till final disposal of this petition.
- vi. Any other order/s as may deems fit and proper under the circumstances of the case.

2. The Secretary of the Auqaf, Religious Affairs, Zakat & Ushr Department of Sindh (Respondent No.3) responded to allegations regarding irregularities in the distribution of Zakat funds since 2012. The High Court had previously directed the National Accountability Bureau (NAB) to investigate these claims. The High Court directed NAB to investigate illegalities in Zakat fund distribution on multiple occasions (2017 and 2018). Following inquiries, NAB found no incriminating evidence and subsequently closed the cases. The petitioner, Mr. Arbab Ali Moro, is accused of being a habitual complainant with a history of filing frivolous petitions against Zakat Department officials. He was previously terminated from his position as a Zakat clerk and is alleged to have ulterior motives in his complaints. Letters from local authorities describe the petitioner as mischievous and indicate he uses a false address to file complaints. A prior inquiry by the Zakat Department concluded that the petitioner was guilty of criminal defamation, leading to a request for legal action against him. Lastly, the Respondent No.3 seeks to dismiss the Petitioner's claims due to his baseless nature with exemplary costs imposed on the petitioner for his vexatious litigation.

3. Respondent No.4 filed his comments/reply wherein it is stated that Respondent No. 4 was assigned an "allowed to work" charge as Deputy Director (BPS-18) in the Religious Affairs Department of Karachi Division through a notification dated 06.01.2022. However, believing this to contravene an earlier order dated 21.09.2021, Respondent No. 4 declined the charge through a letter dated 10.01.2022 and requested its revocation. Respondent No. 4 clarified that he has never sought, lobbied for, or held any additional, acting, OPS, or "allowed to work" charges, either currently or in the past. The petitioner accused Respondent No. 4 of involvement in a significant fraud in the Zakat and Ushr Department, specifically disbursing funds to ineligible recipients. Respondent No. 4 refuted these allegations, stating they were baseless, incorrect, and motivated by malice. Respondent No. 4 provided a detailed record of his postings, showing he has only held two operational roles: District Zakat Officer, Karachi West (BPS-17), and



Zakat Officer, Karachi Central (BPS-17). It is contended that he is not involved in disbursing Zakat funds except for salaries of Zakat-paid staff, which were processed jointly with the former Chairman of the District Zakat Committee (DZC), Karachi Central. During his tenure as Zakat Officer, Karachi Central, Respondent No. 4 was involved in disbursing salaries totalling Rs. 1,511,300/- over nine months (July 2015 to March 2016), which were lawful and jointly approved. Respondent No. 4 asserted that he has never engaged in illegal activities, fraud, or corruption throughout his career. Respondent No. 4 highlighted that the petitioner filed a baseless complaint on 13.12.2021 to obstruct his promotion, which was driven by malice and ulterior motives. Respondent No. 4 requested this Court to:

- o Dismiss the Petition as it pertains to Respondent No.4.
- o Address the Petitioner's delinquent conduct.
- o Direct the official Respondents to promote Respondent No. 4 from BPS-18 to BPS-19.

4. The Petitioner asserts that the appointment of Respondent No. 4 as Senior Accounts Officer, along with the allocation of additional responsibilities, is illegal and in violation of the rulings of the Hon'ble Supreme Court. The Petitioner emphasizes that all appointments must strictly adhere to the established rules, regulations, and merit-based criteria as determined by the relevant authorities. It is further alleged that Respondent No. 4 is a favored individual (referred to as a "blue-eyed person") who has been improperly assigned to the Head Office of the Chairman, Zakat & Ushr, in Karachi. The Petitioner also accuses Respondent No.4 of mismanaging Sindh Bank ATM cards associated with Guzara Allowance and alleges involvement in fraudulent activities and embezzlement of a significant portion of Zakat & Ushr funds. Consequently, the Petitioner seeks the Court's intervention to address these alleged irregularities and requests that the present Petition be granted in accordance with its prayer clauses.

5. Dr. Farugh Naseem, the learned counsel representing Respondent No. 4, has argued that Respondent No. 4 is currently not holding any additional or substantive position, as he has already relinquished all the additional charges that are being challenged in this petition. As a result, the counsel contends that the present petition has become infructuous. Additionally, he argued that the Petitioner has filed multiple complaints before various forums, all of which have reached finality. In light of these arguments, the learned counsel for Respondent No. 4 has urged the Court to dismiss the petition at hand.



6. The Learned Additional Advocate General of Sindh has endorsed and adopted the arguments presented by the learned counsel for Respondent No. 4.

7. We have heard the petitioner, the learned counsel for Respondent No. 4, as well as the learned Additional Advocate General of Sindh, and have meticulously examined the material on record. Under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, the High Court is vested with the jurisdiction to issue a writ of Quo Warranto, subject to the provisions of the Constitution. Such a writ may be entertained if the Court is satisfied that no other adequate legal remedy is available. Upon an application filed by any individual, the High Court may direct a person holding or claiming to hold a public office within its territorial jurisdiction to demonstrate the legal authority under which he asserts his right to occupy that office.

8. The relief sought by the petitioner has become infructuous due to the fact that Respondent No. 4 was promoted by the Government of Sindh through Notification No. SOIII (SGA & CD) 7-2/2022, dated 02-04-2022, and Notification No. SOIII (SGA & CD) 7-2/2023, dated 15-08-2023. Notably, the petitioner has not challenged these notifications to date. As for the departmental inquiry, it suffices to state that since the law provides appropriate forums and guarantees individuals the right to seek redress for his grievances, the petitioner is at liberty to approach the relevant forum with a complaint, which shall be dealt with in accordance with the law.

9. The relief sought by the petitioner does not satisfy the prerequisites for the issuance of a writ of *quo warranto*, as it pertains to presenting information before the High Court concerning an individual who has allegedly claimed and usurped a public office, franchise, or liberty. The fundamental rationale behind the writ of *quo warranto* is to adjudicate the legality of the holder of a statutory or constitutional office and to determine whether such individual is occupying the office in accordance with the law or in violation thereof. The writ serves to question the authority of the officeholder by demanding, "By what warrant or authority do you hold this public office?". The essential conditions for the issuance of a writ of *quo warranto* are as follows:

- The office in question must be a public office, established by statute or the Constitution itself.
- The office must be substantive in nature and not merely a function of employment or a position held at the pleasure of others.



6

- There must be a contravention of the Constitution, a statute, or a statutory instrument in the appointment of the individual to the office.

The primary grounds for granting a writ of *quo warranto* include:

- The officeholder lacks the prescribed qualifications for the position.
- The appointing authority lacks the competence to make such an appointment.
- The procedure prescribed by law for the appointment has not been duly followed.

It is evident that for a petitioner to successfully claim a writ of *quo warranto*, he must demonstrate to the Court, *inter alia*, that the office in question is a public office and that it is being held by a usurper without lawful authority. This necessarily entails an inquiry into whether the appointment of the alleged usurper was made in compliance with the law or in violation thereof.

10. The principles established by the Honorable Supreme Court of Pakistan in Case of *Masudul Hassan v. Khadim Hussain and another* (PLD 1963 Supreme Court 203) are well-settled, wherein it was held that: "*The now obsolete writ of quo warranto was in its nature an information lying against a person who 'claimed or usurped an office, franchise or liberty' and was intended 'to enquire by what authority he supported this claim in order that the right to the office may be determined' it was necessary for the issue of the writ that the office should be one created by the state, by charter or by statute, and that the duty should be of a public nature. It was necessary also that the respondent should be in possession of the office*".

11. The Supreme Court of Pakistan, in the case of *Capt. (Retd.) Muhammad Naseem Hijazi v. Province of Punjab through Secretary, Housing and Physical Planning and 2 Others* (2000 SCMR 1720), addressed the matter of the writ of *quo warranto* and made a significant observation, emphasizing the following point: "*High Court is competent to enquire any person holder of a public office to show that under what authority he is holding the said office. In such-like cases where a Writ in the nature of quo warranto is instituted the duty of the petitioner is to lay an information before the court that such and such officer has no legal authority to retain such office. For a petitioner who act, in fact. As an informer is not required to establish his locus Standi to invoke the jurisdiction of the court. Writ of quo warranto in its nature is an information laying against person who claimed or usurped an office, franchise or liberty and was intended to inquire by what authority he supported his claim in order that right to office may be determined. It is necessary for the issuance of writ that the office should be*



one created by the state of character or by statute and that the duty should be of a public nature, writ of quo warranto could be moved by "any person who even may not be an aggrieved party but is holding a public office created by character or statute by the state" any person can move the High court to challenge the unauthorized occupation of a public office. On any such application court is not only to see that the incumbents is holding the office under the order of a competent authority but it is to go beyond that and see as the whether he is legally qualified to hold the office or to remain in the office. The court has also to see if statutory provisions have been violated in making the appointment. The invalidity of appointment may arise not only from want of qualification but also from violation of legal provision for appointment.

12. With regard to prayer clause (iii) of the Petition, it falls within the exclusive domain of the competent authority to initiate a departmental inquiry against a civil servant if, in the authority's opinion, the individual:

- (a) is inefficient or has ceased to be efficient;
- (b) is guilty of misconduct;
- (c) is corrupt or may reasonably be considered corrupt because:
 - (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his ostensible means; or
 - (iii) he has persistent reputation of being corrupt; or
- (d) is engaged, or is reasonably suspected of being engaged, in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore prejudicial to national security, the authority may impose on him one or more penalties.

However, the departmental inquiry is essential to maintain discipline and decorum within the institution. The competent authority can dispense with a regular inquiry if it finds sufficient documentary evidence that establishes the charges against the employee. However, this decision must be supported by compelling and justifiable reasons, which should be recorded in writing. The authority must ensure that the reasons for dispensing with the inquiry are cogent and legally sustainable.



8

13. The record indicates that the Petitioner has failed to provide any documentary evidence before this Court to substantiate the allegations of misconduct against Respondent No.4, which would justify directing Respondents Nos.1 and 2 to initiate a departmental inquiry. The only materials submitted by the Petitioner consist of mere applications or complaints filed before various forums. Moreover, it has been established, based on the comments of Respondent No.3, that the Petitioner himself was terminated from service as *Aamleen-e-Zakat* (Zakat Clerk) due to misconduct. Consequently, the grounds and justifications put forth by the Petitioner for seeking a departmental inquiry against Respondent No.4 are devoid of merit and do not warrant such proceedings.

14. As outlined above, the subject matter of the petition has become infructuous and legally ineffective due to changed circumstances. Furthermore, the Petitioner has failed to fulfill the necessary legal requirements for the issuance of a writ of *quo warranto*. Consequently, we find no merit in proceeding further, and the present petition stands dismissed. However, it is essential to clarify that the observations and conclusions in this judgment shall not prejudice or limit the rights of any parties involved to seek other legal remedies available under the law.

15. These constitute the detailed reasons for our short order issued on 03.02.2025, through which the present petition was dismissed.


JUDGE
JUDGE