

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Muhammad Saleem Jessar
Justice Nisar Ahmed Bhanbhro

CP No.D-4289 of 2025

(Khadim Hussain v. Province of Sindh and 2 others)

Petitioner : through Mr. Nehal Khan Lashari, advocate

Respondents No.1&2 : through Mr. Hakim Ali Shaikh, Additional Advocate General Sindh a/w Dr. Liaquat Ali Abro and Nadeem Ahmed Qureshi, Law Officers, Law Department, Government of Sindh

Respondent No.3 : through Mr. Ishtiaq A. Memon, advocate

Date of hearing and order: **04.02.2026**

ORDER

NISAR AHMED BHANBHRO, J. Through this petition, the petitioner claims following relief(s):

- a. *To issue writ of Quo Warranto against the Respondent No 3 namely Muntazir Mehdi, Additional Prosecutor General Sindh BS-19, Acting Prosecutor General Sindh and enquire him under what authority, he holds a public office as prosecutor General Sindh when he does not possess length of service required by the Law and the impugned Notification No.SO(P-III)CPS/02-65/2019, 03.02.2025 requires to be set-aside.*
- b. *To declare that the petitioner is eligible to hold the office of Prosecutor General Sindh on acting charge basis as the petitioner holds third position in the seniority throughout the province of Sindh and respondent No.3 being most junior to the petitioner and holding the 17th Number as per the seniority list.*
- c. *To direct the Government of Sindh to appoint any Prosecutor General Sindh on regular basis to hold the public office of Prosecutor General Sindh in case if it is not possible in reasonable time to do so further direct the Government of Sindh to appoint a most senior Additional Prosecutor General Sindh from top 3 most senior Additional Prosecutor Generals.*
- d. *To hold that the impugned notification dated: 03.02.2025 was issued in violation of article 25 and 25-A of the Constitution of Islamic Republic of Pakistan 1973."*

2. Learned counsel for the petitioner contended that the respondent No.3 has been appointed as Prosecutor General Sindh on acting charge basis; that Respondent No 3 stands at Sr. No.17 of the merit list of Additional Prosecutor Generals and his appointment as Prosecutor General on an acting charge basis was without any lawful authority. He contended that appointment of Respondent No 3 is liable to be set at naught as under Rule 8 - A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974 (APT Rules), the senior most person is eligible for such appointment, as such acting charge appointment cannot be made beyond a period of Six Months. He contended that the office of Prosecutor General is saddled with critical duties of prosecution in the province of Sindh hence needs full time appointment. He contended that running the office on an acting charge basis for an indefinite period was not warranted under the law. He lastly prayed to allow this petition and to set aside the impugned notification dated 03.02.2025.

3. Learned Additional Advocate General Sindh assisted by Mr. Ishtiaq A. Memon, learned counsel for the respondent No.3, contended that the summary for appointment of Prosecutor General was floated to the Chief Minister Sindh by the Secretary, Law, Parliamentary Affairs & Criminal Prosecution Department, Government of Sindh, on resignation of ex-Prosecutor General on 29.01.2025. He contended that the names of four Additional Prosecutor Generals were proposed for the office of Prosecutor General; that under Section 6 of the Sindh Criminal Prosecution Service (Constitution, Function and Powers) Act, 2009 (the said Act), the Government of Sindh was competent to appoint a person having the required qualification. The Respondent No 3 was found fit and eligible for appointment, therefore he was appointed as prosecutor General to look after the affairs of the office of Prosecutor General until a full time appointment. He argued that there is no illegality in the impugned notification, and the writ of quo warranto was not maintainable as the petitioner has claimed relief for himself, which cannot be granted to him. He prayed for dismissal of the petition.

4. Heard arguments and perused the material available on record.

5. Perusal of the record revealed that the respondent No.3 was appointed as Prosecutor General on acting charge basis vide the

impugned notification dated 03.02.2025. The Law Department Government of Sindh floated Summary for appointment of the Prosecutor General Sindh until the appointment of regular officer, mentioning the names of Mr. Khadim Hussain Khuhro (Petitioner), Mr. Siraj Ali Khan Chandio, Mr. Muhammad Iqbal Awan and Mr. Muntazir Mehdi Memon (Respondent No 3) as appropriate persons for the post of Prosecutor General. For the sake of convenience, Para 3 of the Summary available at Page 15 of the Court's file is reproduced below:

"3. The office of the Prosecutor General is an Important and the State's top legal advisory office established under Sindh Criminal Prosecution Service (Constitution, Function and Powers), Act, 2009 for providing valuable insight and guidance to the Court and the State on complex legal criminal matters on regular basis. Till such an experienced person may be appointed, acting charge of the office of the Prosecutor General may be assigned from the following panel of Law Officers working in the office of the Prosecutor General:-

i.	Mr. Mr. Khadim Hussain Khuhro	Addl. P.G. (BS-19)
ii.	Mr. Siraj Ali Khan Chandio	Addl. P.G. (BS-19)
iii.	Mr. Muhammad Iqbal Awan	Addl. P.G. (BS-19)
iv.	Mr. Muntazir Mehdi Memon	Addl. P.G. (BS-19)"

6. A bare reading of the summary makes it crystal clear that the respondent No.3 was an eligible person to be appointed as Prosecutor General, besides the petitioner himself. It was left at the discretion of the Chief Minister Sindh to appoint one of the Additional Prosecutor Generals as the Prosecutor General Sindh until the regular appointment. Chief Minister Sindh exercised discretion in favor of Respondent No 3 and he was accordingly notified for the said office.

7. Section 7 of the said Act provides the qualification for the appointment of Prosecutor General which reads as under:

"7. Qualification for the appointment of Prosecutor General.-A person shall not be appointed as Prosecutor General unless he is a citizen of Pakistan, and is not less than forty five years of age, he has, for a period of, or for the period aggregating, not less than ten years, been an advocate of the High Court.

(a) is or was qualified to be appointed as judge of High Court or has for a period of, or for the periods aggregating, not less than ten years, been an Advocate of the High Court; or

(b) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General and is enrolled as an Advocate of High Court; or

(c) he has, for a period of not less than seven years, performed the functions of a District Public Prosecutor or has performed functions of a Prosecutor in Sindh, under any law, for a period of not less than fifteen years, and is enrolled as an Advocate of High Court; or

(d) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General; or

(e) he has, for a period of not less than seven years, performed the functions of a District Public Prosecutor or has performed functions of a Prosecutor in Sindh, under any law, for a period of not less than fifteen years.

Explanation.- In computing the period during which a person has been an Advocate of the High Court or held judicial office, there shall be included any period during which he has held judicial office after he became an Advocate or, as the case may be, the period during which he has been an Advocate after having held judicial office.”

8. From the perusal of the above provisions of law, it is deduced that the Government can appoint a Prosecutor General having the qualification prescribed herein above. When confronted, learned counsel for the petitioner conceded to the fact that the respondent No.3 did not suffer from any disqualification envisaged under Section 7 (supra). However, he further contended that respondent No.3 was a junior-most officer and assigning him charge of the Prosecutor General was beyond the scope of the law as APT Rules, provided a mechanism for appointment of any person on acting or current charge basis. The arguments so mounted might have force for appointments on acting charge basis in civil service against the promotion post when the suitable officer in the relevant cadre was not available and person who was otherwise eligible to hold the post was assigned the charge of said post. Rule 8 - A of the APT Rules being relevant provision of law is reproduced below for the sake of convenience.

8-A.- (1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(2)

(3) In the case of a post in Basic Scale 17 and above, reserved under the rules to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer of the Basic Scale in which the post exists is available that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most

senior officer otherwise eligible for promotion in the organization, cadre or service, as the case maybe, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for less than six months current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendation of the Departmental Promotion Committee or the Provincial Selection Board, I or II, as the case may be.

(6) Acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(7) Acting charge appointment shall not confer any vested right for regular promotion to the post or grade held on acting charge basis.

(8) The civil servant appointed on acting charge basis shall assume full duties and responsibility of the post.

(9) The civil servant appointed on acting charge basis shall be entitled to draw fixed pay equal to the minimum pay at which his pay would have been fixed had he been appointed to that post on regular basis.

Explanation.- Service rendered on acting charge basis in the basic scale applicable to the post shall not count for purposes of drawl of increments in the Basic Scale. Such service shall, however, count towards increments in the Basic Scale held immediately before appointment on acting charge basis.

9. The above provisions of APT Rules make it crystal clear that the acting charge appointments are made against the promotion post in civil service. The provisions of Rule 8 - A (supra) are attracted to the posts in Civil Service, whereas the office of the Prosecutor General is a statutory position and Rule 8-A supra shall not apply to the said post. It is not the case of the Petitioner that Respondent No.3 suffered from any of the disqualifications articulated under Section 7 of the said Act, however he only stressed that incumbent Prosecutor General was junior to other officers. The position of Prosecutor General is critical in nature, no one can claim this position on the basis of seniority, but only merit and competency are the relevant factors to be kept under consideration for such appointment. The summary floated to the Chief Minister speaks that while leaving the office of Prosecutor General, learned ex-Prosecutor General had assigned the charge of the office to the respondent No.3,

meaning thereby that he had reposed his confidence in him. Petitioner failed to produce any material on record to say that the respondent No.3 was not a competent person or otherwise ineligible to hold the said position.

10. The appointment of Prosecutor General is made by the Government on such terms and conditions as may be determined and appointee perpetuates in the office until the pleasure of the Government. The office of the Prosecutor General is a tenure post as determined by the Government. The Government appoints Prosecutor General by exercising powers conferred under Section 6 of the said Act, which is reproduced below for academic purposes.

*6. **Prosecutor General** (1) Government shall appoint a Prosecutor General, on such terms and conditions, as may be determined by Government.*

(2) The terms and conditions of service of the Prosecutor General shall not be varied during the term of his office.

(3) The Prosecutor General shall hold office at the pleasure of Government.

(4) The Government may, for reasons to be recorded in writing and after providing him an opportunity of being heard, remove the Prosecutor General prior to the completion of his tenure, on the ground of misconduct or physical infirmity.

(5) The Prosecutor General may resign from his post by tendering resignation in writing to Government.

(6) The Prosecutor General shall have a right of representation and audience on behalf of Government in lower Court, the High Court, the Federal Shariat Court and the Supreme Court.

(7) The Prosecutor General may delegate any of his powers or functions to any Prosecutor or officer of the Service

11. To lay the claim for issuance of writ of *quo warranto*, the petitioner has to satisfy, *inter alia*, that the office in question is a public office and it is held by a usurper that too without lawful authority and the petitioner is not having any special kind of interest against the alleged usurper and he being a member of the public was acting under bonafide. Once this junction is crossed, then the Court will proceed further to make an inquiry as to whether the appointment of the alleged usurper has been made in

accordance with the law or not. A writ of quo warranto is maintained to settle the legality of the holder of a statutory or commercial office and to decide whether he was holding such public office in accordance with the law or against the law. In the present petition, through prayer clause (b) petitioner asserted that office of Prosecutor General may be assigned to him, which speaks of his personal interest and tendered this petition as not maintainable as the relator failed to demonstrate bonafides for filing of this petition.

12. Petitioner, through this petition, seeks rectitude of actions taken by the Government authorities. For that purpose, he has to demonstrate his honesty and fairness for filing the petition, least to say that the choice to invoke the equitable writ jurisdiction of the court must demonstrate the aforementioned moral compass. Honourable Supreme Court and this Court have unanimously held that for issuance of writ of quo warranto it must be established that the holder of public office suffered from the prescribed qualification, the appointing authority was not a competent authority to make the appointment and the prescribed procedure of law was not followed. The Petitioner has failed to point out any illegality or perversity in the appointment of respondent No.3 warranting for issuance of a writ in nature of quo warrant.

13. In the wake of above discussion, instant petition fails and is accordingly dismissed along with pending application(s) if any.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Nadir*

Approved for reporting