

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-318 of 2026

[Pawar Dino v. Federation of Pakistan and 5 others]

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

Petitioner by : Mr.Aayatullah Khuwaja, Advocate

Respondents by : Nemo.

Dates of Hearing : **19.02.2026**

Date of Decision : **19.02.2026**

JUDGMENT

ARBAB ALI HAKRO J:- Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, a qualified Homoeopathic practitioner, has called in question the validity of notification dated 13.02.2026 issued by the Federal Government under Section 8 of the Unani, Ayurvedic and Homoeopathic Practitioners Act, 1965 ("**UAH Act, 1965**"), whereby members under clause (a) of Section 5 were notified to the National Council for Homoeopathy ("**NCH**") and in particular the nomination of a member from the Province of Sindh, while simultaneously seeking enforcement of an earlier communication dated 26.10.2023 of the Health Department, Government of Sindh, wherein his name was initially included in a panel of nominees for composition of the NCH.

2. The petitioner avers that he is a law-abiding citizen and a qualified Homoeopathic Doctor, having obtained a DHMS diploma in 2017 from an institution recognized by the National Council for Homoeopathy and that he is running a clinic under the name "Asia Homoeopathic Clinic" at Hur Camp Colony, Hyderabad. It is the case of the petitioner that on the basis of his application and curriculum vitae, the Health Department, Government of Sindh, through Section Officer (ME), issued letter No. SO(ME) U.A.H. Council/2023 dated 26.10.2023 addressed to the Secretary, Ministry of

National Health Services, Regulations & Coordination ("MoNHSR&C"), whereby three names were forwarded for nomination under clause (a) of Section 5 of the UAH Act, 1965. The said letter records that "the competent authority has been pleased to nominate following members for the composition of the National Council for Homoeopathy under the act of 'The Unani, Ayurvedic and Homoeopathic Practitioners Act, 1965' as under Section 5 clause (a)" and at Serial No.1 the name of "Mr. Pawar Dino S/O Muhammad Bachal Shar" appears, followed by two other Homoeopathic doctors. The record further reveals that MoNHSR&C, upon receipt of a legal notice and reminder from the petitioner's counsel, addressed letter No. F.13-2/2012-A-IV/NCH dated 30.12.2024 to the Health Department, Government of Sindh, pointing out that the earlier letter dated 26.10.2023 had not been received in the Ministry and requesting verification of its authenticity and, if genuine, its re-submission along with CVs of three Homoeopathic doctors before 20.01.2025 for consideration under Section 5(a) of the UAH Act, 1965. Subsequently, the Health Department, Government of Sindh, issued letter No. SO(ME) U.A.H. Council/2025 dated 30.05.2025 addressed to MoNHSR&C, stating that "the Government of Sindh with the approval of Provincial Cabinet in its meeting held on 20.5.025 is pleased to nominate following three Homoeopathic Doctors" and then set out a fresh panel of three names, namely (1) Mr. Farooque Ansari, (2) Mr. Ghulam Akbar, and (3) Mr. Muhammad Aslam, with their domicile, registration year and experience. The letter also records that the Health Department "has proposed aforementioned nominations with a priority to Mr.Farooque Ahmed Ansari" and requested that if the Federal Government proposes any other member, the case may be referred back to the Health Department. The petitioner had earlier challenged the letter dated 30.05.2025 by way of Constitution Petition No. D-1823 of 2025 before this Court, which, according to him, is still pending adjudication. During the pendency of that petition, the Federal Government, in exercise of powers under Section 8 of the UAH Act, 1965,

issued S.R.O. No. F.13-2/2022-Admn-IV/NCH dated 13.02.2026, notifying members nominated under clauses (a) and (d) of Section 5 to the NCH. In the said notification, at Serial No.4, "Homoeopathic Doctor Ghulam Akbar" is notified under Section 5(a) as a member from Sindh.

3. The petitioner avers that by virtue of the earlier letter dated 26.10.2023, he had acquired a vested right or at least a legitimate expectation to be nominated as a member of NCH from Sindh, and that the subsequent letter dated 30.05.2025 and the notification dated 13.02.2026 are illegal, mala fide, discriminatory and in violation of Articles 18 and 25 of the Constitution.

4. Learned counsel for the petitioner argued that the UAH Act, 1965, particularly Section 5, prescribes a structured composition of the NCH and envisages that the Federal Government shall nominate four members under clause (a) after consulting the Provincial Governments concerned, one from each Province. It was submitted that the consultation process with the Province of Sindh had concluded when the Health Department, Government of Sindh, issued a letter dated 26.10.2023 nominating the petitioner along with two others, and that this nomination, once made by the competent authority, could not be arbitrarily withdrawn or superseded without affording the petitioner an opportunity of hearing. Counsel emphasized that the letter dated 26.10.2023 was not a mere proposal but a formal nomination, as is evident from the language that "the competent authority has been pleased to nominate the following members for the composition of the National Council for Homoeopathy....as under Section 5 clause (a)." According to him, this created a legitimate expectation, if not a vested right, in favour of the petitioner that his name would be forwarded and acted upon by the Federal Government in terms of Section 8 of the UAH Act, 1965. Any subsequent deviation, it was argued, had to meet the constitutional tests of fairness, non-arbitrariness and absence of mala fides. Learned counsel further contended that the subsequent letter dated 30.05.2025, whereby a fresh panel of three

names was forwarded after approval of the Provincial Cabinet, was actuated by extraneous considerations and nepotism, as the petitioner's name alone was dropped without any reason, while one of the earlier nominees, namely Ghulam Akbar, was retained and another new name Muhammad Aslam, was added. It was argued that this selective exclusion of the petitioner, despite his qualification and experience, amounted to hostile discrimination and a colourable exercise of power, offending Articles 18 and 25 of the Constitution. It is also argued that the Federal Government, despite being put on notice through legal notice and reminder, failed to adhere to the earlier nomination and instead issued a notification dated 13.02.2026, notifying Ghulam Akbar as a member from Sindh. Counsel submitted that the Federal Government was under a legal obligation to examine the legality of the subsequent letter dated 30.05.2025 in the light of the Islamabad High Court judgment reported as **2025 CLC 1036**, wherein, according to him, issuance of an altogether new schedule for NCH was declared unlawful. The earlier process was directed to be followed. By parity of reasoning, he argued, once a nomination process had culminated in the letter dated 26.10.2023, the respondents could not lawfully discard it and initiate a fresh nomination exercise. Lastly, counsel submitted that the pendency of the earlier Constitution Petition No. D-1823 of 2025 does not bar the present petition, as the cause of action has been further aggravated by the issuance of the notification dated 13.02.2026, which is a fresh and independent cause. He prayed for a declaration under the relief clause, the suspension of the impugned notification, and consequential directions to implement the earlier nomination.

5. We have heard learned counsel for the petitioner at considerable length and examined the material placed on record, including the relevant provisions of the UAH Act, 1965 and the documents annexed with the petition. The controversy, though presented with some emotional overtones, essentially turns on three inter-related questions: first, whether the letter

dated 26.10.2023 conferred upon the petitioner any enforceable legal right to be nominated or appointed as member NCH under Section 5(a); second, whether the subsequent letter dated 30.05.2025 and the notification dated 13.02.2026 can be struck down as mala fide, discriminatory or ultra vires the UAH Act, 1965; and third, whether this Court, in exercise of its constitutional jurisdiction, can issue a mandamus compelling the executive to nominate or notify a particular individual to a representative statutory body.

6. Before adverting to these questions, it is apposite to revisit the statutory scheme briefly. Section 3 of the UAH Act, 1965, provides for the establishment of the National Council for Homoeopathy as a body corporate. Section 5, as amended, prescribes the composition of the NCH and, insofar as relevant, stipulates that the NCH shall consist of "four members, being registered Homoeopaths, to be nominated by the Federal Government after consulting the Provincial Government concerned, of whom one shall be from each Province." The remaining members are to be elected by registered and listed Homoeopaths and teachers of recognized institutions, and four members are to be nominated by the Federal Government, including a scientist and a Deputy Secretary (Budget) from the Ministry of Health.

7. The phrase "to be nominated by the Federal Government after consulting the Provincial Government concerned" is of some significance. The power to nominate under Section 5(a) is vested in the Federal Government; consultation with the Provincial Government is a condition precedent to the exercise of that power, but the ultimate act of nomination is that of the Federal Government. The UAH Act, 1965, does not create any statutory right in favour of individual practitioners to be nominated; rather, it structures the inter-governmental process and the composition of the Council. The locus of the right is institutional, not personal.

8. The letter dated 26.10.2023 emanates from the Health Department, Government of Sindh and is addressed to the Secretary, MoNHSR&C. It records that "the competent authority has been pleased to nominate the

following members for the composition of the National Council for Homoeopathy... as under Section 5 clause (a)". Then it lists three names, including the petitioner's. This communication, in its true legal character, is an expression of the Provincial Government's view in the consultative process envisaged by Section 5(a). It is not and cannot be the nomination under Section 5(a) itself, which lies exclusively within the remit of the Federal Government.

9. It is well-settled that not every administrative step in a multi-tiered decision-making process creates a justiciable right in favour of a person whose name happens to be mentioned at an intermediate stage. The law draws a clear distinction between a recommendation, proposal or panel on the one hand and a final appointment or notification on the other. The former, unless elevated by statute to a determinative status, remains inchoate and subject to reconsideration, revision, or even withdrawal by the competent authority, provided such action is not tainted by mala fides, arbitrariness, or a violation of any express legal prohibition.

10. The petitioner's argument that the letter dated 26.10.2023 conferred upon him a vested right to be nominated as a member of NCH is, therefore, misconceived. At best, that letter could give rise to a legitimate expectation that his name would be considered in good faith by the Federal Government when exercising its power under Section 5(a), read with Section 8. Legitimate expectation, however, is not a crystallized right; it is a public law concept that operates as a constraint on arbitrary departure from a declared policy or consistent past practice. Even then, the doctrine does not compel the authority to act in a particular manner; it merely obliges it to act fairly, rationally and with due regard to its own representations.

11. The record shows that MoNHSR&C, upon being apprised through legal notice and reminder, addressed a letter dated 30.12.2024 to the Health Department, Government of Sindh, stating that the earlier letter dated 26.10.2023 had not been received and requesting verification of its

authenticity and, if genuine, its re-submission along with CVs of three Homoeopathic doctors before 20.01.2025. This, in itself, does not suggest any mala fide; rather, it reflects an attempt to regularize the consultative process and ensure that the Federal Government acts on an authentic and complete record.

12. The more critical development is the issuance of a letter dated 30.05.2025 by the Health Department, Government of Sindh, whereby, "with the approval of Provincial Cabinet in its meeting held on 20.05.2025," a fresh panel of three Homoeopathic doctors was forwarded, omitting the petitioner's name and including that of Muhammad Aslam, while retaining Ghulam Akbar and Farooque Ansari. This letter, by its very terms, supersedes the earlier communication of 26.10.2023. Once the Provincial Government, acting through its Cabinet, revisited the matter and approved a new panel, the earlier panel ceased to have operative effect in the consultative process.

13. The question then is whether the Provincial Government's act of revising its panel and omitting the petitioner's name is justiciable on the grounds urged. The petitioner alleges mala fides, nepotism and discrimination, but beyond bare assertions, no concrete material has been placed on record to substantiate these grave allegations. It is trite that mala fides are not to be presumed; they must be pleaded with specificity and proved by cogent material. Courts have consistently held that allegations of malafide, particularly against public functionaries, are of a serious nature and cannot be lightly accepted on the basis of conjectures or surmises.

14. The mere fact that the petitioner's name was included in an earlier panel and omitted in a later one does not, ipso facto, establish mala fides or discrimination. The Provincial Government, in the exercise of its executive discretion, may take into account a variety of factors, such as experience, seniority, regional representation, professional standing, or even the need to maintain continuity, when proposing names for a representative statutory body. The latter panel of 30.05.2025, in fact, sets out the registration year

and experience of each nominee, indicating that professional experience was a relevant consideration. The petitioner has not demonstrated that he was better placed on these objective parameters than those ultimately proposed.

15. As to the plea of discrimination under Article 25, it is well-established that equality before law does not mean that every person must be treated identically in all circumstances. What the Constitution forbids is hostile discrimination between persons similarly placed without any reasonable basis. In the present case, the petitioner has not shown that he and the ultimately nominated member from Sindh, namely Ghulam Akbar, were similarly situated in all material respects, nor has he shown that the differentiation, if any, was devoid of a rational nexus with a legitimate governmental objective. In the absence of such a demonstration, the Article 25 challenge cannot be sustained.

16. The reliance placed on Article 18 is also misplaced. Article 18 guarantees the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business, subject to reasonable restrictions imposed by law. The petitioner's right to practice Homoeopathy is not under threat; he continues to be a registered practitioner and to run his clinic. Membership of the NCH is not a profession or occupation in itself; it is a representative, time-bound statutory office, the filling of which is governed by the UAH Act, 1965. Non-selection or non-nomination to such an office does not, without more, amount to infringement of Article 18.

17. Even if one were to assume, *arguendo*, that the Provincial Government ought to have afforded the petitioner an opportunity of hearing before revising its panel, the question remains whether such omission, in the circumstances of this case, warrants the drastic relief of quashing the Federal notification and compelling the executive to nominate the petitioner. The jurisprudence on judicial review of appointments to representative or advisory bodies is cautious; courts have repeatedly held that they will not sit as selection boards or substitute their own preferences for those of the

competent authority, save where the process is shown to be vitiated by patent illegality, mala fides, or violation of mandatory statutory provisions.

18. The impugned notification dated 13.02.2026 has been issued under Section 8 of the UAH Act, 1965, which provides that the Federal Government shall publish in the official Gazette the names of members nominated under Section 5. The notification, on its face, records the names of members from each Province under Section 5(a), including "Homoeopathic Doctor Ghulam Akbar" from Sindh, as well as members under Section 5(d). There is nothing *ex facie ultra vires* in the notification; it reflects the culmination of the statutory process. To set aside such a notification on the basis of an earlier, superseded provincial communication would be to unsettle the composition of a national statutory body on a tenuous foundation.

19. The argument that the respondents have adopted a "pick and choose" policy, favouring "blue-eyed" individuals, remains in the realm of rhetoric. Courts cannot invalidate executive action on the basis of rhetoric; they require evidence. The petitioner has not placed any material to show that the ultimately nominated member lacked requisite qualifications, that any statutory disqualification applied to him, or that the Provincial or Federal Government acted under dictation or for collateral purposes. In the absence of such material, the presumption of regularity attaching to an official act remains unrebutted.

20. The composition of the NCH under Section 5 is a carefully balanced mix of nominated and elected members, designed to ensure representation of Provinces, practitioners and institutions. To disturb that composition midstream on the basis of an individual grievance about non-nomination would have systemic implications and could potentially paralyse the Council's functioning. Judicial review, particularly in matters of institutional composition, must be exercised with a sense of institutional comity and restraint.

21. In sum, the petitioner has failed to establish that: (i) the letter dated 26.10.2023 conferred upon him any enforceable right to be nominated or

notified as member NCH; (ii) the Provincial Government's subsequent letter dated 30.05.2025 is vitiated by proven mala fides, arbitrariness or violation of any mandatory statutory provision; or (iii) the Federal Government's notification dated 13.02.2026 is ultra vires the UAH Act, 1965 or the Constitution. The doctrinal thresholds for intervention, be it under the rubric of legitimate expectation, equality, or non-arbitrariness, have not been crossed.

22. For the foregoing reasons, this petition is **dismissed** in *limine*, alongwith pending applications.

JUDGE

JUDGE

Sajjad Ali Jessar
Approved for reporting