

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-569 of 2026  
(*Shayan Anjum & others versus Province of Sindh & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Zulfiqar Ali Sangi

**Date of hearing and order: 30.4.2026**

M/s M.M. Aqil Awan, Danish Rashid Khan and Laraib Awan advocates for the petitioner

Mr. Abdul Jalil Zubedi, Additional AG

M/s. Farjad Ali Khan advocate and Muhammad Umar Farooq advocate for respondents No.4 and 11

Mr. Hadi Bux Chandio advocate for respondents No.8 and 10

Mr. Naseer Ahmed Panhwar advocate for respondent No.9

Mr. Ghazanfar Ali Abbasi, DS-III, Board of Revenue, Sindh

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**ORDER**

**Adnan-ul-Karim Memon, J.** Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following relief: -

- (a) *To declare that the impugned seniority list dated 15.01.2026 of Sub-Inspectors BS-14 in Anti-Encroachment force, Board of Revenue Sindh, as unlawful, without jurisdiction and in violation of Rule 12.2 of Police Rules 1934 and direct the Respondent No. 1 to prepare the final seniority list of Petitioners in accordance with Rule 12.2 of the Police Rules 1934.*
- (b) *To declare that the selection of 26 sub-inspectors BS-14 for upper course meant for further promotion to the post of Inspector as reflected in letter dated 06.01.2026, based on the impugned seniority list are equally unlawful and without jurisdiction.*
- (c) *To restrain the Respondent No.1 & 2, from exercising any power based on the impugned seniority list dated 01.01.2026 as well as suspend the operation of letter dated 06.01.2026 till disposal of the present Petition.*

2. The case of the petitioners is that they were duly appointed against permanent posts of Sub-Inspectors (BS-14) in the Anti-Encroachment Force, Board of Revenue, Sindh, after fulfilling the prescribed selection criteria pursuant to advertisement dated 18.01.2012. Their names were correctly reflected in the tentative seniority list dated 15.04.2025. It is submitted that the subsequent seniority list dated 01.01.2026 is unlawful, arbitrary, and without jurisdiction, as it has been prepared in violation of the governing law. It is urged that under Rule 10 of the Sindh Public Property (Removal of Encroachment) Rules, 2010, members of the Force are to be governed by the rules applicable to the Police Force; therefore, seniority must strictly be determined in accordance with Rule 12.2 of the Police Rules, 1934, which is based primarily on the date of first appointment. It is further submitted that the respondents have illegally relied upon the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which are

inapplicable, as the Petitioners are not civil servants but members of a statutory force governed by special rules. This misapplication of law renders the impugned seniority list void ab initio. They emphasized that even on merits, the impugned seniority list is defective, as it disregards the principle of date of appointment. For instance, Petitioner No. 1, appointed on 05.09.2012, has been placed below individuals appointed later, clearly violating Rule 12.2 of the Police Rules, 1934. It is also submitted that the seniority list lacks legal sanctity as it was not finalized by the competent authority after due application of mind; rather, it appears to have been approved mechanically without proper deliberation. The petitioners submit that the subsequent actions, including selection of 26 Sub-Inspectors for the Upper School Course vide letter dated 06.01.2026, being based on the impugned seniority list, are equally illegal and liable to be set aside.

3. Learned counsel for the petitioners submits that the Anti-Encroachment Force has been constituted under Sindh Act No. XVIII of 2010, which, except for limited provisions, does not prescribe comprehensive terms and conditions of service. It is submitted that under Rule 10 of the Sindh Public Property (Removal of Encroachment) Rules, 2010, members of the Force are to be governed by the rules applicable to the Police Force. It is contended that the impugned seniority list dated 01.01.2026 has been prepared by applying Rule 11(d) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, read with Rule 12.2 of the Police Rules, 1934. The learned counsel argues that the 1975 Rules, having been framed under the Sindh Civil Servants Act, 1973, are applicable exclusively to civil servants, whereas members of the Anti-Encroachment Force are statutory functionaries and do not fall within the definition of civil servants. Therefore, the preparation of the seniority list under the 1975 Rules is without lawful authority and in violation of Rule 10. It is further submitted that seniority is required to be determined strictly in accordance with Rule 12.2 of the Police Rules, 1934, on the basis of the date of first appointment, and in case of the same date, on the basis of age. It is contended that this principle has been disregarded, as petitioner No. 1, appointed on 05.09.2012, has been placed below an officer appointed on 05.11.2012, thereby rendering the impugned seniority list contrary to law. Learned counsel further submits that the impugned seniority list has not been prepared by the competent authority, namely the Director General of the Force, with due application of mind, and that mere mechanical approval does not constitute a valid exercise of statutory power. It is lastly submitted that, on the basis of the impugned seniority list, 26 Sub-Inspectors (BS-14) have been processed for the Upper School Course for promotion to the rank of Inspector vide letter dated 06.01.2026, which action is also liable to be declared unlawful as being consequential to an illegal seniority list.

4. Learned AAG, duly assisted by the counsel for the private respondents, submits that the petitioners' contentions are misconceived. It is argued that members of the Anti-Encroachment Force, constituted under Sindh Act No. XVIII of 2010, are public servants within the meaning of Section 24, and in the absence of comprehensive service rules, the competent authority has rightly applied the Police Rules, 1934, read with the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, for determination of seniority. It is contended that Rule 10 does not exclude the application of other relevant service rules, and the impugned seniority list dated 01.01.2026 has been prepared in accordance with established practice and with due administrative approval. It is further argued that placement in the upper school course vide letter dated 06.01.2026 does not confer any vested right to promotion. Learned AAG further submits that the petition is premature and not maintainable, as the petitioners have an adequate and alternate remedy available before the competent authority, including the Director General and the appropriate service forum, which has not been exhausted. It is thus prayed that the petition be dismissed.

5. However, after arguing the matter at some length both the parties agreed for disposal of the petition in terms that the competent authority shall take decision a fresh in accordance with law, so far as the seniority issue is concerned. Be that as it may we intend to decide the lis on merit as well.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. Based on the pleadings and rival contentions of the parties, the following questions for determination arise before this Court:

- i) *Whether the members of the Anti-Encroachment Force constituted under Sindh Act No. XVIII of 2010 are to be treated as civil servants, or as members of a statutory force governed by special rules?*
- ii) *Whether in view of Rule 10 of the Sindh Public Property (Removal of Encroachment) Rules, 2010, the seniority of Sub-Inspectors (BS-14) is required to be determined exclusively in accordance with Rule 12.2 of the Police Rules, 1934?*
- iii) *Whether the application of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, for preparation of the impugned seniority list dated 01.01.2026 is lawful and within jurisdiction?*
- iv) *Whether the impugned seniority list dated 01.01.2026 has been prepared in accordance with law, particularly the principle of seniority based on the date of first appointment (and age in case of same date), or suffers from illegality and arbitrariness?*
- v) *Whether the impugned seniority list has been finalized by the competent authority with due application of mind, or is liable to be set aside on account of lack of lawful exercise of authority?*

- vi) *Whether the selection/nomination of 26 Sub-Inspectors (BS-14) for the Upper School Course vide letter dated 06.01.2026, being consequential to the impugned seniority list, is sustainable in law?*
- vii) *Whether the present Constitutional Petition is maintainable under Article 199 of the Constitution, or is liable to be dismissed on the ground of availability of an adequate alternate remedy?*

8. Under the Sindh Public Property (Removal of Encroachment) Act, 2010, the Government is empowered to establish an Anti-Encroachment Force for the prevention and removal of encroachments from public property and for retrieval of possession. The Force comprises senior and junior ranks, including the Director General (Senior Member, Board of Revenue), Directors, Inspectors, Sub-Inspectors, and Constables, as notified by the Government. The superintendence of the Force vests in the Government, while the Director General exercises powers analogous to those of the Provincial Police Officer under the relevant law. The Force is entrusted with functions including lodging FIRs, conducting inquiries and investigations, prosecuting offences relating to encroachment, retrieving possession from encroachers, coordinating training of staff, and performing other functions assigned by the Government. For the purpose of inquiry and investigation, members of the Force are vested with powers similar to those of police officers, including powers of search, arrest, seizure, and registration of cases. Officers not below the rank of Inspector may act as officer-in-charge of a police station within their jurisdiction and may arrest without warrant in cases relating to encroachment, subject to legal safeguards. The Act further provides that members of the Force, while performing enforcement duties, shall wear prescribed uniforms and may seek assistance from the police, which is bound to provide such assistance. Officers of the Force are under a statutory duty to obey lawful orders, serve wherever required, and maintain discipline, with penalties prescribed for misconduct, negligence, or breach of duty. Importantly, all officers of the Force are deemed to be public servants within the meaning of the Pakistan Penal Code. The Government is also empowered to frame rules regulating the terms and conditions of service of the members of the Force, their recruitment qualifications, and their powers and functions.

9. Under the Sindh Public Property (Removal of Encroachment) Rules, 2010, framed under the Sindh Public Property (Removal of Encroachment) Act, 2010, the Government is empowered to regulate the functioning of the Anti-Encroachment Force and to carry out the purposes of the Act through delegated rule-making authority. The Force is constituted under the Act comprising senior and junior ranks and is tasked with removal of encroachments from public property, including conducting inquiries and investigations and taking necessary enforcement action. The Rules further provide that members of the Force shall exercise powers of inquiry and investigation under the Code of Criminal Procedure, 1898 and the Sindh Police Rules, 1988. They are also required to wear

prescribed uniform during all official duties, including court appearances, as notified and regulated by the Director General, who is also empowered to modify the uniform. In terms of service conditions, members of the Force are governed by rules applicable to the Police Force. The Rules additionally empower the Government to frame rules regarding functions, powers, and incentives or rewards for members of the Force for efficient performance of duties.

10. The Anti-Encroachment Force is a statutory force created under the Act of 2010, distinct from the general civil service structure. Although Section 24 declares its members as “public servants” for the purposes of the Penal Code, this by itself does not convert them into civil servants under the Sindh Civil Servants Act, 1973.

11. The scheme of the Act and Rules clearly shows that the Force is a specialized enforcement body, functioning with powers analogous to police officers, including investigation, arrest, and enforcement powers. Therefore, its employees are statutory functionaries governed by special law, not ordinary civil servants.

12. Rule 10 of the Sindh Public Property (Removal of Encroachment) Rules, 2010 expressly provides that members of the Force shall be governed by rules applicable to the Police Force. This creates a clear legislative intent of adopting Police Rules as the primary governing framework, including for service matters such as seniority. Accordingly the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, being applicable to civil servants under the 1973 Act, cannot automatically apply to members of the Force unless specifically incorporated. The governing framework for seniority is therefore Rule 12.2 of the Police Rules, 1934, which provides a settled mechanism based on date of first appointment; and age where appointment dates are identical.

13. The record shows that the impugned seniority list dated 01.01.2026 has been prepared by invoking both Police Rules and Civil Servants Rules, 1975. This hybrid application of two distinct legal regimes is legally impermissible, as the Force is not part of the civil service structure. The 1975 Rules cannot override or dilute Rule 10 of the 2010 Rules. Seniority must be determined under a single consistent legal framework. Furthermore, the admitted position that officers appointed earlier i.e. 05.09.2012 have been placed below later appointees on 05.11.2012 demonstrates prima facie deviation from Rule 12.2 of the Police Rules, 1934. However, the objection regarding “mechanical approval” by the competent authority requires cautious examination. Administrative approval per se does not vitiate a seniority list unless shown to be without lawful authority or contrary to statutory rules, which in this case has already been established to a limited extent.

14. The selection of 26 Sub-Inspectors for the Upper School Course vide letter dated 06.01.2026 is admittedly based on the impugned seniority list. It is a settled principle that “When the foundation is illegal, the superstructure built upon it cannot stand.” Therefore, if the seniority list is found defective, all consequential actions derived therefrom are also legally unsustainable, subject to correction of seniority.

15. The objection regarding alternate remedy is not sufficient to oust constitutional jurisdiction where the dispute involves interpretation of statutory rules. The issue pertains to jurisdictional error in application of law; and the impugned action has civil consequences affecting service rights and promotion prospects. Therefore, the petition is maintainable.

16. In view of the above, we are of the view that the Force is a statutory force, not civil service, though its members are public servants for penal purposes. Seniority is to be governed by Rule 10 of 2010 Rules read with Rule 12.2 of Police Rules, 1934, not the 1975 Rules. Application of Civil Servants Rules, 1975 is not lawful in the present context. The impugned seniority list is not fully in accordance with Rule 12.2, hence requires reconsideration. The approval process requires re-verification by competent authority with proper application of mind under correct legal framework. The Upper Course selection is consequential and cannot sustain independently if seniority is corrected.

17. In view of the above findings, instead of striking down the entire process in a disruptive manner, this Court deems it appropriate to issue a corrective direction rather than annulment, in the interest of administrative continuity. It is therefore recommended and directed that the competent authority Director General, Anti-Encroachment Force / Board of Revenue shall revisit and reframe the seniority list strictly in accordance with Rule 10 of the 2010 Rules, and Rule 12.2 of the Police Rules, 1934. Such exercise shall be completed after hearing all affected officials and ensuring transparency. Upon finalization of corrected seniority, consequential matters including the Upper School Course selection shall be re-evaluated accordingly, within three weeks’ time.

18. For the foregoing reasons, the petition along with pending application(s) is disposed of in the above terms with directions for reconsideration of seniority in accordance with law, rather than outright invalidation of the entire administrative process. Meanwhile, the issue of uniform of the force as well as the service related issues shall also be firmly decided once for all by the competent authority. The aforesaid exercise shall be undertaken within three months’ time accordingly.

JUDGE

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