

HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P No.D-140 of 2025

[Ashfaq Ali
Vs.
District & Sessions Judge and 02 others]

Present:

Mr. Justice Arbab Ali Hakro,
Mr. Justice Abdul Hamid Bhurgri,

Petitioner : Ashfaq Ali s/o Roshan Ali Khoso,
through Mr. Muhammad Ali Pirzado,
Advocate. Nemo.

Respondents by : Mr. Liaquat Ali Shar, Additional
Advocate, General

Dates of hearing & decision : **27.10.2025**

ORDER

ARBAB ALI HAKRO, J.- Through, this Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner Ashfaq Ali Khoso, challenges the issuance of a final show-cause notice dated 11.02.2025, issued by Respondent No.1, the District & Sessions Judge, Kamber-Shahdadkot at Kamber, in connection with disciplinary proceedings initiated against him for allegedly securing his initial appointment in the year, 2012 based on forged Domicile and Permanent Residence Certificates.

2. On the last date of hearing, the following Order was passed:

“Mr. Abdul Qudoos, Advocate, holds brief for Mr. Muhammad Ali Pirzado, learned counsel for the petitioner and submits that the latter is presently out of station.

Learned A.A.G. submits that the petitioner, an employee of the District Judiciary, has been served with a final show-cause notice

dated 11.02.2025 by respondent No.1, the District & Sessions Judge, Kambar-Shahdadkot, in connection with disciplinary proceedings initiated against him. He further contends that the instant petition is not maintainable in its present form, inter alia, due to non-joinder of the Registrar, High Court of Sindh, who is a necessary party in view of the administrative control exercised by the High Court over judicial officers.

We note that the maintainability of a constitutional petition challenging the initiation of disciplinary proceedings, particularly at the show-cause stage, requires satisfaction of the threshold under Article 199 of the Constitution, including the availability of alternate remedies, ripeness of cause and presence of necessary parties. The petitioner must demonstrate that the impugned action is patently without jurisdiction, mala fide, or in violation of the principles of natural justice, warranting interference at a pre-decisional stage.

*As a matter of indulgence, the hearing is adjourned to **27.10.2025 at 11:00 a.m.** Learned counsel for the petitioner is put on notice to satisfy the Court on the maintainability of the petition, including but not limited to: whether the petition is premature in view of the pendency of disciplinary proceedings; whether the Registrar, High Court of Sindh, ought to have been impleaded as a necessary party and whether the petitioner has availed or exhausted any departmental remedies available under the relevant service rules.*

It is further ordered that in case of non-appearance of the petitioner or his counsel on the next date of hearing, appropriate orders shall be passed in accordance with law.”

3. Today, neither the petitioner nor his counsel appeared. No intimation has been received. We, therefore, proceed to decide the matter on merits, having perused the record and heard the learned Additional Advocate General, Sindh.

4. The threshold question is whether the instant petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is maintainable at this juncture, when the disciplinary proceedings initiated against the petitioner are still inchoate and the competent authority has passed no final adverse order.

5. It is trite law, fortified by a consistent line of judicial pronouncements, that constitutional jurisdiction under Article 199 is not to be invoked in a manner that pre-empts or disrupts the ordinary course of departmental proceedings, particularly when the impugned action is merely preparatory or interlocutory in nature. The writ

jurisdiction is not designed to supplant the statutory framework of service discipline, nor to interdict administrative processes at their incipient stage, unless the petitioner demonstrates that the action complained of is palpably without jurisdiction, actuated by mala fides or in flagrant violation of the principles of natural justice.

6. In this regard, the Supreme Court of Pakistan, in its Order dated 21.07.2020, passed in *Suo Moto Case No. 01/2020*, has laid down a salutary principle of restraint, observing that judicial interference at a pre-decisional stage, particularly in matters involving allegations of misconduct or administrative irregularity tends to stall the disciplinary process, frustrate institutional accountability and undermine the integrity of internal governance mechanisms. The apex Court cautioned against micromanaging departmental inquiries by constitutional courts, emphasizing that such interference should be reserved for cases where the impugned action is demonstrably *ultra vires* or the inquiry is a mere façade for victimisation.

7. A show-cause notice, whether initial or final, is not amenable to writ jurisdiction unless it is shown to be a nullity in law. The issuance of a show-cause notice is a procedural step intended to afford the employee an opportunity to explain his conduct and does not by itself constitute an adverse determination of rights.

8. In the present case, the petitioner has been served with a final show-cause notice dated 11.02.2025, which merely calls upon him to respond to specific allegations concerning the authenticity of his Domicile and Permanent Residence Certificates submitted at the time of initial appointment. It is not a dismissal order, nor does it impose any penalty. The petitioner has been afforded a full opportunity to submit

his reply, and the matter is pending before the competent authority for adjudication in accordance with law. No material has been placed on record to suggest that the inquiry is being conducted in violation of the principles of natural justice. The petitioner has not alleged denial of hearing, bias, or procedural impropriety. He has not demonstrated that the District & Sessions Judge, Kamber-Shahdadkot, lacks jurisdiction to initiate disciplinary proceedings against ministerial staff under his administrative control. In the absence of such infirmities, invoking constitutional jurisdiction is premature and unwarranted.

9. It is well-settled that the constitutional courts do not sit as appellate forums over departmental inquiries. The petitioner must exhaust the remedies available under the service rules, including the right to reply, personal hearing and appeal, if and when an adverse order is passed. Premature judicial intervention undermines the disciplinary framework and sets a deleterious precedent for circumventing lawful accountability. Accordingly, we are constrained to hold that the instant petition, being directed against a mere show-cause notice and filed at a stage when no final determination has been made, fails to meet the threshold of maintainability under Article 199 of the Constitution.

10. The petitioner has urged that the disciplinary proceedings initiated against him in the year 2025, on the premise that a prior show-cause notice issued in the year 2014, based on identical allegations concerning the authenticity of his Domicile and Permanent Residence Certificates, was disposed of by the then District & Sessions Judge, Larkana, with the remark “**Heard. Excused.**” This claim, however, is fundamentally misconceived and legally untenable.

11. The doctrine of *functus officio* elucidated by the Supreme Court of Pakistan in ***Kh. Muhammad Fazil v. Mumtaz Munnawar Khan Niazi (deceased) through L.Rs. and another*** (2024 SCMR 1059), applies only where a judicial or quasi-judicial authority has conclusively adjudicated a matter, having exercised its jurisdiction to the fullest extent and passed a reasoned, speaking order after affording due process. Once such adjudication is complete, the authority becomes *functus officio*, i.e., it ceases to possess further competence to alter, revisit, or re-adjudicate the matter, save for clerical or arithmetical corrections.

12. In the present case, the record reveals that in the year, 2014 show-cause notice was disposed of with a cryptic administrative notation: **“Heard. Excused.”** This remark, devoid of any findings, reasoning, or reference to the applicable service rules, does not constitute a formal adjudication under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. No inquiry was conducted, no evidence was recorded, and no speaking order was passed. The closure was administrative in nature, not judicial or quasi-judicial. It did not culminate in determining rights or liabilities or preclude future proceedings.

13. It is well-settled that administrative remarks, howsoever final they may appear, do not attract the doctrine of *functus officio* unless they are the product of a structured adjudicatory process. Furthermore, Section 21 of the General Clauses Act, 1897, provides a statutory basis for revisiting prior administrative orders. It stipulates that the power to issue orders includes the power to amend, vary, or rescind them, provided such exercise is undertaken in the same manner and

subject to the same conditions as the original Order. This provision empowers the competent authority to reopen a matter where new and credible evidence emerges, especially in fraud or misrepresentation cases.

14. In the present case, the verification report dated 15.01.2025, issued by the Deputy Commissioner, Kashmore @ Kandhkot, reaffirms that the said office never issued the 2012 Domicile and PRC, which are bogus. This report not only corroborates the earlier 2014 verification but also constitutes fresh and material evidence that was never adjudicated upon in any formal manner. The emergence of such evidence not only justifies but necessitates a fresh inquiry to uphold the integrity of public service and institutional accountability.

15. It is also pertinent to note that the office of the District & Sessions Judge is a continuing administrative authority. The change in incumbents does not extinguish the jurisdiction of the office. The doctrine of *functus officio* attaches to the act, not the office. Since no formal adjudication was made in the year 2014, the office retains jurisdiction to inquire into misconduct, especially when supported by verified documentary evidence.

16. In view of the foregoing, the doctrine of *functus officio* is misplaced. The Order passed in the year 2014, as “**Heard. Excused.**” was not a final adjudication under law. The competent authority is not barred from initiating a fresh inquiry, particularly in light of verified and un rebutted evidence of fraud. The present disciplinary proceedings are a lawful exercise of jurisdiction and are not vitiated by any legal infirmity.

17. The learned A.A.G. has objected to the non-joinder of the Registrar, High Court of Sindh, as a necessary party. It was contended that in view of the administrative control exercised by the High Court over the subordinate judiciary, the Registrar ought to have been impleaded. The impugned disciplinary proceedings, including the issuance of the final show-cause notice dated 11.02.2025, have been initiated by Respondent No.1, the District & Sessions Judge, Kamber-Shahdadkot, in his capacity as the competent disciplinary authority over ministerial staff posted within his judicial establishment. The Sindh Judicial Service Rules and the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, vest the District Judge with administrative and disciplinary jurisdiction over non-gazetted employees such as Junior Clerks. The Registrar, High Court of Sindh, does not exercise supervisory control over individual disciplinary proceedings unless the High Court itself has issued a directive, endorsed the action, or passed a final order.

18. In the present case, there is no allegation nor any material on record to suggest that the Registrar was involved in issuing the show-cause notice, the framing of charges, or the conduct of the inquiry. The District Judge has initiated and conducted the entire disciplinary process in his own administrative capacity. Therefore, the Registrar is neither a necessary nor a proper party to the proceedings. The High Court, as a constitutional entity, cannot ordinarily be impleaded in its own writ jurisdiction under Article 199. The judicial and administrative wings of the High Court are distinct in function, and unless the administrative wing has played a direct role in the impugned action, its joinder is not required. Accordingly, the objection regarding non-joinder

of the Registrar is untenable and does not affect the maintainability of the petition.

19. The petitioner has placed considerable reliance upon his participation in the departmental examination held in 2014 and his continued service for over a decade as evidence of competence and good conduct. It is urged that these factors demonstrate his bona fides and entitle him to protection against retrospective scrutiny of his appointment. While the petitioner's performance and tenure may be commendable in isolation, they do not cure the foundational illegality of securing public employment through fraud. The law is unequivocal: no right vests in a person who enters public service by deceit, misrepresentation, or submission of forged documents. The sanctity of public appointments demands that the entry be lawful, regular, and verifiable. If the foundation is void, the superstructure cannot be sustained.

20. The petitioner's participation in departmental examinations and his unblemished service record may be relevant for assessing penalty, but they do not preclude inquiry into the legality of his initial appointment. The disciplinary authority is well within its jurisdiction to examine whether the petitioner's entry into service was tainted by fraud, and if so, to take appropriate action under the law.

21. In view of the foregoing, the petition being premature, misconceived, legally deficient and factually unsubstantiated is **dismissed** along with pending miscellaneous applications. The competent authority shall proceed with the disciplinary inquiry strictly in accordance with the law, ensuring due process and affording the petitioner a fair defence opportunity. However, it is clarified that

respondent No.1 shall not be swayed or influenced by any observation contained in this order.

22. Let a copy of this Order be sent to the learned District & Sessions Judge, Kamber-Shahdadt, for compliance and to the Petitioner and his Counsel for information.

JUDGE

JUDGE

Qazi Tahir PA/*