

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No. D- 1640 of 2024

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri

Petitioner : Syed Muhammad Ali Shah in person

Respondents : Province of Sindh through Chief Secretary
Government of Sindh, Karachi and others
through Mr. Ali Raza Baloch, Additional
Advocate General Sindh

Respondent No.3 : Dr. Ali Gul Shah present in person

Date of Hearing : 25.11.2025

Date of Order : 09.12.2025

ORDER

Abdul Hamid Bhurgri, J- The petitioner has approached this Court seeking a writ of quo warranto in respect of Respondent No.3, asserting that the post of District Health Officer (DHO) is a BPS-20 position under the relevant service rules, whereas Respondent No.3 substantively holds the rank of BPS-19 and stands at Serial No.53 in the seniority list dated 24.10.2023. It is contended that, given his seniority position, there is no immediate likelihood of his promotion to BPS-20, and therefore his posting as DHO, Sukkur, is contrary to law. It is further alleged that such posting amounts to an Own Pay Scale (OPS) appointment, a practice deprecated by the superior courts, particularly in Khan Muhammad v. Chief Secretary Balochistan (2018 SCMR 1411).

2. The Secretary, Health Department (Respondent No.2) has filed comments controverting the stance of the petitioner. It is submitted that the Provincial Cabinet, upon consideration of administrative requirements and service structure constraints, approved the reclassification of the posts of District Health Officer as floating posts (BPS-19/20), which decision stands formally notified

through Notification dated 11.04.2022. In terms of the said notification, officers in BPS-19 as well as BPS-20 are eligible for posting against such positions. It is, therefore, contended that the posting of Respondent No.3 is neither an OPS arrangement nor contrary to any rule or policy. Significantly, the petitioner has not assailed the validity of the aforementioned notification.

3. Learned counsel for the petitioner reiterates that the said notification does not cure the illegality, and that Respondent No.3 remains ineligible to hold a BPS-20 post. It is argued that permitting a BPS-19 officer to occupy a higher post undermines the principle of merit and violates the ratio laid down in Khan Muhammad (supra). On this premise, issuance of a writ of quo warranto is sought.

4. We have heard the petitioner in person as well as the learned Additional Advocate General Sindh and have perused the material available on record. The undisputed position is that, by virtue of Notification dated 11.04.2022, the Government of Sindh has formally reclassified the post of District Health Officer as a floating post capable of being held by officers of BPS-19 or BPS-20. The said notification continues to hold the field. No challenge to its legality, competence, vires, or underlying rationale has been raised before us. In the absence of such challenge, the Court must proceed on the premise that the restructuring of the post and the revised eligibility criteria stand validly notified.

5. Once the post is reclassified in this manner, the eligibility of an officer holding BPS-19 to be posted against the same flows directly from the policy decision of the competent authority. The appointment of Respondent No.3 is, therefore, traceable to a lawful source of authority. The reliance placed by the petitioner upon Khan Muhammad (2018 SCMR 1411) is misconceived, as that judgment concerns OPS and ad hoc arrangements dehors the rules. The present appointment is not an OPS posting but one founded squarely on a subsisting notification authorizing the placement of BPS-19 officers against floating posts.

6. It is well-settled that a writ of quo warranto issues only where an appointment to a public office is shown to be patently illegal, void, or made in derogation of an express statutory mandate. The jurisdiction is supervisory in nature and does not extend to examining suitability, seniority, comparative merit, or administrative preferences among eligible officers. Unless the petitioner demonstrates a clear and unambiguous statutory violation, the Court will not exercise this extraordinary jurisdiction. The petitioner has neither pointed to any statutory bar that would render Respondent No.3 ineligible nor placed on record any material indicative of mala fide or colourable exercise of authority.

7. The scope of quo warranto being limited, and the appointment of Respondent No.3 being supported by a validly notified policy and made by the competent authority within its administrative domain, no case of usurpation of public office is made out. The prerequisites for issuance of a writ of quo warranto are thus wholly absent.

8. In the case of *Ghulam Shabir v. Muhammad Munir Abbasi and others* reported in (PLD 2011 SC 516), the apex court has held as under:-

“Insofar as maintainability of the Petition is concerned it would be seen that per settled law a writ of quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the Court in granting or refusing the same and each aspect of the case is to be considered. There is also no cavil with the argument that in such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the Court with ulterior motive, mala fide intention etc. relief can be declined.”

9. For the foregoing reasons, and in view of the legal position discussed hereinabove, the petition is found to be devoid of merit and is accordingly dismissed.

Judge

Judge