

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Date

Order with Signature of Judge

PRESENT:

**MR. JUSTICE ADNAN-UL-KARIM MEMON, J.
MR. JUSTICE ZULFIQAR ALI SANGI, J.**

C.P.No.D-769 of 2023

[Afzal Hussain Baloch Vs Province of Sindh and others]

Date of hearing : 03.03.2026

Date of order : 03.03.2026

Mr. Muhammad Arshad Khan Tanoli, Advocate for the petitioner.
Mr. Ayan Mustafa Memon, Advocate for the Respondent Nos.2, 3 and 4.
Mr. Talha Abbasi, Advocate for Respondent Nos.6 and 8.
Mr. Azain Memon, Advocate for Respondent Nos.7 and 10
Mr. Ali Safdar Depar, AAG.

ORDER

ZULFIQAR ALI SANGI, J:- Through this petition filed under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner, a journalist by profession, has invoked the constitutional jurisdiction of this Court in the nature of a writ of quo warranto, questioning the legality of appointments of Respondents No.6 to 11 in the National Institute of Cardiovascular Diseases (*hereinafter referred to as "NICVD"*), a statutory body established under the National Institute of Cardiovascular Diseases (Sindh Administration) Act, 2014.

2. The principal allegation of the Petitioner is that Respondents No.6 to 11 are holding public offices without lawful authority, as their appointments were allegedly made in violation of the advertised criteria and statutory requirements, and that such irregularities are reflected in the Annual Audit Inspection Report for the financial year 2020–21 issued by the Director General Audit, Sindh. The case of the Petitioner, in summary, is that the NICVD is a public sector institution, and its affairs are regulated by statute. Under Section 7 of the Act of 2014, the general direction and administration vest in the Governing Body, which is empowered to appoint officers in BPS-18 and above. An advertisement dated 08.06.2016 was published in the daily newspaper Dawn inviting applications for various posts including

Head of Internal Audit (BPS-18), Head of Human Resources (BPS-18), Head of Stores (BPS-18), Manager OPD Services, Assistant Manager Procurement and Manager Corporate Services. The Respondents No.6 to 11 were appointed against the said posts; however, according to the Petitioner, they did not possess the requisite qualifications and experience prescribed in the advertisement. The Petitioner has relied heavily upon certain Proposed Draft Paras (PDPs) forming part of the Annual Audit Inspection Report 2020–21, dated 04.03.2022, wherein it was observed that the appointments suffered from irregularities, including non-fulfillment of eligibility criteria, lack of verification of credentials, grant of excessive salary packages, and promotions without advertisement. It is contended that these appointments constitute misuse of authority, favoritism and nepotism, resulting in loss to the public exchequer, and therefore this Court, in exercise of jurisdiction in quo warranto, may declare the appointments void ab initio.

3. After the notices the Respondent No.2 (NICVD), as well as Respondents No.6, 7, 8 and 10 (and similarly placed Respondents), have filed their detailed counter-affidavits. The principal objections raised by them are that the appointments were made in the year 2016–2018, whereas the petition was filed after lapse of more than five to seven years. During this period, the respondents completed probation and their services were confirmed therefore the petition is hit by laches. They in their counter affidavits stated that the document relied upon by the Petitioner is not a final audit report but merely Proposed Draft Paras (PDPs). It is clarified through letter dated 05.08.2022 issued by the Office of the Director General Audit, Sindh, that the observations were at a preliminary stage, subject to consideration by the Departmental Accounts Committee (DAC), and had not attained finality nor been placed before the Public Accounts Committee. It is further asserted that all appointments were made after public advertisement, scrutiny, shortlisting, and interviews by duly constituted Selection Committees, and that the appointees possessed the requisite qualifications and experience. In certain cases, age relaxation was granted in accordance with applicable Government notifications and Governing Body resolutions. It is also contended that a writ of quo warranto lies only where a person is holding a public office without lawful authority, i.e., in clear violation of statutory

provisions. Alleged factual disputes regarding comparative merit, salary packages, or adequacy of experience cannot be adjudicated in such proceedings. It is further contended that no reference or proceedings have been initiated by the National Accountability Bureau in respect of the impugned appointments.

4. Counsel for the petitioner argued that present petition is maintainable under Article 199(1)(b)(ii) of the Constitution, being in the nature of a writ of *quo warranto*, whereby this Hon'ble Court is competent to examine whether Respondents No. 6 to 11 are lawfully holding public offices in a statutory body. The National Institute of Cardiovascular Diseases (NICVD) is a statutory body created under the National Institute of Cardiovascular Diseases (Sindh Administration) Act, 2014. It performs public functions, is funded by public exchequer, and its employees hold public offices. Therefore, appointments therein must strictly conform to statutory provisions and constitutional mandates. It is contended that in proceedings of *quo warranto*, the question of delay or personal locus is immaterial, as the Court acts to protect public interest and ensure that public offices are not usurped unlawfully. Counsel submits that the advertisement dated 08.06.2016 clearly prescribed mandatory qualifications and experience for the posts in question. However, the Respondent No. 6 (Head of Internal Audit, BPS-18) allegedly lacked CA (Intermediate) qualification and possessed only CA (Foundation). He was allegedly granted an excessive salary package and promoted to BPS-19 during probation without advertisement. Respondent No. 7 (Head of HR) was allegedly overage and lacked requisite post-qualification experience. Respondent No. 8 was elevated from BPS-17 to BPS-18 within six months without lawful justification. Respondent No. 9 lacked the required Master's degree. Respondent No. 10 allegedly did not possess the prescribed MBA qualification and the Respondent No. 11 allegedly lacked the required Master's degree and proper verification of credentials. It is argued that these appointments were made in disregard of statutory rules and advertised criteria, rendering them void ab initio. The counsel for the Petitioner relies upon the Annual Audit Inspection Report (2020-21) issued by the Director General Audit, Sindh, dated 04.03.2022, which observed non-fulfillment of mandatory qualifications, noted absence of verification of credentials, Highlighted irregular promotions and recommended termination, recovery of salaries, and fresh recruitment

through transparent process. It is further argued that even if styled as Proposed Draft Paras, the observations reveal glaring illegality and misuse of authority that cannot be ignored by this Court. Counsel argues that the impugned appointments offend Articles 4, 9, 10-A, 25 and 27 of the Constitution, which guarantee Equality before law, Due process, Non-discrimination in service matters and Fair and transparent recruitment in public employment. It is further argued that the Supreme Court has repeatedly held that public appointments must be made strictly on merit and in accordance with law; deviation renders them void. It is argued that unlawful appointments and inflated salary packages have caused financial loss to public funds. The Court, in exercise of constitutional jurisdiction, is duty-bound to prevent perpetuation of illegality and protect public interest. The counsel for the Petitioner submits that given allegations of irregularities and reported investigations, direction to the concerned accountability authority is justified to ensure transparency and fixation of responsibility.

5. Learned counsel for Respondents No. 2 and 6–11 and learned AAG Sindh controvert the petition and argued that Respondents were appointed between 2016–2018. They have completed probation and their appointments stand confirmed. The petition was filed after 5–7 years of service. Such gross and unexplained delay renders the petition liable to dismissal on the doctrine of laches. Even in quo warranto, extraordinary delay may disentitle relief. Counsel for the Respondents submit that the Petitioner has relied upon Proposed Draft Paras (PDPs), which are preliminary working papers, have not been finalized, are subject to Departmental Accounts Committee (DAC) deliberations and do not include departmental replies. It is argued that no adverse inference can be drawn from an incomplete and leaked internal document. Only the finalized Audit Report, after due process, attains legal sanctity. It is further contended that access to confidential audit correspondence suggests that the Petitioner is acting at the behest of undisclosed vested interests within the institution, thereby lacking bona fides. It is argued that the Petitioner has not specifically impugned the individual offer letters of Respondents No. 6–11. In absence of direct challenge to foundational appointment orders, the writ is not maintainable. In light of the National Accountability (Amendment) Act, 2023, the prayer seeking direction to NAB is stated

to be misconceived and beyond jurisdiction. Counsel for the Respondents assert that all posts were publicly advertised. Shortlisting and interviews were conducted. Selection Committees evaluated candidates. Governing Body approved appointments. And services were confirmed after probation. Thus, appointments were made strictly in accordance with law. It is argued that the Respondent No. 6 possesses over 27 years' audit experience and international certifications (CISA, CRISC). His salary was approved by the Governing Body. The Respondent No. 7 fulfilled experience requirements; age relaxation was lawfully granted under Government notification. The Respondent No. 8 was appointed after competitive process and promoted through Departmental Promotion Committee. The Respondent No. 9 has resigned; petition against him is infructuous. The Respondent No. 10 possessed over 13 years' procurement experience; MBA was not mandatory in view of alternative criteria and the Respondent No. 11 was appointed in BPS-16 (not BPS-17 as alleged) and possessed requisite experience. It is argued that in *quo warranto*, the Court only examines as to whether the office is public; Whether it is created by statute and whether the incumbent fulfills statutory eligibility. The Court does not sit in appeal over comparative merit, salary fixation, or administrative wisdom. Respondent's counsel further submit that the Petitioner has not demonstrated violation of any mandatory statutory provision; Allegations are based on disputed facts requiring evidence; Such controversy cannot be adjudicated in writ jurisdiction. They prayed that the petition may be dismissed with cost.

6. We have heard the learned counsel for the respective parties at length and, with their valuable assistance, have carefully examined and perused the material available on the record.

7. The expression *quo warranto* is derived from Latin, signifying **“by what authority.”** Historically, it originated in English common law as a prerogative writ issued by the Crown to inquire into the authority under which a person claimed or usurped a public office, franchise, or liberty. In constitutional jurisprudence, a writ of *quo warranto* is invoked to restrain the unlawful assumption or usurpation of a public office. It vests constitutional courts with the jurisdiction to scrutinize the legality of a person's claim to a public office and, where

such appointment is found to be contrary to law, to declare the office vacant by ousting the incumbent therefrom. Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 expressly empowers the High Court to pass an order **“requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office.”** The constitutional scheme thus explicitly recognizes the writ of *quo warranto* as a mechanism to ensure transparency, legality, and adherence to statutory mandates in appointments to public offices, and as a safeguard against unauthorized occupation thereof. The writ of *quo warranto* serves as an instrument of judicial review whereby the Court examines the legitimacy of a person’s entitlement to hold a public office. The term literally connotes an inquiry into the authority under which such office is claimed. It operates as an efficacious remedy to prevent individuals who lack the requisite qualifications or legal sanction from occupying public offices. There exists no statutory bar restricting who may invoke this jurisdiction; any person, acting in public interest, may maintain such proceedings. Nonetheless, it is well settled that the issuance of this writ lies within the discretionary jurisdiction of the Court, and no litigant can assert it as a matter of right.

8. From the pleadings and submissions advanced in the instant matter, the following questions arise for determination:

(i) Whether the present petition is maintainable in view of delay and laches?

(ii) Whether reliance upon Proposed Draft Audit Paras is sufficient to sustain a writ of quo warranto? And

(iii) Whether Respondents No.6 to 11 are holding public offices without lawful authority?

9. It is an admitted position that Respondents No.6 to 11 were appointed during the period 2016 to 2018. The petition has been instituted after a substantial lapse of time, by which stage the appointees had not only completed their probationary period but had also been confirmed in service. Although in proceedings seeking a writ of *quo warranto* the rules relating to locus standi and limitation are not applied with technical rigidity, unexplained delay remains a relevant and material consideration particularly where rights have

crystallized and the incumbents have continuously served for several years. The Petitioner has failed to furnish any plausible or satisfactory explanation for invoking the constitutional jurisdiction of this Court at such a belated stage.

10. The entire edifice of the petition rests upon Proposed Draft Paras forming part of an Audit Inspection Report. The material available on record, including correspondence issued by the Office of the Director General Audit, Sindh, reflects that the observations were at the stage of Proposed Draft Paras; the Departmental Accounts Committee had yet to deliberate thereupon; the audit process had not attained finality; and no finalized Audit Report incorporating such objections had been placed before the competent forum. These Proposed Draft Paras are merely preliminary observations, subject to response, scrutiny, verification, and adjudication within the statutory audit framework. Such tentative and unverified observations cannot, in themselves, constitute conclusive proof of illegality so as to invalidate appointments through constitutional jurisdiction.

11. The respondents have placed on record their respective qualifications, experience certificates, and approvals of the competent governing body. The allegations of the Petitioner regarding lack of prescribed qualification, overage, or insufficiency of experience have been categorically denied. These assertions give rise to disputed questions of fact requiring detailed evidentiary examination, which cannot appropriately be undertaken in summary proceedings under Article 199 of the Constitution, particularly in a petition seeking issuance of a writ of quo warranto. The record does not disclose any patent statutory prohibition or express violation of mandatory provisions of the law in the making of the impugned appointments.

12. The Petitioner has further sought a direction to the Director General, NAB Karachi, to initiate an inquiry. It is well-settled that constitutional jurisdiction cannot ordinarily be invoked to command an investigative agency to commence proceedings in the absence of a cognizable and established illegality. Such agencies are governed strictly by their respective statutes and cannot be directed to assume jurisdiction beyond the scope thereof.

13. Upon a careful appraisal of the pleadings and the material placed on record, this Court is of the considered view that: the petition is predicated upon preliminary and unverified audit observations which have not attained finality; no clear contravention of the statutory provisions governing the appointments has been demonstrated; the appointments were made pursuant to public advertisement and through a duly constituted selection process; the petition is afflicted by unexplained delay; and the scope of a writ of quo warranto does not extend to adjudication of disputed factual controversies or re-evaluation of administrative discretion. Consequently, the Petitioner has failed to establish that Respondents No.6 to 11 are holding their respective offices without lawful authority.

14. For the foregoing reasons, this Constitutional Petition is hereby *dismissed*. It is, however, clarified that the statutory audit mechanism shall proceed strictly in accordance with law, and any competent forum may independently examine the audit observations on their own merits, uninfluenced by the dismissal of the present petition.

JUDGE

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