

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No.D-160 of 2023

**Riaz Ahmed Jokhio**

Petitioner: Through Mr. Ghulam Mustafa Kolachi, advocate

Respondents: Mr. Ali Safdar Depar, Assistant Advocate General  
Mr. Yasir Ahmed Shah, Assistant Attorney General

Date of hearing  
& Decision: 10.03.2023.

### **ORDER**

Through this writ of quo warranto, the petitioner- Riaz Ahmed Jokhio is seeking the declaration to the effect that the retrospective transfer from one cadre to another cadre and subsequent benefits of absorption of the posts in favor of private respondents, in the office of the Accountant General Sindh, is illegal, and in violation of principles of natural justice, therefore, liable to be struck down in terms of the dicta laid down by the Hon'ble Supreme Court of Pakistan in cases reported as **2013 SCMR 1752** and **2015 SCMR 456**.

2. We asked the learned counsel to satisfy this court about the maintainability of this petition under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973. He submitted that the basic purpose of issuance of the writ of quo warranto is to settle the legality of the holder of a statutory or constitutional office and this court has to decide whether private respondents were/are holding such public office under law or against the law, therefore, the writ of quo warranto can be instituted by the petitioner though he may not be a directly aggrieved person. He further submitted that to maintain a writ of quo warranto there is no requirement of an aggrieved person and a whistleblower can come forward to appraise the factual position to this court and this court has to take cognizance if the holder of public office is illegally occupying the public office as such this petition is maintainable.

3. On merits, he submitted that the initial appointment of private respondents is fake, besides they are non-cadre employees of the Education and Literacy Department and subsequently absorbed in the office of Accountant General Sindh, which act was/is illegal and violative of the dictum laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid cases. He prayed for a

direction to respondents No.1 to 3 to repatriate to their parent department in terms of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch 2015 SCMR 456.

4. We have been informed that the private respondents have been served vide bailiff report dated 20.01.2023, however, they have chosen to remain absent.

5. We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the record with his assistance.

6. Since the issue relates to the initial appointment of the private respondents and their subsequent absorption in the office of Accountant General of Sindh, based on the alleged inherent disqualification to hold the aforesaid posts and the petitioner has to substantiate through cogent material to invoke the jurisdiction of this court under Article 199 (1)(b)(ii) of the Constitution. Petitioner has also raised ancillary issues of fake appointment of the private respondents which could only be threshed out by the competent authority of the respondents; and, we at this juncture are not in a position to say for and against the initial appointment of the private respondents, therefore, without touching the merits of the case, leave the petitioner to approach the competent authority of the respondents, for redressal of his grievances for the simple reason that the issue of eligibility of the private respondents to hold the posts is to be looked by the competent authority first and if the decision goes against the petitioner he is at liberty to call in question vires of the order before the appropriate forum. On the aforesaid proposition, we are guided by the decision rendered by the Hon'ble Supreme Court of Pakistan in the aforesaid cases.

7. This petition stands disposed of together with the listed application, in the above terms.

Let a copy of this order be transmitted to the Secretary, Education and Literacy Department, Government of Sindh and Accountant General Sindh for their perusal and appropriate action under the law after providing the opportunity of hearing to all concerned.

**JUDGE**

**JUDGE**