

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Constitutional Petition No. D - 180 of 2023

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on M.A. No.928/2023.
3. For orders on M. A. No.745/2023.
4. For hearing of M.A. No.929/2023.
5. For hearing of Main Case.

Petitioner : Muhammad Umer s/o Abdul Ghani,
through Mr. Ashfaq Hussain Abro Advocate

Respondents : (1) The Secretary Local Government, Karachi
(2) Director-I, Local Government, Board Karachi
(3) Regional Director Local Government, Larkana
(4) Deputy Commissioner, Kashmore at Kandhkot
(5) Chief Officer District Council Kashmore at Kandhot
(6) Sadiq Ali Laghari, Administrator District Council,
Kashmore
(7) Province of Sindh, through Chief Secretary Sindh,
Karachi

Mr. Zulfiqar Ali Domki, advocate for respondent No.4.

Mr. Habibullah G. Ghouri, advocate for respondent No.6.

Mr. Abdul Hamid Bhurgri, Addl. Advocate General Sindh.

Date of hearing : 17.05.2023.

Date of decision : 24.05.2023.

ORDER

ARBAB ALI HAKRO, J.- Through instant petition which is filed under Article 199(1)(b)(ii) of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has challenged Notification No.SLGD/SLGB/SECY/2023/072, dated 02.3.2023 ("**impugned Notification**") issued by the

Government of Sindh, Local Government Department (Sindh Local Government Board), whereby respondent No.6/Mr. Sadique Ali Laghari (BPS-18/Council Employee) has been appointed as Administrator, District Council Kashmore at Kandhkot, subject to verification of his service profile, relieving Deputy Commissioner, Kashmore at Kandhkot / respondent No.4 from the additional assignment.

2. Following the notice, Respondent Nos. 1, 2, 5, and 6 provided individualized comments in Opposition to the requested writ.

3. Learned counsel for the Petitioner submitted that through a general Notification dated 30.8.2022, the Deputy Commissioners of all Districts except Karachi had been appointed as Administrators of District Councils; that all of the sudden impugned Notification has been issued by respondent No.2 by which respondent No.6 has been given the Charge of Administrator District Council Kashmore at Kandhkot, which the Petitioner has challenged through the writ of Quo Warranto; that service file of respondent No.6 is shaky, therefore, in the impugned Notification his appointment as Administrator, District Council is subject to his verification of service profile; that the employee/ respondent No.6, whose service file is not stable has been given such important post, without the approval of concerned Secretary, thus it is against the provision of Sindh Local Government Act, 2013("the Act, 2013"), as respondent No.2 was not competent to issue impugned Notification. Therefore, same to be quashed, and earlier Notification dated 30.8.2022 to be restored.

4. Conversely, learned Additional Advocate General, at the outset, contended that under Section 21(3) of the Act, 2013, Government may appoint an Administrator to perform his functions of the Council as Administrator until the elected body assumes the office. He further contended that appointment of Civil/Public Servant on additional charge basis is discouraged by the Circuit Court of this Court at Hyderabad vide Order dated 24.3.2021, passed in C.P No.D-1202 of 20211; thus the appointment of Deputy Commissioner as Administrator District Council, Kashmore at Kandhkot is against the spirit of above Order of this Court. It is further contended by him that the impugned Notification has been issued by respondent No.2 with the approval of the Secretary, Local Government & Housing Town Planning Department, who was promoted in BPS-21 and allowed to continue as Additional Chief Secretary, Local Government & Housing Town Planning Department vide Notification dated 16.12.2022. Finally, he submitted that the Petitioner is not the aggrieved person and has no *locus standi* to invoke writ jurisdiction of this Court to assail the posting of Respondent No. 6 as Administrator, District Council, Kashmore at Kandhkot.

5. Respondent No.4, who has engaged private Counsel, provided argumentation in support of the Petitioner's version.

6. The arguments were heard. The documents were carefully examined.

7. Upon examining the impugned Notification, it becomes evident that it has been promulgated under Section 21(3) of the Act, 2013

and as a result of the Provincial Cabinet's decision. It has also received the necessary endorsement from the competent Authority i.e. the Minister of Local Government. Consequently, respondent No.6 has been designated as the Administrator for District Council Kashmore at Kandhkot. Concerning the subject at hand, it is pertinent to consider the contents of Section 21(3) of the 2013 Act, which reads as follows: -

21. Election of office bearers and nominated members of the Council.---(1) Subject to the provisions of this Act, a Council, other than a Union Council and Union Committee shall, after the indirect election of women, Non-Muslim and labour or peasant members, in terms of section 19, elect the Mayor and Deputy Mayor, Chairman and Vice Chairman, as the case may be and a leader of the Opposition in the respective Council.

(2)

(3) On the expiry of the term of office of a Council, Government may appoint an Administrator to perform the functions of the Council until the elected Council assumes the office.

8. It is evident upon an examination of sub-section (3) within Section 21 of the 2013 Act that a provisional and transitional measure has been implemented in the form of designating the responsibility of Administrator for District Council Kashmore at Kandhkot to respondent No.6 until the duly-elected Council can assume office. Therefore, as mentioned earlier, the Notification was lawfully issued in adherence to the provision outlined in Section 21(3) of the Act of 2013.

9. The counsel appearing on behalf of the Petitioner is basing his arguments on a prior notification issued on August 30th, 2022, through which all Deputy Commissioners were appointed within their respective districts, except for Karachi, as administrators of all District Councils in Sindh an additional capacity. However, this practice was

ultimately deemed legally impermissible by a decision delivered by the Apex Court in the reported cases of *Province of Sindh and others vs Ghulam Fareed and others* (2014 SCMR 1189) and *Khan Muhammad vs Chief Secretary, Government of Balochistan Quetta and others* (2018 SCMR 1114).

10. It is important to note that the scope of exercising powers when functioning on an acting charge basis is limited and determined by whichever event occurs first. The District Council relies upon the Administrator, as specified by the Act of 2013, to oversee the management of routine administrative matters. It would be in the right place to cite the judgment of Apex Court, titled *Bank of Punjab v. Haris Steel Industries (Pvt.) Ltd* (PLD 2010 SC-1109) about "acting charge", wherein it has been observed that :-

"52. And more importantly, the provisions envisaging appointments of acting incumbents are a mere stopgap arrangement meant to cater for emergencies, and such-like provisions can never be allowed to be used to circumvent the law relating to the making of a regular appointment to such an office or to be used as a substitute for a regular appointment or to be abused to put an unqualified person to hold a post which the law does not permit him to hold. Reference may be made to Al-Jehad Trust Case (PLD 1996 SC 324).

11. One of the Petitioner's counsel objections pertains to the impugned Notification issued by respondent No. 2/Director-I of the Local Government Board Karachi, which is argued to have been issued beyond his Authority. In reference to this matter, examination of Notification No. SOI(SGA&CD)-1/08/2022, dated 16/12/2022 which was issued by the Chief Secretary of Sindh, reveals that Mr. Najam Ahmed Shah (respondent No.2/Director-I, Local Government Board of Karachi)

has been granted permission to retain his position as Additional Chief Secretary (BPS-21), Local Government & Housing Town Planning Department regularly. This decision was made under the Establishment Division, Government of Pakistan's Notification No. F.1/5/2022/E-5(PAS) dated 14.12.2022 regarding promotions to BPS-21. Therefore, the contention posited by the Petitioner carries no weight.

12. It has been observed that respondent No.4, arrayed in the current petition under his official designation, has retained the services of private legal counsel to challenge the matter in question, thus acting contrary to the interests of the Government and lacking prior authorization from the relevant competent Authority. The legal representative advocating for respondent No. 4 endorsed the version presented by the Petitioner, indicating the existence of collusion between respondent No. 4 and the Petitioner. In the case of *Rasheed Ahmad vs. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad and others (PLD 2017 S.C 121)*, wherein Hon'ble Apex Court in Para No. 24, has held as under: -

"24. It is regrettable that governments persist in engaging private advocates for no justifiable reason, which practice must now stop. If the procedure as mentioned above (in paragraph 22 above), or a better one prescribed by governments, is not followed before engaging a private advocate then any statement made before a court or comments/written statement that are filed would not be binding on the concerned government. Moreover, to pay the fee of such private advocate would constitute financial impropriety by the person who does so on behalf of the

government, subjecting him/her to disciplinary action in accordance with the applicable law."

13. In view of the above discussion and the law as interpreted by the Apex Court, the present writ petition does not qualify for the test of a writ of quo warranto. As such, the same is not maintainable as Respondent No.6 holds the Administrator, District Council post on an acting charge basis, i.e., as a temporary and stopgap arrangement. The petition stands dismissed along with the listed applications.

JUDGE

JUDGE