

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6087 of 2023

Date

Order with signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ
MR. JUSTICE ABDUL MOBEEN LAKHO

FRESH CASE:

For hearing of main case.

Dated; 29th May 2024

Mr. Muhammad Sharif Buriro, Advocate for Petitioners
No.3 and 11.

Mr. Muhammad Zahid Khan, Advocate for Petitioner
No.13.

**_*_*_*_

ORDER

1. Instant petition was filed by the petitioners working as Additional Prosecutors General, Sindh in the nature of quo-warranto challenging the appointment of Dr. Syed Fiaz-ul-Hasan Shah, Prosecutor General Sindh vide Notification No.SOII(SGA&CD)3-40/2008, dated 6th August 2019, for having issued in violation of law.
2. However, when the matter was taken up for hearing in Court on 18.12.2023, following order was passed: -

“3. Mr. Samiullah Soomro, Advocate files his vakalatnama on behalf of the petitioner No.5, however, under instructions, submits that the name of petitioner No.5 may be deleted from the array of the petitioners in the instant petition. Order accordingly. Office is directed to delete the name of petitioner at Sr. No.5 from the array of petitioners.

After hearing the learned counsel for the petitioners at some length and from perusal of the pleadings, prima facie, it appears that petitioners, who are Addl. Prosecutors in the Prosecutor General Office, though have challenged the appointment of respondent No.2, however, have not challenged

the eligibility of the respondent No.2 to be appointed as Prosecutor General, nor could refer to any provision of The Sindh Criminal Prosecution Service (Constitution, Function and Powers) Ordinance, 2007, which could support the contention of the petitioners that appointment of respondent No.2 through Notification dated 06.08.2019 is illegal or unconstitutional, except referring to rules formulated under Section 15 read with Section 8 of the Sindh Criminal Prosecution (Constitution, Function and Powers) Ordinance, 2006, which according to petitioners, have not been followed in the case of appointment of respondent No.2 as Prosecutor General Sindh, whereas, there has been an amendment in Sections 6 and 7 of the Ordinance, 2006, relating to appointment of Prosecutor General, the same has been duly amending by promulgation of The Sindh Criminal Prosecution Service (Constitution, Functions and Powers), Ordinance, 2007. Whereas, from pleadings and while hearing the petitioners present in Court, who are Additional Prosecutors of the Prosecution Department, It has transpired that petitioners are aggrieved by a letter recently written by the Prosecutor General to the Ministry of Law regarding performance of law officers of Prosecutor General Office, and have also expressed their grievance with regard to the functioning of the Prosecution Department as well as the conduct of the Prosecutor General Sindh, which according to the petitioners, has not remained cordial, whereas, on account of recent incident whereby a letter has been written by the Prosecutor General Sindh, alleging poor performance of Additional and Deputy Prosecutors, petitioners have felt seriously aggrieved, which according to petitioners, does not reflect the true picture about the efficiency and performance of petitioners or other officers of Prosecution Department, hence, it amounts to defamation of all the Additional and Deputy Prosecutors.

Petitioners present in Court have submitted that they have nothing personal against respondent No.2, as they are performing their duties under him since his appointment in the year 2019, however, keeping in view the harsh behaviour and non-cooperation by the Prosecutor General Sindh, particularly, the allegations of incompetency and poor performance of Additional and Deputy Prosecutors in the letter issued by the P.G. Sindh instant petition is filed.

In order to sort out the issues between petitioners and respondent No.2, it has been suggested by the learned counsel,

that before taking up the matter to hear and decide on the legal plane in the instant petition, an attempt shall be made to reconcile the dispute between petitioners and respondent No.2. Such proposal on the part of the petitioners under the circumstances, appears to be reasonable. We are also of the view that there shall be complete harmony and good relations amongst all the officers of Prosecution Department, Government of Sindh, which is backbone of Criminal Justice System.

Accordingly, before issuing any notices in the instant matter, let a proposal in writing, if any, may be submitted by the learned counsel for the petitioners within fifteen (15) days for resolution of the dispute, if any, containing proposals for improvement of working relations of the Prosecutor General Office, whereas, the petitioners and the P.G. Sindh, if so desire, may have a meeting pursuant to such proposals, and intimate the outcome of such meeting to the Court on the next date to be fixed by the office. However, if there is no settlement reached between petitioners and respondent No.2, its result/outcome may be intimated to the Court, whereafter, instant petition will be taken up for hearing in Court.”

3. Thereafter, on 09.05.2024, when the matter was taken up for hearing in Court, it transpired that most of the petitioners sought deletion of their names from the array of the petitioners, which fact was duly recorded in the order in the following terms:

“ Mr. Muhammad Sharif Buriro, Advocate has shown appearance and files his vakalatnama on behalf of the petitioners No.3 and 11, which is taken on record. Likewise, Mr. Muhammad Zahid Khan, Advocate has also shown appearance and files his vakalatnama on behalf of the petitioner No.13, which is also taken on record. However, both the learned counsel for petitioners request for time to prepare the brief.

It has been observed that statements have been filed by petitioners No.1, 2, 6, 7, 8 and 10 to the following effect: -

STATEMENT

The Undersigned herewith most respectfully submit that I do not press above title petition to my extent

as Petitioner No.____. Therefore, my name as a Petitioner No.____ may be deleted.

Since notices have not been issued in the instant matter so far, whereas, petitioner No.5 has already withdrawn his name from array of petitioners on 18.12.2023. It appears that there has been resolution of dispute between the petitioners and respondent No.2. Office is directed to delete the name of aforementioned petitioners from the array of petitioners.

*According to learned counsel present in Court, keeping in view the order passed by this Court on 18.12.2023 and statements of above petitioners, who do want to press instant petition, they will also make an attempt to amicably resolve the dispute between the petitioners and respondent No.2. On their request, adjourned to **29.05.2024**.”*

4. Today, when the matter was taken up for hearing as date by Court, the learned counsel for petitioners were required to assist this Court as to maintainability of instant petition, however, they have requested for further time to seek instructions from their clients for settlement of the matter but could not assist the Court as to maintainability, nor could refer to any provision of law under i.e. Sindh Act No.IX of 2010 [The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009], which has been allegedly violated in the case of appointment of respondent No.2 as Prosecutor General Sindh vide impugned Notification, as referred to hereinabove. On the contrary, it has been noted that instant petition has been filed on account of some personal grievance/grudge, whereas, most of the petitioners have already sought deletion of their names from the array of petitioners. Record shows that respondent No.2 has been appointed in terms of Section 6 of the Act No.IX of 2010, which reads as follows: -

“6. [(1) Government shall appoint a Prosecutor General, on such terms and conditions, as may be determined by Government.]

(2) *The terms and conditions of service of the Prosecutor General shall not be varied during the term of his office.*

[(3) The Prosecutor General shall hold office at the pleasure of Government.]

(4) *The Prosecutor General may resign from his post [****] by [*****]*

(5) *The Prosecutor General shall have a right of representation and audience on behalf of Government in lower Court, the High Court, the Federal Shariat Court and the Supreme Court.*

[(6) The Prosecutor General may delegate any of his powers or functions to any Prosecutor or officer of the Service.]”

5. From perusal of the memo of petition and after hearing the petitioners, it appears that petitioners have merely relied upon Sindh Prosecutors (Appointment & Condition of Service) Rules, 2006 and referred to Rule 4, relating to the appointment of contractual prosecutors, according to which, Government is required to invite applications from the lawyers, who hold domicile and requisite qualification, etc. However, after promulgation of the aforesaid Act No.IX of 2010, the appointment of the Prosecutor General is regulated under section 6 of the Act No.IX of 2010 and not under Sindh Prosecutors (Appointment & Condition of Service) Rules, 2006. Moreover, the aforesaid Rules 2006 were sub-ordinate legislation Notified under Section 15(1) of the Ordinance, 2006, which otherwise have lost sanctity or applicability after Repeal of Ordinance 2006, whereas, such Rules otherwise, cannot applicable to the provisions of the Current Law i.e. Act No.IX of 2010 [The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009], under which the appointment of respondent No.2 has been made. Learned counsel for the petitioners could not controvert above factual

and legal position. Accordingly, instant Constitution Petition, having no substance, is dismissed alongwith listed application.

CHIEF JUSTICE

JUDGE

Farhan/PS