

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-5615 of 2025
(*Sher Ali versus Province of Sindh & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 02.04.2026

Mr. Ali Asadullah Bullo advocate for the petitioner
Mr. Salman Sabir advocate for the Respondents
Mr. Abdul Jalil Zubedi Assistant Advocate General

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s): -

- a. *To declare that the impugned Transfer order dated 05.11.2025 and the order for additional charge dated 12.11.2025, issued by Respondent No.4, as illegal, without lawful authority ultra vires to the Sindh Local Government Act, 2013 and set aside the same;*
- b. *Restrain the Respondents, from taking nay coercive action against the petitioner, including but no limited to suspension, stoppage of salary or ignitiation of disciplinary proceedings, except in accordance with law.*

2. The case of the petitioner is that he is an employee of the Local Government Board (SCUG) and was promoted to BS-18 as Additional District Officer on the recommendation of the Departmental Promotion Committee. After restructuring of local government institutions, he was transferred to Town Municipal Corporation (Jinnah Town) and allowed to join as Director (Education). However, Respondent No.4, without lawful authority and in violation of Sections 80 and 81 of the Sindh Local Government Act, 2013, issued an order transferring him and directing him to report to the office of the Chairman, and subsequently assigned his additional charge to another officer without approval of the Municipal Commissioner.

3. The petitioner's counsel contends that these actions are mala fide, arbitrary, and contrary to law and settled principles laid down by the Supreme Court regarding fair exercise of discretionary powers. He asserts that the impugned orders are illegal, discriminatory, and liable to be set aside on the premise that as per Section 3 of the Local Governemnt Act of 2013, the Chief Executive of a town municipal corporation of the Town Municipal Corporation, is the Town Municipal Commission, having administrative powers to be exercised,

however the Chairman has exercised such powers, which can be termed as coram non-judice. He prayed to allow this Petition.

4. Conversely, the learned AAG and counsel for Respondents No.3 and 4 submit that the petitioner is not an SCUG employee but a Local Council employee, and therefore his service matters fall within the jurisdiction of the respective Council. They contend that under Section 80(c) of the Sindh Local Government Act, 2013 (as amended), the Mayor/Chairman is the competent authority to supervise, transfer, and assign duties to council employees, and the impugned orders were issued lawfully in exercise of such powers. They further submit that the petitioner concealed material facts, including the subsequent order dated 14-01-2026 assigning him as Director Library, which he received, and therefore the petition is not maintainable, involves service matters, and is liable to be dismissed.

5. After hearing the learned counsel for the parties and examining the record, the controversy essentially revolves around the status of the petitioner and the competence of Respondent No.4/Chairman under the Sindh Local Government Act, 2013 to issue transfer and additional charge orders.

6. The foundation of the petitioner's case rests on his assertion of being an SCUG employee; however, the record and submissions of the respondents indicate that he is, in fact, a Local Council employee. Under the Sindh Local Government Act, 2013, a clear distinction is maintained between SCUG employees whose service matters vest with the Government, and Local Council employees whose service matters fall within the domain of the respective Council.

7. In terms of Section 7, a Council is a body corporate, competent to manage its affairs, including service matters of its employees. Furthermore, the proviso to Section 80(c) explicitly stipulates that only matters relating to SCUG employees are to be referred to the Government, thereby implying that all other employees remain under the administrative control of the Council.

8. In absence of any conclusive material establishing the petitioner as an SCUG officer, the presumption tilts in favour of the respondents' stance that he is a Local Council employee, hence governed by the Council's administrative framework.

9. Section 80(c) of the Act provides that the Mayor/Chairman shall exercise supervision and control over all employees of the Council and dispose of all questions relating to their service. The expression "supervision and control" has been judicially interpreted to include, transfer, posting, assignment of duties, and allocation of additional charge. Thus, the impugned transfer order dated

05.11.2025 and the subsequent order dated 12.11.2025 fall squarely within the statutory competence of the Chairman, particularly when no rule has been shown prohibiting such exercise of power.

10. The petitioner's argument that only the Municipal Commissioner is the Chief Executive under Section 3 does not negate the statutory authority vested in the Chairman under Section 80. The scheme of the Act reflects a dual administrative structure, where the Municipal Commissioner acts as executive head for administrative implementation, while the Chairman/Mayor retains supervisory and controlling authority over employees. Therefore, the exercise of powers by the Chairman cannot be termed as coram non iudice, as it is expressly sanctioned by statute.

11. The allegation of mala fide requires specific pleading and strict proof. The petitioner has failed to demonstrate any personal bias, ulterior motive, or violation of a mandatory statutory provision.

12. The Supreme Court held that mala fide must be established with cogent evidence and cannot be presumed. Similarly, it was held that discretion, if exercised within the legal framework, is not to be interfered with merely on subjective dissatisfaction.

13. In the present case, the impugned orders are administrative in nature, issued by a competent authority under enabling provisions of law, and therefore do not suffer from illegality.

14. It is a settled principle that transfer and posting are incidents of service and fall within the exclusive domain of the employer. The Honourable Supreme Court emphasized that judicial review in such matters is limited unless the order is without jurisdiction, mala fide, or in violation of law. No such exceptional circumstance has been established in the present case.

15. The petitioner admittedly did not disclose the subsequent order dated 14.01.2026 assigning him as Director Library. Such concealment disentitles him to discretionary relief under Article 199 of the Constitution, as it is well settled that a litigant invoking constitutional jurisdiction must approach the Court with clean hands. Moreover, the matter pertains to service/administrative affairs, for which alternate remedies may be available, thus further restricting the exercise of constitutional jurisdiction.

16. In view of the above discussion, it is held that the petitioner has failed to establish that he is an SCUG employee. The Chairman, being competent under Section 80(c) of the Sindh Local Government Act, 2013, lawfully exercised

authority in issuing the impugned orders. No mala fide, illegality, or jurisdictional defect has been proved. The petition suffers from concealment of material facts and pertains to service matters not warranting interference under Article 199 of the Constitution. Consequently, the Constitutional Petition is dismissed along with pending application(s), being devoid of merit. The impugned orders dated 05.11.2025 and 12.11.2025 are upheld. However with no order as to costs.

JUDGE

JUDGE

Shafi