

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. D-5164 of 2026
(Israr Ahmed Sodhar versus Government of Sindh & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 17.8.2026

Mr. Junaid Ahmed, Advocate for the petitioner

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: -

- I. *Declare that the appointment of Respondent No.5 as Regional Director, PPHI Sindh, vide Office Order dated 13.08.2014, was made without lawful authority and is void ab initio; and that every appointment, elevation, promotion and extension subsequently conferred upon him by PPHI Sindh, deriving as each does from the said appointment, is likewise without lawful authority and void ab initio;*
- II. *Declare that the appointment of Respondent No.5 as Chief Operating Officer, PPHI Sindh, vide Office Order dated 26.08.2021, together with the extensions/renewals thereof dated 29.07.2022, 05.10.2023 and the further extension proposed/granted with effect from 26.08.2025, are unlawful, without lawful authority, of no legal effect and void ab initio;*
- III. *Declare that the purported approval dated 12.08.2025 of the Chairman, Board of Directors, PPHI Sindh, extending the contract of Respondent No.5 for a further period of two years with effect from 26.08.2025, and the Office Order dated 29.07.2022 extending the said contract by eleven months with effect from 27.07.2022, were each made by an authority having no power in that behalf, are coram non judice, without lawful authority and of no legal effect;*
- IV. *Declare that Respondent No.5 holds and occupies the office of Chief Operating Officer of PPHI Sindh (or such other office within PPHI Sindh as he may presently be holding) without lawful authority, and is liable to be ousted therefrom forthwith;*
- V. *Declare that the policy for appointment of Chief Operating Officer approved by the 32nd meeting of the Board of Directors of PPHI Sindh dated 30.06.2021 is unlawful and liable to be set aside, having been framed in violation of the principles of transparency, fairness, merit and equal opportunity;*
- VI. *Suspend the operation of the Contract Renewal of Chief Operating Officer PPHI Sindh dated 01.08.2025 as approved by the Chairman, Board of Directors, on 12.08.2025;*
- VII. *Restrain the Respondent No.5 from continuing to function as, or draw remuneration as, Chief Operating Officer of PPHI Sindh until this Petition is heard and disposed of on merits;*
- VIII. *Restrain the Respondents, and each of them, whether acting by themselves or through their officers, servants, agents or any person acting on their behalf, from taking any adverse or coercive action against the Petitioner during the pendency of the instant Petition, including his repatriation.*
- IX. *Direct the Respondents to fill the office of Chief Operating Officer, PPHI Sindh, strictly in accordance with the applicable law, the Manual of Operations, and a duly and lawfully framed recruitment policy, through an*

open, transparent and competitive process through Sindh Public Service Commission. Till completion of process, Respondent No. 3 be directed to depute a suitable Civil Servant not below than the BPS-18/19 to act as COO in place of Respondent No. 5.

- X. Direct Respondent No.4 to ensure that all appointments to, and extensions in, the senior management positions of PPHI Sindh are hereafter made strictly in accordance with law, and to place before this Court a compliance report in that behalf;*
- XI. Direct Respondent No.6 to certify if the Respondent No.5 qualified the Central Superior Services (CSS) exam in the year 2002 or otherwise;*
- XII. Direct NAB and Anti-Corruption Department to conduct an independent inquiry / investigation into the legality of the appointments and the formulation of the COO, and the role therein of the concerned officers, Selection Committee members and Board members, with appropriate proceedings to follow against persons found responsible for violation of law, misuse of authority or breach of fiduciary duty and to ascertain the quantum of financial loss to the Public Ex-Chequer, and fix the responsibility;*
- XIII. Direct the competent authority to determine, after due inquiry, in accordance with law and after affording due process, the financial consequences of the appointments / continuation found to be without lawful authority, including recovery of salaries, allowances and other monetary benefits unlawfully paid;*

2. At the very outset, we asked the counsel for the petitioner to satisfy this Court about the maintainability of the petition.

3. Learned counsel for the Petitioner submitted that the Petitioner, a CSS officer serving on deputation as Director in PPHI Sindh, has challenged the unlawful appointment and continuation of Respondent No.5 as Chief Operating Officer (COO) of PPHI Sindh. It was contended that PPHI Sindh is wholly funded by the Government of Sindh, performs public healthcare functions and manages more than 1,800 healthcare facilities; therefore, it is amenable to the constitutional jurisdiction of this Court under Article 199, and the office of COO is a public office. Learned counsel argued that the appointment of Respondent No.5 as Regional Director in 2014 was void ab initio, as the advertisement restricted eligibility to CSS, PCS/PSS and Ex-PCS officers applying through proper channel with NOC, whereas Respondent No.5 did not belong to any of the prescribed cadres. It was further submitted that his deputation had already expired and his resignation from Federal service in 2014 had severed his connection with the parent department. Despite this, he was appointed and subsequently continued in PPHI Sindh. It was further contended that Respondent No.5's subsequent appointment as Director in 2019 and his elevation as COO in 2021 were founded upon his earlier, allegedly void appointment. According to learned counsel, illegal service cannot create a lawful qualification or vested right for appointment to a subsequent public office. Learned counsel further submitted that the COO policy approved on 30.06.2021 was framed in a manner specifically accommodating Respondent No.5. His candidature had allegedly been preferred even before the policy and advertisement were formulated, and the newly introduced eligibility route was satisfied only by him. He added that although fifteen applications were

received, Respondent No.5 alone was shortlisted, interviewed and selected. It was argued that the process was, therefore, a colourable exercise of power, lacking transparency, merit and equal opportunity. It was also argued that the selection process suffered from structural bias because the members who had participated in framing the eligibility criteria and had earlier supported Respondent No.5's candidature subsequently sat on the Selection Committee which recommended his appointment. He submitted that policy also granted him a special right of reversion to the post of Director, a benefit unavailable to other candidates. Learned counsel further challenged the successive extensions of Respondent No.5's tenure as COO, submitting that an extension cannot cure a foundationally illegal appointment. It was also argued that the Board itself was not validly constituted, as several directors had allegedly continued beyond the statutory period prescribed under the Companies Act, 2017 and the Articles of Association. Relying upon the principles laid down by the Supreme Court regarding appointments made contrary to prescribed eligibility criteria, counsel submitted that an appointment made in violation of the advertisement is a nullity; no vested right can arise from an illegal appointment; and experience acquired under such appointment cannot be relied upon to qualify for a subsequent office. Counsel also relied upon the principle that when the foundation is unlawful, the superstructure cannot survive. Learned counsel accordingly prayed that the appointments of Respondent No.5 as Regional Director, Director and COO, together with all subsequent extensions, be declared without lawful authority and void ab initio; that Respondent No.5 be restrained from continuing as COO and drawing remuneration; that the COO policy of 30.06.2021 be set aside; and that the post be filled through a lawful, transparent and competitive process. In support of his contentions, learned counsel for the petitioner has placed reliance on the order dated 20.12.2017 passed by the Supreme Court in Civil Petition No. 211-K of 2016, and the order passed by the learned Balochistan High Court in the case of *Dr. Rashid Tareen versus The Government of Baluchistan* (2024 CLD 948). He also relied upon the cases of *Sohail Baig Noori versus High Court of Sindh through Registrar* (2017 PLC (C.S.) 1142, *Shahid Iqbal versus Government of Khyber Pakhtunkhwa through Chief Secretary* (2021 PLC (C.S.) 711) and *Asif Javed Advocate versus Board of Directors through Chairman Lahore Transport Company* (2020 CLC 210). Counsel has further sought appropriate inquiry into the legality of the appointments and the financial consequences arising from the alleged unlawful continuation in office. He prayed to allow this petition.

4. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance and case law cited at the bar.

5. The petition, though couched in the form of a challenge to the appointment and continuation of Respondent No.5 against the public post, is essentially a petition invoking the extraordinary jurisdiction of this Court in the nature of quo warranto under Article 199(1)(b)(ii) of the Constitution. We are of the view that in such proceedings the petitioner need not establish that he is an “aggrieved person”; however, the essential jurisdictional requirements must first be satisfied, that the office in question is a public office and that the incumbent is holding or purporting to hold it without lawful authority. This Court, in proceedings of quo warranto, is primarily concerned with the legality of the appointment and not with comparative suitability, administrative wisdom or the merits of competing candidates against the substantive post not contractual post based on tenure.

6. In the present case, however, a fundamental difficulty arises regarding the very character of the office of Chief Operating Officer, PPHI Sindh. PPHI Sindh is admittedly a not-for-profit company established under Section 42 of the Companies Act, 2017, governed by its Board of Directors and operating pursuant to its corporate framework and arrangements with the Government of Sindh. Its performance of functions relating to public healthcare and the participation of Government representatives on its Board, by themselves, do not necessarily convert every office created within the corporate structure of PPHI Sindh into a statutory or public office for purposes of Article 199(1)(b)(ii).

7. The decisive question is not merely whether the organization performs a public service or receives governmental support, but whether the particular office is created by or under law and carries with it a delegation of sovereign governmental authority. The distinction is between a public office, the tenure and authority of which are created and regulated by law, and a contractual or corporate employment which is dependent upon the governing instrument of the organization.

8. The same principle also places a limitation upon the scope of the present proceedings. Even where an office is amenable to quo warranto jurisdiction, the Court does not ordinarily substitute its own assessment for that of the competent appointing authority. The inquiry remains confined to whether the authority acted beyond its jurisdiction, violated a mandatory statutory requirement, appointed a person suffering from a legal disqualification, or otherwise exercised power contrary to law. The judicial review can be examined illegality, irrationality and procedural impropriety, but it is not the function of this Court to determine merely whether a particular policy or administrative decision is the fairest or most desirable one.

9. In the instant matter, the allegations regarding the initial appointment of Respondent No.5 in 2014, his subsequent appointment as Director, his elevation

as COO in 2021, the framing of the COO policy, the constitution of the Selection Committee, alleged favouritism, and successive contractual extensions undoubtedly raise questions concerning the propriety of the decisions taken by the management of PPHI Sindh. However, a writ of quo warranto cannot be converted into a general roving inquiry into the entire service history of an employee or into an investigation into disputed allegations of mala fides, bias and financial irregularity unless a clear violation of a binding statutory provision is first demonstrated. The petitioner was therefore required to identify a specific statutory provision having the force of law which prohibited Respondent No.5 from holding the office of COO or which rendered the impugned appointment legally void. Mere violation of an internal policy, corporate procedure, recruitment preference or departure from an earlier advertisement, without establishing that such requirement was mandatory in law, would not by itself justify the issuance of writ quo warranto. This Court's jurisdiction is to determine legality, not to sit as an appellate authority over every administrative or corporate employment decision.

10. Moreover, the challenge to the 2014 appointment after the passage of a considerable period, followed by subsequent appointments and extensions, requires particular caution. Although delay or laches does not invariably defeat a genuine quo warranto proceeding where a person continues to occupy a public office unlawfully, this Court is nevertheless required to examine whether the alleged defect is a continuing legal disqualification or merely a historical grievance concerning the manner in which an earlier contractual appointment was made. A defect which does not legally disqualify the incumbent from holding the present office cannot be transformed into a continuing usurpation merely by describing all subsequent appointments as part of the same “chain” of illegality.

11. Most importantly, the doctrine that “the foundation being unlawful, the superstructure cannot stand” can operate only where the foundational appointment is first established to be legally void. It cannot be applied on the basis of allegations alone. Likewise, the fact that Respondent No.5 may have acquired experience during his previous service does not, without more, establish that his subsequent appointment was void. The Court was required to determine whether the eligibility requirement relied upon by the petitioner was mandatory and statutory in character and whether Respondent No.5 was legally disqualified from appointment at the relevant time. The burden of placing sufficient material before this Court to attract the extraordinary remedy of quo warranto rests upon the person seeking such relief.

12. As regards the allegations of favoritism, pre-selection, manipulation of the eligibility criteria and conflict of interest, such allegations, if supported by cogent documentary material, may justify scrutiny by the competent forum or authority.

However, mere assertions of mala fide, bias or cronyism, unsupported by legally demonstrable facts, are insufficient to warrant removal of an incumbent through quo warranto petition. The Supreme Court has also cautioned that this extraordinary constitutional remedy should not be employed as a pressure mechanism and that interference is warranted where the appointment is contrary to law, the appointing authority lacked jurisdiction, or there is a clear legal disqualification or patent abuse of authority.

13. Accordingly, the petition cannot succeed merely on the basis of the allegations that Respondent No.5's earlier appointment was irregular, that the COO policy was framed to accommodate him, or that the selection process could have been conducted in a more transparent manner. In the absence of a clear statutory prohibition, a legally enforceable qualification which Respondent No.5 lacked, or cogent material establishing that the appointing authority acted wholly without jurisdiction, the essential ingredients for issuance of a writ of quo warranto have not been established at this stage. The prayers seeking declaration that all previous appointments and extensions are void ab initio, removal of Respondent No.5 from office, recovery of his remuneration, and initiation of criminal or anti-corruption proceedings consequently cannot be granted in these constitutional proceedings merely on the basis of disputed factual assertions.

14. For the foregoing reasons, we are of the view that the petitioner has failed to establish the foundational requirements for issuance of a writ of quo warranto under Article 199(1)(b)(ii) of the Constitution. No patent statutory disqualification or lack of lawful authority on the part of the competent appointing forum has been demonstrated so as to render the present occupation of the office by Respondent No.5 a continuing usurpation.

15. The challenge to the corporate appointments, policy decisions and contractual extensions essentially involves disputed questions concerning the internal administration and employment affairs of PPHI Sindh, which cannot, in the circumstances of the present case, be converted into a roving constitutional inquiry.

16. Consequently, the petition, including the prayers for suspension of the contract, removal of Respondent No.5, setting aside of the COO policy, recovery of remuneration and directions for investigation, is found to be without sufficient foundation and is accordingly dismissed in *limine* alongwith listed applications leaving the petitioner to avail his remedy as per law.

JUDGE

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