

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-7383 of 2015

CMA No.9327/2017

CMA No.9328/2017

Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Pakistan Medical Association (Centre).....Petitioner

Versus

Chancellor Dow University of Health Science
and others.....Respondents

Date of hearing: 24.04.2017

Mr. Khawaja Shasmul Islam, Advocate for the Respondent No.3.
Mr. Umar Lakhani, Advocate for the Respondent No.4.
Mr. Salman Talibuddin, Additional Attorney General along with Mr.
Syed Junaid Ahmed, Additional Secretary (HE), Sindh Governor's
Secretariat Karachi.
Mr. Abdul Jalil Zubedi, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- The instant petition along
with several others were disposed of by this Court vide common
order dated 26.04.2016 with the following observations:-

“24. As a result of above discussion the petitions are
admitted to regular hearing and disposed of in the
following terms:-

(1) The Notification dated 26.10.2015 issued for the
appointment of Dr. Noshad A. Shaikh as Vice Chancellor,
Dow University of Health Sciences, and Karachi is set
aside.

(2) Since Dr. Saeed Quraishy is also one of the
candidates in the selection process, therefore, in order to
maintain impartiality and neutrality, the Chief Minister,
Sindh is directed to substitute the nomination of Mr.
Fazal-ur-Rehman and in his place any other competent
person be inducted into Search Committee through
reconstitution.

(3) The Search Committee shall consider the applications of all 12 candidates de novo on merits with proper application of mind and recommend three most suitable candidates for approval of the Chief Minister, Sindh for one of the most suitable candidate.

(4) The Chairperson of Search Committee shall ensure the presence of all members of Search Committee at the time of considering the applications for awarding marks on the basis of pro-forma yardstick and on the day when the interviews shall be conducted. The members of search committee may also consider the appointment of co-opted member according to the mandate given to them.

(5) After completion of process, the Chief Minister, Sindh shall forward his advice to the Governor of Sindh/Chancellor in terms of Section 12(1) of the Dow University of Health Sciences Act, 2004 (As amended) and Article 105 of the Constitution of Islamic Republic of Pakistan, 1973.

(6) This entire process should be completed within 20 days positively without any delay. However on issuance of Notification for the appointment of Vice Chancellor, Dow University of Health Science, Karachi on the advice of Chief Minister Sindh, the Additional Charge given to Professor Dr. Masood Hamed Khan vide Notification dated 10.11.2015 as Vice Chancellor, Dow University of Health Sciences, Karachi as stopgap arrangement will come to an end automatically. During this period, he shall perform only day to day and routine work without taking any major decision as directed earlier vide orders dated 1.12.2015 passed in CP No.D-7383/2015.

(7) All pending applications in the aforesaid petitions are also disposed of accordingly.”

2. On 25.03.2017, Professor Dr. Masood Hameed Khan/Respondent No.3 filed listed application for initiation of contempt proceedings against the alleged contemnors on account of their willful, and deliberate act of disobeying above mentioned order passed by this Court.

3. Mr. Khawaja Shams-ul-Islam, learned counsel for Respondent No.3 has argued that after passing of the above order, Search Committee conducted the interviews on 03.05.2016 contrary to the directions given in Para No.24 (2 to 4) of the order

reproduced supra. He has further contended that in violation of the order passed by this Court, the alleged contemnor No.1 has issued Notification No.GS/9-14/2016(SO-HE/195 dated 15.03.2017 assigning the Additional Charge of Vice Chancellor to Professor Dr. Khawar Saeed Jamali of Dow University of Health Sciences. He added that this Court in Paragraph No. 24 (6) of the order reproduced supra has held that on issuance of Notification for the appointment of Vice Chancellor, the Additional Charge given to Professor Dr. Masood Hameed Khan vide Notification dated 10.11.2015 as Vice Chancellor, Dow University of Health Sciences, Karachi as stopgap arrangement will come to an end automatically. And, during the said period, Respondent No.3 shall perform only day to day routine work without taking any major decision. He further contended that the said directives given in the order of this court have been violated by the alleged contemnors. He has further contended that the decision given by this Court in the instant petition was challenged before the Hon'ble Apex Court in Civil Petition No.280-K and 283-K of 2016 and the order of this Court was maintained vide order dated 06.05.2016. Hence, the order passed by this Court has attained finality and cannot be ignored, bypassed or violated. Learned counsel maintained that by issuance of impugned Notification dated 15.03.2017, the case of the Respondent No.3 has been jeopardized as the Additional Charge given to him as stoppage arrangement has come to an end. Thus, the alleged contemnors have circumvented the directives passed by this Court in paragraph No.6 of the order reproduced supra. Learned counsel concluded submissions by saying that Additional Charge assigned to Professor Dr. Khawar Saeed Jamali as Vice Chancellor by the alleged contemnor No.1 tantamounts to

clear contempt of Court and prayed that appropriate action may be taken against the alleged contemnors. In support of his contentions he relied upon the Judgment passed by Hon'ble Supreme Court in the case of Proceedings against Justices (R) Iftikhar Hussain Chaudhry and others (PLD 2011 SC 197) and various orders passed by the learned Single Judge of this Court in Suit No. 893/2017.

4. This Court vide order dated 27.03.2017 issued notice to the Respondent No.1, 2 and 4 as well as Advocate General, Sindh.

5. Mr. Salman Talibuddin, learned Additional Attorney General of Pakistan has contended that he would only confine his arguments to the extent of maintainability of instant application. He argued that the listed application against the Governor Sindh is bared under Article 248 of the Constitution because the said Article provides complete immunity / protection to the Governor while performing functions of his office, therefore, the said functions and powers cannot be called in question before this Hon'ble Court. He further contended that as per his understanding the contempt proceedings are criminal in nature, hence, no order could be passed against the Governor, Sindh during the tenure of his office.

6. Mr. Umar Lakhani, learned counsel representing Respondent No.4 has referred to the counter affidavit filed by him to CMA No.9328/2017 and contended that instant contempt application is not maintainable on the touch stone of Article 248 of the Constitution of Islamic Republic of Pakistan 1973. He has next

contended that the Respondent No.3 has no vested right to seek continuance as Vice Chancellor in DUHS. He added in his arguments that the Hon'ble Apex Court vide order dated 23.02.2017 passed in Cr. Org Petition No.175/2016 in CRP No.193/2013 has held as under:-

“We further direct the Secretary Services to ensure that no retired Government Officer is appointed on contract basis in terms of the directives contained in the judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs Province of Sindh (2015 SCMR 456) and those who have been posted on contract basis should be de-notified immediately in all the Government Departments or even in any Authority and submit report within two weeks for our perusal in Chambers”.

7. He further argued that the Respondent No.3 attained the age of superannuation in the year 2014, as such he cannot be allowed to continue in DUHS as Vice Chancellor. He further contended that there are specific directions of Hon'ble Supreme Court (supra) in respect of Re-employment on contract basis and the said practice has been deprecated by the Hon'ble Apex Court. He next contended that the Respondent No.3 has misconceived the interpretation of the order dated 26.04.2016 in his favour because the arrangement made in the said order in respect of Respondent No. 3 was only a stopgap arrangement. Therefore, the Respondent No. 3 has no vested right to continue as Vice Chancellor, DUHS. Learned counsel concluded that the wife of the Petitioner has already filed suit No. 893/2017 challenging the impugned Notification dated 15.03.2017 in CMA No.9328/2017, whereby the Additional Charge of the Vice Chancellor has been given to Dr. Khawar Saeed Jamali and the same matter is still pending before the learned Single Judge of this Court.

8. We have heard the learned counsel for the respective parties and perused the material available on record and the case laws cited at the bar.

9. A perusal of order dated 26.04.2016 reveals that this Court has only observed that Additional Charge to Respondent No.3 as Vice Chancellor of Dow University of Health Sciences would continue as a stopgap arrangement, and would come to an end automatically upon appointment of Vice Chancellor, DUHS. Respondent No.3 was directed to perform only day to day routine work without taking any major decision.

10. We are of the view that the order dated 26.04.2016 has essentially and materially directed and dealt with the process of appointment of Vice Chancellor, DUHS, which should be completed within 20 days positively without any delay on the advice of Chief Minister, Sindh. By observing that Respondent No.3 would hold on to the said charge as stopgap arrangement would not, however, create a vested right in Respondent No. 3 to remain Vice Chancellor permanently. The very arrangement called 'stopgap arrangement' is temporary in nature and under the law could be assigned to anyone on seniority basis to run day to day affairs. The Respondent No. 1 could appoint any of the officers as provided under the law in order to run the institution smoothly.

11. More so, we have been informed that the Respondent No. 3 has been relieved in compliance of the judgment passed by the Hon'ble Supreme Court vide order dated 23.02.2017 in Cr. Org

Petition No.175/2016 in CRP No.193/2013. During the course of proceedings of the instant matter the learned counsel for the Respondent No. 3 produced a copy of order dated 19.04.2017 passed by the learned Single Judge of this Court in suit No.893/2017. The relevant portion of the said order is reproduced as follows:-

“In compliance of the last order, today Mr. Navid Ahmed Sheikh, Secretary (Universities and Boards) of the defendant No.1 has submitted a progress report in the following terms:-

In compliance with the orders of this Hon’ble Court dated 14.04.2017, it is respectfully informed that the Chief Minister, Sindh has sent the Summary to the Governor Sindh / Chancellor advising that the process of appointment of Vice Chancellor, DUHS should be initiated afresh and that the additional charge of the post of Vice Chancellor, DUHS, given to Prof. Dr. KhawarSaeedJamali may be withdrawn and assigned to Prof. Dr. Muhammad Masroor, being the senior most Professor and Pro-Vice Chancellor DUHS during the interregnum while the process for the appointment of Vice Chancellor is undertaken.

Syed Junaid Ahmed, Additional Secretary (HE) Governor House submits that the summary has been received in the Governor House office and within one week orders will be passed on the summary by the worthy Governor for the regular induction of the Vice Chancellor. It is clearly mentioned in the progress report that till final decision for the regular induction, instead of Professor Dr.KhawarSaeedJamali the additional charge of Vice Chancellor shall be given to Professor Dr. Muhammad Masroor who is senior most Professor during the interregnum period. Adjourned to 28.04.2017 at 11.00 a.m.”

12. We in the above circumstances, put a query to Mr. Salman Talibuddin, learned Additional Attorney General to apprise this Court with respect to the appointment of the Vice Chancellor DUHS as directed by this Court in order dated 26.04.2016. The learned law officer after consultation with the official present in Court namely Mr. Syed Junaid Ahmed, Additional Secretary (HE), Governor House informed that the Summary on the issue of

appointment of Vice Chancellor is in process before the Governor Sindh/Chancellor and an order will be passed on the said summary within a week. This undertaking has also been given by the above named official present in Court, which has already been recorded in Suit No.893/2017.

13. So far as Notification dated 15.03.2017 is concerned, we are of the view that the same is pending in Suit No.893/2017, as such we would refrain to pass any order in this regard, because the same may prejudice the case of either party in the said Suit.

14. So far as the assignment of the Additional Charge of Vice Chancellor of DUHS to Professor Dr. Khawar Saeed Jamali is concerned the same has already been taken care of in order dated 19.04.2017 passed in Suit No.893/2017.

15. In view of the above discussion, at this juncture, we are of the view that no contempt of this Court's order dated 26.04.2016 is made out. Therefore, the listed applications bearing No.9327/2017 is accordingly dismissed along with CMA No.9328/2017 in the above terms.

JUDGE

JUDGE

