

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit No. 2270 of 2018**

**Plaintiff:** Mir Muhammad Raza,  
Through Mr. Umar Lakhani, Advocate.

**Defendants No.2,3 & 4:** Trading Corporation of Pak.  
(Pvt.) Ltd. & others through  
Fayaz Ali Metlo, Advocate.

1. For hearing of CMA No. 133/2019.
2. For hearing of CMA No. 17292/18.

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**Dates of hearing:** 3.10.2019 & 10.10.2019.

**Date of Order:** 10.10.2019.

**ORDER**

**Muhammad Junaid Ghaffar J.** This is a Suit for Declaration and Injunction, whereby, the Plaintiff seeks a declaration that Show Cause Notice dated 07.08.2018 and Office Order dated 24.10.2018 are illegal, without jurisdiction, and based on malafides, whereas, with a further declaration that Plaintiff's academic credentials stand resolved and is a past and closed transaction. After passing of ad-interim orders on 4.12.2018, whereby, the defendants were restrained from passing any final order; the plaintiff has filed another CMA No.133/2019, seeking suspension of the final Show Cause Notice and vide order dated 7.1.2019, the said Show Cause Notice was also suspended. Through this order both listed applications for injunction are decided.

2. Learned Counsel for the Plaintiff submits that presently the Plaintiff is working as a Manager in BPS-18 in defendant No.2, whereas, he was inducted into service in the year 2010, pursuant to an application made by him in response to an advertisement; that the impugned Show Cause Notice, has alleged that education credentials of the Plaintiff are forged, which is incorrect; that University i.e. defendant No.6 has already confirmed the

genuineness of the mark sheet vide its letter dated 12.08.2017; that earlier some inquiry was initiated against the Plaintiff in respect of misconduct by the same management / officials and finally the appeal of the Plaintiff was decided in his favor, whereby, he was exonerated by the Secretary Commerce; that once again the same people have initiated this malafide exercise with false allegations; that after passing of ad-interim order on 04.12.2018, another Show Cause Notice has been issued on the basis of some inquiry and defendants have made up their mind for dismissal of the Plaintiff from service; that the Plaintiff despite verification of the mark sheet is also pursuing his case for issuance of a proper degree; but due to dispute between defendants No.5 & 6, the same is yet to be issued and the Plaintiff will provide the same in due course of time; that the Plaintiff is being victimized time and again and the entire exercise is unwarranted as well as illegal; that the Plaintiff is entitled for the injunctive relief and can prove his case at the trial as it needs factual determination. In view of such arguments he has prayed for grant of listed applications.

3. Learned Counsel for the defendants submits that the Suit is not maintainable as defendant No.2 is a private company with no statutory Rules; the rule of master and servant applies and it is only damages at the most which can be claimed by the Plaintiff; that pursuant to an advertisement for appointment of deputy managers, the Plaintiff applied by stating that he has an MBA degree from Muhammad Ali Jinnah University, whereas, the requirement was an MBA from Institute of Business Administration ("IBA") or Lahore University of Management and Sciences ("LUMS"); that till date no degree of any of these Universities has been furnished and instead a mark sheet of defendant No.6 University was provided, which on verification was found to be forged and fake twice, through letters dated 06.08.2015 and 19.09.2015 issued by the University; that the verification letter relied upon by the Plaintiff is a forged and fabricated document; that Plaintiff cannot continue his employment without furnishing a proper degree, whereas, several years have passed; but he has failed to make compliance; that as per Rules of TCP, the degree has to be verified; that even otherwise

the detailed mark sheet provided by him is also fake and forged and does not corroborate with the percentage and GPA purportedly claimed by the Plaintiff; that earlier also proceedings for misconduct were initiated and it is incorrect to assume that Plaintiff was exonerated; but was penalized by the appellate authority who had ordered deduction of the amount usurped from his salary; that no case of injunction is made out as the ingredients for grant of such injunction are lacking in this matter; that the Plaintiff had obtained his employment on a fabricated document, therefore, cannot seek protection under the doctrine of past and closed transactions; that there is no malafide attributed against the defendants, whereas, it is a simple case of verification of Plaintiff's educational credentials / degree, which admittedly he has conceded that it has not been issued; that even HEC was approached by defendant and they have replied that verification of any degree can be obtained online and despite this, the Plaintiff has failed to get any such verification; that even otherwise for the last three months he is absent from duty without leave and this also does disentitle him from seeking any indulgence. In support of his contention he has relied upon the cases of ***Basharat Hussain and another v. Provincial Government through Chief Secretary and 4 others*** reported as **2018 PLC (C.S) Note 151**, ***Nazar Hussain and others v. Deputy District Education Officer and others*** reported as **2003 SCMR 1269** and ***Muhammad Ali and 11 others v. Province of KPK through Secretary, Elementary and Secondary Education, Peshawar and others*** reported as **2012 SCMR 673**.

4. I have heard both the learned Counsel and perused the record. The Plaintiff was employed with defendant No.2 in the year 2010 pursuant to an advertisement and it is not in dispute that the qualification required was an MBA degree either from IBA or LUMS, whereas, in his application he had claimed to be an MBA from Muhammad Ali Jinnah University. It is not clear as to how, despite being ineligible insofar as the University is concerned, he was employed. It further appears that Defendants vide their letter dated 12.8.2015 had sought an explanation from the Plaintiff to the effect that *while applying against the contract appointment of Deputy*

*Project Manager in TCP you submitted your CV wherein, you declared your qualification as MBA (HRM and Finance) from Muhammad Ali Jinnah University, Karachi, However, later on you have provided a copy of MBA Marks Certificate from Al-Khair University (AJK), and in response the Plaintiff vide its letter dated 19.8.2015 furnished his explanation that this was a typing or clerical mistake and he has qualified as an MBA from Al-Khair University and already furnished Mark Sheet to that effect. It further appears that at the same time the Defendants sought verification of his credentials from the said University as no proper degree was provided by him and twice letters were issued to the University, who wrote back vide their letters dated 6.8.2015 and 19.9.2015 and have confirmed that the mark sheet relied upon is fake and bogus. Despite such categorical stance of the University it appears that no further adverse action was taken and the Plaintiff continued his employment with an assurance to furnish his degree as and when it is issued by the University. On the other hand, the Plaintiff's case is that the same University vide its letter dated 12.8.2017 has confirmed the genuineness of the mark sheet.*

5. It may be of relevance to observe that any conclusive findings as to the correctness of the Plaintiff's claim must not be finally decided by this Court at the injunction stage as an inquiry after issuance of Show Cause Notice(s) is pending, and if an adverse finding to that effect is given, then it may prejudice the case of the Plaintiff before the inquiry officer as well as the competent authority who has to finally decide the matter. For the present purposes the Court has to only see that whether a case for restraining the defendants from proceeding further with the Show Cause Notice and the inquiry proceedings is made out or not. And for that the Plaintiff has to make out a case of such indulgence to exercise discretion in his favor.

6. The Plaintiff has sought employment and therefore the initial burden or onus of proving and satisfying as to the credentials of his academic qualifications for seeking the requisite job assignment based on the advertisement rests upon the employee and not the employer. A person, who comes for a job has to pass that basic requirement and the tests so needed. If the Plaintiff stands qualified as an MBA, then it is his responsibility to

discharge such onus come what may. It is not that if he has been employed, the verification process ceases automatically. In this case, as of today, the Plaintiff concedes that no degree has been awarded. The question whether the University had any issue with HEC also is of no relevance for the defendants. Notwithstanding this, even otherwise, the Plaintiff's case is that such issue has been resolved. If that is the case, then it was incumbent upon the Plaintiff to get a proper degree verified or at least have the issue resolved to the satisfaction of the Defendants including genuineness of the mark sheet, which earlier, has been termed as bogus and fake twice. Though Plaintiff has placed reliance on a subsequent letter of the said University and the learned Counsel for the Defendants has contended that it is a forged and fabricated letter as the type style, letter-head and signatures are different than the two earlier letters; however, for the present purposes this Court should not delve upon this issue and no conclusive observation ought to have been recorded, but at least the burden has shifted on the Plaintiff to satisfy this discrepancy, instead of taking shelter under other issues of it being a past and closed transaction; the dispute between the University and HEC, so on and so forth. In that he has failed to satisfy this Court, as to how in these circumstances an injunction can be granted. And added by the argument that the Plaintiff by mistake claimed to be having an MBA degree from Muhammad Ali Jinnah University instead of Al-Khair University (AJ&K) as it is also not very convincing. A person who has qualified from one University, apparently, cannot make such a typing or clerical mistake. If that is so, then the onus has again shifted upon the Plaintiff to satisfy as to the allegations of the defendant.

7. The conduct of the Plaintiff is even otherwise not very straight forward or of a reasonable nature. When this case was filed, ad-interim order was obtained by arguing that the inquiry officer was biased, as he, in some other inquiry, had earlier given an adverse finding against the Plaintiff; hence, the inquiry must be stopped. To this, on the last date of hearing, this Court as an indulgence and to meet the ends of justice, asked defendants Counsel to seek instructions for nominating any other inquiry

officer, and today they have courteously agreed upon that by filing a statement before the Court; however, surprisingly and for no good and justifiable reason(s) the Plaintiff has shown his reluctance for appointment of another inquiry officer. Though, it is settled law that the inquiry officer cannot be appointed at the whims and choices of an aggrieved person; but nonetheless, considering the fact that earlier also same Inquiry Officer had given adverse remarks against this very Plaintiff; this Court showed indulgence; but the Plaintiff has now backed away from joining any inquiry of whatsoever nature. Such conduct of the Plaintiff does not help his case in any manner as to the ingredients of making out a prima facie; hence, does not warrant any further indulgence.

8. Besides this, it is also a matter of fact that the Hon'ble Supreme Court had taken up the matters of fake educational qualifications of employees of PIA / CAA in *Suo Muto* proceedings, through Human Rights Case No.8645 of 2018, wherein, various orders have been passed and certain directions have been given to PIA and CAA. The Defendants status is at par with that of PIA / CAA for the present purposes. The precise gist of the orders so passed reflects that the Hon'ble Supreme Court was of the view that verification of the alleged fake and bogus educational credentials be done through PIA (Employer) as time and again PIA had argued that in various cases the respective Courts have passed ad-interim orders restraining them from proceeding any further. However, the Hon'ble Supreme Court had not appreciated this and on 24.12.2018 the following order was passed;

**"The CEO of PIA, Air Marshal Arshad Malik is in attendance and states that out of 73 cases regarding bogus degrees of the pilots and cabin crew, 10 cases have been finalized and action has been taken against the delinquents, whereas stay orders have been obtained prohibiting final action against he accused. Having heard the CEO PIA we direct that the proceedings in the 63 cases be finalized independently by CAA/PIA within a period of 10 days from today irrespective of any stay order obtained by any party from any Court in Pakistan, after which the issue of pendency of cases throughout Pakistan shall be considered by this Court and appropriate orders may be passed."**

Thereafter another order has been passed on 9.1.2019 which reads as under;

“We have been apprised by Ms. Amna Warsi, Legal Advisor of Civil Aviation Authority (CAA) that the degrees of 16 pilots of all the Airlines have been found to be fake on account of which their licenses have been suspended. **Besides, the degrees of 65 members of the cabin crew have also been found to be fake and action has been taken against which they have a right of appeal.** Moreover, there are 6 more degrees which require verification from abroad. Be that as it may, substantial work in this matter has been accomplished. In light of the above, we do not wish to keep this matter pending which is accordingly disposed of. Verification of the remaining degrees should be conducted at the earliest after which appropriate action should be taken in accordance with law.”

9. The overall inference which could be drawn is that in these type of cases, it is a matter between the employer and the employee and verification, if any, is to be done by the employer and in case of any adverse reports, action will also be taken by the employer against which the employee will have a right of appeal in accordance with law and the service regulations of the employer as the case may be. When the case of the Plaintiff is seen from the perspective of the above observations, even otherwise, in the peculiar facts and circumstances of the Plaintiffs case no further indulgence is warranted for passing of any injunction in his favor.

10. Moreover, on merits also, the Plaintiff's case lacks all ingredients for grant of an injunction as no prima-facie case is made out as apparently there are two letters of the very University, which have confirmed the non-genuineness of the mark sheet as against one subsequent letter, relied upon by the Plaintiff. Insofar as balance of convenience is concerned, this again does not lie in favor of the Plaintiff because of his conduct as noted hereinabove. Insofar as causing of irreparable loss is concerned, the same can be compensated after the trial, if the Plaintiff so succeeds; therefore, both these applications merit dismissal and accordingly by means of a short order, they were dismissed with cost of Rs.10,000/- to be deposited in the account of High Court Clinic and these are the reasons thereof.

**J U D G E**