

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 1072 of 2022

Date Order with Signature(s) of Judge(s)

Fresh Case

1. For order on Misc No.4858/2022
2. For order on Misc No.4859/2022
3. For order on Misc No.4860/2022
4. For hearing of main case

22.02.2022

Mr. Abdul Salam Memon, advocate for the petitioner

1. Urgency granted.
2. Granted subject to all just legal exceptions.
- 3-4. Petitioner has remained as Vice-Chancellor, Shaheed Mohatarma Benazir Bhutto Medical University, Larkana, has assailed the vires of the notification dated 12.02.2022, whereby she has been forced to proceed on leave for 45 days; and in her place, respondent No.3 has been assigned the acting charge of Vice-Chancellor of respondent-university. It is, *inter alia*, contended on behalf of the petitioner that there is no provision under Shaheed Mohatarma Benazir Bhutto Medical University Act, 2008 as amended by Sindh Universities and Institutes Laws (Amendment) Act, 2018 to direct the Vice-Chancellor of University to proceed on leave, therefore, the impugned action taken by the competent authority of respondent University is a nullity in the eyes of law. Per learned counsel, the competent authority is only empowered, in case of allegations of gross misconduct, inefficiency, corruption, violation of budgetary provisions, moral turpitude, maladministration, and mismanagement of the university, which is not the case in hand. However, due to certain incidents of suicidal death of students namely Dr. Nimarta and Dr. Nausheen Shah, which prompted the competent authority to exercise the powers vested in him under sub-section 9(10) of the Act, 2008 as amended under the Act-2018, as such the entire exercise conducted in this regard is based on presumption and no concrete evidence is available on record to force the petitioner to go for leave. Learned counsel referred to various documents attached with the memo of the petition including judicial inquiry conducted by the learned District and Sessions Judge, Larkana, regarding the death of students; and, opined the death of above students as suicide. He also referred to the order dated 24.11.2020 passed by this court in CP No.D-4364/2020 and submitted that under similar circumstances, this court has held that there is no provision to direct the incumbent Vice-Chancellor to proceed on leave, during the pendency of inquiry proceedings. He prayed for the suspension of the impugned notifications.

At this stage, learned AAG assisted by Ghulam Ali Birhmani, Secretary (Services-1), SGA&CD, has waived the notice of this petition and submitted that the forensic Department has found concrete evidence concerning the alleged suicidal death of the students, therefore, the competent authority has decided to conduct a probe into the allegations; and in the meanwhile, the petitioner Vice-Chancellor has been directed to proceed on leave till further orders under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, just to avoid influence in the inquiry proceedings. Per learned AAG, the Government of Sindh is taking concrete efforts to bring the actual culprits into the book, therefore, the petitioner should cooperate with the probe committee as constituted by the Government of Sindh vide notification dated 12.02.2022; and during this period, petitioner may not be allowed to continue as Vice-Chancellor of the respondent university.

The questions involved in the present proceedings are whether the Vice-Chancellor of University could be directed to proceed on leave under Shaheed Mohatarma Benazir Bhutto Medical University Act, 2008 as amended by Sindh Universities and Institutes Laws (Amendment) Act, 2018; and, whether the petitioner is under probe by the Inquiry Committee constituted by the Government of Sindh vide notification dated 12.02.2022. Let notice be issued to the respondents as well as to learned Advocate General Sindh for **08.03.2022**. However, it is made clear that the impugned notifications are subject to the outcome of this petition. The Inquiry Committee is directed to submit its preliminary recommendations before this court on the next date of hearing, in terms of Reference dated 12.02.2022, so far as the role of the petitioner is concerned. At this stage, the petitioner has insisted for the interim order, let at the first instance preliminary report be submitted to ascertain the role of the petitioner in the aforesaid probe.

JUDGE

JUDGE

Nadir/PA