

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

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Agha Faisal

High Court Appeal No. 108 of 2021

Professor Dr. Lubna Ansari Baig  
Versus  
Province of Sindh & others

Date of Hearing: 14.07.2021

Appellant: Through Mr. Haider Waheed Advocate

Respondents No.1&2: Through Mr. Salman Talibuddin, Advocate General Sindh along with Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

Respondents No.3: Through Mr. Arshad Tayebaly Advocate.

Intervener: Through Mr. Ovais Ali Shah Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- On the strength of credentials and being number one in the list of candidates, short listed for appointment of Vice Chancellor of respondent No.3, appellant filed a suit as she viewed discrimination at the hands of the authority.

2. Being aggrieved of an order passed in the aforesaid suit bearing No.722 of 2021 dated 24.06.2021, appellant has preferred this appeal, inter alia on the following facts and grounds:-

3. Foreseeing a discrimination appellant preferred a suit for declaration, mandatory and permanent injunction and on 02.04.2021 an injunctive order in the following terms was passed:-

*“Mr. Muhammad Irfan Siddiq Advocate files power on behalf of defendant No.5, which is taken o record. He seeks time for filing counter-affidavit/objection to this application.*

*Despite being served none is present for defendants No.1 to 4; therefore, office is directed to repeat notice to them through first three modes.*

*Learned counsel for the plaintiff states that in somehow identical controversy agitated in C.P. No.D-2209 of 2021 (Re. Dr. Muhammad Umar Farooq v. Government of Sindh and others) ad-interim order has been passed by the Division Bench of this Court, whereby the Committee has been allowed to conduct the interview of the shortlisted candidates; however, it would not make final list in respect of the selected candidate or candidates as the case may be. He requests that in view of aforesaid order of Division Bench, ad-interim injunctive order in this case may also be granted. Order accordingly.*

*The matter is adjourned to 09.04.2021.”*

4. While the aforesaid injunctive order was operating, a notification dated 22.06.2021 that concerns with the subject was issued. Appellant being aggrieved of this notification has yet again filed Misc. Applications for seeking appropriate injunctive orders. Such applications being CMA No.10430 and 10431 of 2021 came up for consideration on 24.06.2021 before learned Single Judge when notices were ordered to enable parties to file counter-affidavits and rejoinder, if so desire. Learned Single Judge exercised his discretionary powers and issued notices however apart from issuing notices some adverse observation has also been made. For convenience the order is reproduced as terms:-

*“1. Urgency granted.*

*2&3. Notice. Counter Affidavit and Rejoinder, if any, should be filed and exchanged before the next date of hearing.*

**First tier**

*Since Intervener Professor Dr. Amjad Siraj Memon, has now been appointed as Vice Chancellor of Defendant No.3, vide Notification dated 22.06.2021, learned counsel states that said Notification may be suspended. In my considered view, at this interlocutory stage, this would not be proper as it may adversely affect the functioning of Defendant No.3. However, it is necessary to observe that this appointment will be subject to outcome of this proceeding.*

**Second tier**

*Adjourned. Interim orders passed earlier to continue till the next date of hearing.”*

**Third tier**

5. With this observation learned Single Judge also continued the earlier interim orders of 02.04.2021, which virtually restrict such process of appointment. Thus being aggrieved of (a) not granting an injunctive

order in relation to such notification and (b) making adverse observation which otherwise could have been passed only on the disposal of the applications, the appellant has preferred this appeal.

6. Since short controversy is involved, all counsels have argued. We have heard learned counsel in attendance and perused the record.

7. The impugned order is three-tier order. Initially notices were ordered on the applications of the appellant that could said to be in exercise of discretionary powers of learned Single Judge under normal circumstances. The second tier of the order is with regard to a notification which was and is subject matter of the two miscellaneous applications of which only notices were ordered.

8. To us this observation is not only unnecessary but also shows conclusiveness. Had it been a simple notice on the applications, the discretion could said to have been exercised. However, the fact which cannot be ignored is that there was an earlier injunctive order of 02.04.2021 whereby, relying on the observation of Division Bench, Committee was only allowed to conduct interview of shortlisted candidates and were not allowed to finalize the list in respect of selected candidate or candidates, as the case may be and on the strength of the Division Bench's order a similar order was passed in the case/suit of the appellant. With this order in filed, the observations in the second tier of the order was totally unnecessary.

9. The existing state of affairs in view of order dated 02.04.2021 should have been taken into consideration on 24.06.2021 when subsequent applications were fixed. Learned Single Judge has not only gave observation regarding notification but also continued the interim order which order (02.04.2021) otherwise restricted the Committee and/or authority to finalize the candidate out of the shortlisted candidates for the appointment of Vide Chancellor. Therefore, the

argument of the respondents that such discretion of learned Single Judge cannot be disturbed only because of the reason that ad-interim injunctive order was not passed, was not impressive.

10. The Act XXIII of 2013 that deals with the issue of Vice Chancellor would have taken care of the situation and there was no urgency of the nature as highlighted by learned Single Judge in the second tier of the order after issuance of notices of applications of the appellant. No doubt the University/respondent No.3 deserves a regular/ permanent Vice Chancellor, however, the process, mechanism and the legal proceedings should not be allowed to be flouted and it is prima facie contemptuous on the part of the respondents to have continued the process of finalization of Vice Chancellor without disposal of relevant applications on which at least an earlier injunctive order was/is operating.

11. Insofar as conventions of three principles that requires for the disposal of an injunction application are concerned, at this point of time we would not like to comment as it may influence the proceedings before the learned Single Judge. However, we are only of the view that once an earlier injunctive order was passed, a follow up order to carry the real object of the earlier order should have been passed. Presumably, earlier order was passed after a tentative assessment of well-known principle of granting injunction. Learned Single Judge would have been empowered to revisit and decide the applications finally, based on three ingredients, referred above, but not in a cursory manner and that too after passing adverse remarks.

12. The scope of the suit, as filed by the appellant, is that the University/respondent No.3 is bound by the eligibility criteria prescribed in advertisement and that the process of appointment of Vice Chancellor must be undertaken as per provision of Jinnah Sindh Medical University Act, 2013 and that any deviation should be subject to the approval of

Pakistan Medical & Dental Council Regulations. With these set of pleadings and prayer adjudication is being anticipated whereas notification was issued for the appointment of Vice Chancellor in haste when earlier on 02.04.2021 an injunctive order was passed. Presumably as the contention and material must have been taken into consideration earlier that it would have been a miscarriage of justice had the ad-interim injunctive relief is declined.

13. The appeal before us is not only to the extent that ad-interim injunctive relief is declined but also adverse observation, contrary to the prayer in the aforesaid applications were passed in the second tier of the order and then lastly the earlier injunctive order was continued. This has enabled us to intervene as obviously the rights of the appellant which were earlier seen while passing ad-interim injunctive order, would have been frustrated. (2010 YLR 2426).

14. Record shows that as against the operative part of the earlier injunctive order a summary was forwarded and in consequence whereof subject notification was issued. Learned Single Judge kept the applications pending and observed adverse to the prayer made in the applications. Learned Single Judge could have conveniently avoided the observation as only notices were ordered. However, this selection of observation by the learned Single Judge has perhaps overlapped and overshadowed the earlier order and the mandate and without actually the applications being heard and decided. The cursory proceeding normally leads to miscarriage of justice and cumulative effect of the impugned order render it as confounded and in variance.

15. We are also conscious of the fact that since last one year acting Vice Chancellor is performing functions/affairs of respondent No.3 and the said acting Vice Chancellor in fact earlier completed his two tenures of four years each. Respondent No.3 should have a proper and

permanent Vice Chancellor to tow the real object of the University smoothly but not in the manner as provided hereinabove.

16. Since for intervener the appellant had already filed application for impleading him as necessary and proper party in the suit, it requires no further deliberation as far as this application is concerned.

17. With regard to another objection that this appeal is filed after 15 days' time, we are of the opinion that we are viewing the situation of 24.06.2021 when applications were moved and orders were passed, nothing would turn on filing of this appeal after about 15 days' time as long as it is within time.

18. Thus, we deem it appropriate to allow the appeal and set aside the impugned order to the extent of the observations made in respect of notification in the second tier of the order however the notification dated 22.06.2021 shall remain suspended till hearing of the pending applications in the suit. The tentative assessment for passing above ad-interim order in respect of the notification by this Bench is only for ad-interim orders whereas the learned Single Judge would be free to exercise his powers without being influence of any observations while deciding pending applications.

Dated: 14.07.2021

**Judge**

**Judge**