

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No.D –4434 of 2020 along with
Constitutional Petition No.D –2686 of 2021
Constitutional Petition No.D –2281 of 2021
Constitutional Petition No.D –5842 of 2020 &
Constitutional Petition No.D –2573 of 2021

Date	Order with Signature of Judge
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Priority

1. For order on CMA No.21418/2021.
2. For order on office objections.
3. For hearing of CMA No.10959/2021.
4. For order on CMA No.18702/2020.
5. For hearing of main case.

01.09.2021 :

Malik Altaf Hussain, advocate for the petitioner in CP No.D-4434/2020.

Mr. Mustafa Mehdi, advocate for the applicant/intervener in CP No.D-4434/2020.

Mr. Zulfiqar Ali Domki, advocate for the petitioner in CP No.D-5842/2020.

Mr. G.M. Korai, advocate for the petitioner in CP No.D-2281/2021.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh a/w Dr. Kazim Ali Jatoi, Secretary, Health Department, Government of Sindh and Dr. Sikandar Ali Memon, Focal Person, Health Department, Government of Sindh.

At the outset, Secretary Health Department, Government of Sindh, is present in this Court and contends that in the year 2020 Sindh Government has enacted *The Sindh Teaching Hospitals (Establishment of Management Board) Act, 2020*, however, rules are yet to be framed. According to him that Act provides Board to run the affairs of Tertiary Hospitals. It is further contended that **Drawing & Disbursement authority** is still with Medical Superintendent. However, Health Secretary, Government of Sindh, contends that on requisition directly by Medical Superintendent of Tertiary Hospital, he has advised them that these requisitions shall come through Board. According to him that selection of such board is prerogative of Worthy Chief Minister and who is competent to approve the summary with regard to formation of the board of every Tertiary hospital comprising of all stake holders, however, the rules will define the mechanism with regard to purchase of medicine and other surgical instruments as well to assign the posting including the Medical Superintendent. The news of enactment of *'The Sindh Teaching Hospitals (Establishment of*

Management Board) Act, 2020 is worth appreciating but non-framing of the 'rules' appears to be a cause hurting *badly* to purpose for which the 'Act' was/is enacted. Needless to mention that rules are always subordinate to the 'Act' and are always meant to provide 'procedure' for enforcement of the 'Act' hence same shall not violate spirit of referred Act therefore, Medical Superintendent shall not be given sole powers of Drawing & Disbursement and he shall be accountable to the Board as well as removal and transfer or posting shall be subject to consultation of that Board. Accordingly, Health Secretary shall pursue that rules are prepared and vetted within two months from today.

2. As regard contention of Secretary, Health that "*selection of such board is prerogative of Worthy Chief Minister and who is competent to approve the summary with regard to formation of the board of every Tertiary hospital comprising of all stake holders*" it would suffice to say that prerogative of one (Authority) is never an excuse to keep a lawful things delayed / hanging. When the 'Act' itself requires formation of such 'Board' and when importance and vitality thereof is not under any dispute then the one in authority as well those to deal with situation, including but not limited to Secretary, Health, are always supposed to get constitution of the 'Board' which, too, in manner that a lawful thing / issue should not be become a *ping-pong ball*. Accordingly, Secretary Health shall pursue the matter and *hopefully* the Chief Minister shall appreciate the importance and requirement of constitution of 'Board' and shall make it functional so that the objective of enactment of the 'Act' be achieved without any further delay. This exercise shall be completed within 15 days with compliance report through MIT-II.

3. Secretary Health along with Assistant Advocate General Sindh undertakes that all officers posted as on OPS basis on administrative posts will be removed within 10 days from today and only seniors, as stopgap arrangement of that grade, will be posted; thereby they will comply with the Judgment of apex Court reported as **2014 SCMR 1189**, which speaks that only

senior persons shall be posted. Paragraph 12 of that judgment is reproduced as under:-

“12. At times officers possessing requisite experience to qualify for regular appointment may not be available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule 4 of the afore-referred Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting charge basis can be made, subject to conditions contained in the Rules.”

4. Secretary Health contends that in the Provinces of Punjab and KPK there is separate cadre of doctors qualified with MPH degree to be posted on administrative posts. However, in Sindh such rules are not providing such opportunity / appointment. Accordingly, Secretary Health contends that he has working papers lying with him and will ensure that rules are to be examined within such cadre rules in the light of practice of other provinces. Such commitment towards obligation is worth appreciating and is taken on record as such. We expect that Secretary Health will pursue and will bring amendments in those rules to establish / create separate cadre for hospitals administration within three months.

5. At this juncture, Secretary Health contends that he will comply with the order as referred in paras-3 and 4 in letter and spirit, however, with regard to hospitals wherein COVID wards have been established, there is difficulty for doctors to perform their duties efficiently due to their advanced age as they are most vulnerable to Covid-19. Though they have been promoted, but they are reluctant to accept the charge of Medical Superintendent, therefore, they may be given some relaxation. Needless to mention that in abnormal situation, a deviation to normal procedure is always permissible. Accordingly, under these circumstances, there shall be consent in writing by those doctors who are eligible for that post if they are reluctant to join. In that situation till issue of COVID is in existence, Health Department would be competent to post any responsible senior officer in only COVID established hospital(s) as stopgap arrangement which, however, shall not prejudice what was directed by honourable Apex Court in referred case.

6. By order dated 18.08.2017 passed by this Court at Circuit Court Hyderabad in C.P No.D-2303 / 2017, paragraph No.6 of which is as under:-

"In view of above, this Court takes judicial notice and direct Chief Secretary Sindh that he shall constitute committees on District levels in whole Sindh to submit reports with regard to present status of the public sector hospitals, they shall hold open Katchehries in every Taluka Headquarter and visit the hospitals after issuing notices to general public through vide publication and submit their recommendations to Chief Secretary and Secretary Health, Sindh who shall ensure that all requisite facilities as needed and sanctioned for such hospitals are available in all public sector hospitals within a period of three months after the reports submitted by the committees on emergency basis. Such committee shall be comprised upon responsible officers, having good reputation, not below the grade-18 of various departments including nominated representatives of District Bar Association, the representative would be nominated by the concerned District Bar Association. These committees shall be under the head of Deputy Commissioner of the concerned District. This exercise shall be completed within 04 weeks."

7. In the light of above order it was directed to Health Department, Government of Sindh, that they shall form committees and invite public in open *Kachehri* and as per population, revised SNEs of all hospitals from DHU level to district hospitals and Tertiaries. They will submit revised SNEs of all

hospitals including staffs and strength of hospitals to cope up the flow of patients. Besides Secretary Health shall submit details of hospitals which are designated/ notified as DHQ Hospital and Taluka hospitals but yet summaries are not approved which, we insist, is not worth appreciating. It was a categorical direction which was / is always required to be honoured. According, this exercise shall be completed within one month on war basis. Such upgradation shall be completed preferably within two years, however at least six DHQs and 12 Taluka Headquarter hospitals shall be upgraded as required within one year.

8. With regard to *allow to work* in Health Department and other departments, Secretary Health contends that only newly recruited doctors, who were working in their departments, intend to get any training of higher educations, will be accommodated and allowed to work at the concerned hospitals, post-graduation and COVID Ward.

9. Besides all Secretaries shall ensure that all officers are removed who are working on OPS and on Acting Charge within 10 days or any acting charge shall be subject to above referred judgment and such compliance report shall be filed within three weeks, non-compliance will be treated as pejorative act, amount initiating of contempt proceedings.

Adjourned to 07.10.2021. Office to place copy of this order in all connected petitions. Office shall communicate this order to all Secretaries and Worth Chief Secretary Sindh.

JUDGE

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