

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

**HCA No.437 of 2018
along with
HCAs No.438, 446 and 447 of 2018**

Date	Order with signature of the Judge
<u>Hearing Case (Priority).</u>	

1. For order on CMA No.1756 of 2021.
2. For hearing of CMA No.913 of 2019.
3. For order on Office Objection along with Reply at “A”.
4. For hearing of main case.
5. For order on CMA No.2531 of 2018.

23.12.2025

Mr. Muhammad Fahad Pirzada, Advocate for Appellants in all Appeals.

M/s. Uzma Farooq and Zahra Vayani, Advocates for Respondents No.1 to 3-SUPARCO.

Mr. Abdullah Jamil Khan, Principal Law Officer of Respondents-SUPARCO.

Mr. Muhammad Akbar Khan, AAG.

Due to commonality, all these Appeals are decided by this Order.

2. In view of yesterday's Order, the learned Counsel for the Appellants has filed a Statement today, the contents whereof are reproduced hereinbelow_

“I, the undersigned on the instructions of my client do hereby state that my client i.e. the appellant is ready to return to Pakistan and rejoin the SUPARCO and resume its duties on the following points as follows:

- a. *Appellant requests 90 days' time to return the SUPARCO as he wants to conclude his affairs in Canada.*
- b. *Direct the Respondent No1 to remove the name of the appellant from Passport Control List and direct the Embassy of Pakistan at Toronto to issue the passport of the appellant.*
- c. *Issue reinstatement order of the appellant so that he can resume his duties with all the service back benefits.*
- d. *Direct the Respondent No.1 to withdraw the recovery suits against the appellant and no further coercive action.”*

3. Today, Mr. Abdullah Jamil Khan, Principal Law Officer of Respondents-SUPARCO, is present and states that many years have

passed from the date of the Appellants' termination and in addition SUPARCO cannot reliably determine whether such individuals (i.e Appellants) have been compromised during their prolonged unauthorized stay abroad. Reinstating such individuals forces the Organization of strategic importance to assume unknown and unquantifiable risks that could have long-term operational, financial and security consequences. Has stated that the Suits have been initiated by the SUPARCO against the Appellants, *inter alia*, for recovery of the amount spent on their education abroad.

4. The brief facts are that the Appellants were in the employment of SUPARCO and, after completing the procedure, went for the higher studies to Canada, but never returned to-date, resulted in initiating the disciplinary proceedings against them vide a Correspondence of 20.02.2013 (*at page-197*), which was challenged through the following Suits_

- (i) **Suit No.1515 of 2013**
[Waqas Khan versus the Chairman Suparco and others]
- (ii) **Suit No.1081 of 2014**
[Noman Saleem versus the Chairman Suparco and others]
- (iii) **Suit No.1156 of 2014**
[Syed Mohiuddin M. Bukhari versus the Chairman Suparco and others]
- (iv) **Suit No.1157 of 2014**
[Rashid Hussain Khokar versus the Chairman Suparco and others]

The above four Suits preferred by the Appellants to forestall such disciplinary proceedings, since tuition and other fees was not transferred to the University abroad within time by the SUPARCO, thus, due to this lapse and default, the Appellants had to extend their stay and faced other

hardships. Besides other reliefs, the damages were also claimed by the Appellants in their respective Suits.

5. Learned Counsel for the Appellants has argued that the impugned Order ought to be set-aside for the simple reason that there is no concept in law for disposal of Suits as has been done in the impugned Order. Suit of this nature can either be partly or fully decreed or dismissed. Definition clause of 'Decree' [Section 2(2) CPC], so also Rule 5 of Order XX of CPC, enjoin that how a Judgment is to be pronounced by framing and discussing the Issues, and any decision given in violation of this, would be a nullity in the eyes of law. Impugned Order has also observed about the Undertaking that "Appellants want to come back, therefore, 45 days' time was given", on the basis of which, the Suits were disposed of, but per Counsel, fact of the matter is that no such Undertaking was given, which can be construed as a consent to the stance of the SUPARCO. Has placed reliance on the Judgment dated 16.02.2017 of the learned Division Bench of this Court handed down in CP No.D-7084 of 2016 in support of his arguments.

6. On the other hand, learned Counsel for SUPARCO has disputed the above arguments and stated that non-payment of financial assistance, as alleged by the Appellants, was never an issue and is an afterthought. She has referred to one of the Applications of the Appellants (dated 27.12.2012; at page-243), in which only extension of leaves was sought, without any complaint about alleged non-payment or delayed payment of University fees by SUPARCO. Has referred to page-339, an Email (dated 27.11.2013) from the Director Establishment-SUPARCO to the Appellants, whereby SUPARCO offered to facilitate the Appellants for their return to Pakistan by arranging their tickets.

Since the timeframe of 45 days mentioned in the impugned Order had also lapsed, SUPARCO resumed disciplinary proceedings and, upon conclusion thereof, the employment of all these Appellants were terminated vide Office Memorandum of 21.01.2019; appended as Annexure “K”, with the Counter-Affidavit of SUPARCO (at page-1041 of the Court File).

7. Arguments heard and record perused.

8. On the factual side, the above mentioned aspects regarding timely payment and non-payment of University fees are disputed.

9. We agree with the contention of the Appellants’ Counsel that a Judgment is to be passed, *inter alia*, in terms of Rule 5 of Order XX of CPC, whereas definition of ‘Decree’ as mentioned in Section 2(2) of CPC, is reproduced hereinunder_

“(2) “decree” means the formal expression of an adjudicated which so far as regards the Court expressing it, conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint [the determination of any question within section 144 and an order under Rules 60, 98, 99, 101 or 103 of Order XXI]. But shall not include_

- (a) any adjudication from which an appeal lies as an appeal from an order, or*
- (b) any order of dismissal for default.”*

10. The pivotal element of the above definition of ‘Decree’ is determination or expression of the rights of a party. Obviously, the rights or interests of the parties cannot be determined without a proper trial if triable issues are involved, or, if there are none, on the basis of legal issues.

11. Notwithstanding the above, while passing the impugned Order, the Court took into the account the ground realities, vis-à-vis the strategic importance of SUPARCO, that comes under the National Command Authority (“NCA”). The same is also reflected in the impugned Order in the following words_

“....SUPARCO to sympathetically consider their cases and pass orders in accordance with law as to their future relationship with SUPARCO in greater national interest keeping in view that the country requires highly educated individuals in all disciplines of life, and in particular in the field of science, technology and engineering.”

12. Even if the argument of the Appellants' Counsel is accepted that no such consent or Undertaking was given, it hardly makes any difference because object of the impugned Order was to bring back highly skilled and educated professionals to the Organization, and it did not determine / express any right either of the Appellants as Plaintiffs or of SUPARCO as Defendants. Although the disciplinary proceedings were initiated at the relevant time, the Court directed SUPARCO to consider the cases of Appellants on sympathetic grounds. More so, in the intervening period, the services of the Appellants have been terminated, which is a new development in these cases, for which the Appellants may seek remedy, in accordance with law. The Case Law cited by learned Counsel for Appellants, is distinguishable and does not apply to the facts of present Appeals.

13. The conclusion of the above discussion is that, in these peculiar circumstances, no interference is required in the impugned Orders because no illegality exists. Consequently, all these Appeals are dismissed. However, it is clarified that this Decision will not *prejudice* any pending proceedings between the Appellants and the Respondents, including the Suits filed by the latter.

All pending applications also stand disposed of.

JUDGE

JUDGE