

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

CP No. D- 337 of 2016

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<b>DATED</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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20.09.2017.

Mr. Kanjimal Meghwar, advocate for petitioner

Mr. Dost Muhammad Kolachi, advocate intervenor

Mr. Muhammad Ismail Bhutto, Asstt: A.G. along with Mr. Muhammad Ayoub Khyber, Deputy Director Colleges Shaheed Benazirabad, Syed Rasool Bux Shah, Director School Education (Secondary) Hyderabad, Mr. Qamar Shahid Siddiqi, Director General (Incharge) PITE, Nawabshah, Tahir Hussain Sangi D.G. (Monitoring & Evaluation) SELD and Mr. Ghulam Qadir Junejo, ADC-I, Hyderabad for Chief Secretary.

Pursuant to order dated 23.8.2017 & 29.8.2017 Prof. Shahida Parveen, Additional Director, Colleges (Inspection) Hyderabad and Director General Monitoring and Evaluation are present as well they filed compliance report, same is taken on record as well Director PITE present submits report which is taken on record. but none is representing Secretary Colleges

2. Mr. Dost Muhammad Kolachi, counsel for intervenor contends that Secretary Education appeared before this Court on 14.12.2016 and contended that concept of Higher Secondary School was introduced that has created havoc therefore that old system shall be revised. He also contended that staff of Higher Secondary School can be transferred to the colleges with their seniority list which can be maintained separately as subject specials cadre, Secretary Colleges also endorsed this proposal.

3. Before coming to what we have today, it would be appropriate to have a *brief* look to *turning* of few papers (*filed petition*) into a *heavy* heap. We find ourselves compelled to say that though the *weight* and *volume* of instant petition has materially increased *abnormally* by submissions of reports, notifications and policies yet no *true* compliance of binding order of this court as well of Apex Court, insisted in *initial* order passed on 03.11.2016 is made which is:

*“..Besides, Secretary Education and Chief Secretary Sindh shall submit report with regard to compliance of paragraph number 17“..Besides, Secretary Education and Chief Secretary Sindh shall submit report with regard to compliance of paragraph number 174 of judgment passed by apex Court reported as 2014 SCMR 396”.*

On hearing dated 23.11.2016, a *notification* regarding accreditation board was placed for which it was commented in order dated 23.11.2016 as:

*“At the outset learned A.A.G has provided **notification dated 22.11.2016 with regard to compliance of Paragraph-174 of Judgment of apex Court reported in 2014 SCMR 396, whereby accreditation Board is constituted** and is headed by the Chairman of the Members which is taken on record. It *however* prima facie appears that same is not within the spirit of *directives*, provided in the judgment because *even* it is not clear that who would be Chairman of that Board as well names of co-opted members are not available. Without commenting on date of *notification* towards establishment of *Accreditation Board* with reference to date of judgment, we would not hesitate in saying that the lust of the referred judgment shall not be satisfied only by issuing a *Notification* **but it shall require to stand well with the given directive (s) which otherwise have the status of binding in nature from the day it was so passed.** The Additional Secretary Education and Incharge Chief Secretary contended that though the Chairman shall be *educationist* from the department of active and high calibre, acceptable to every stakeholder of the society but it is not requirement that he (*Chairman*) must not be from Education, or other provincial Departments. Since, none denied obligatory duty to **make compliance of directives of judgment of Supreme Court in its letter & spirit hence same is hammered again for which undertaking is made.***

The *issue* relating to *education* not only involved *true* compliance of apex court’s judgment but *education system* for which the respondents (*Education Department*) was / is always *otherwise* bound within spirit of Articles 9, 25-A and 37 therefore, time and *again* directions were issued to do what the *department* was / is already obliged to do however, *attitude* of the Education department continued to be the same as was noticed and observed by apex Court in the case of *“Petition regarding miserable condition of the Schools: In re 2013 SCMR 764”* as:

“2. ....The education departments of the other provinces also admitted that there are Ghost Schools or the property owned by the Schools have been occupied and without taking effective steps, the officers travel from their Provincial Headquarters to Islamabad for attending the cases before the Court but without showing any progress and we are unable to comprehend as to why they are not willing to take the benefits of the orders of the Court or act on their own initiative and make laws to improve the education sector including getting removed encroachments and also of stopping the payments to the staff who are getting salary without providing services. Having left with no option, we are of the opinion that as far as the education sector is concerned, it is one of the most important social service and the executive Government is duty bound to pay full attention in order to raise the standard of education and to ensure that its children are well educated but here the things are otherwise. However, under the circumstances, we direct the **Provincial Government (s) through Chief Secretary or the Secretary Education (s)** to implement the orders of this Court in letter and spirit and in the meanwhile in order to have a clear picture we appoint all the **District and Sessions Judges or the Additional District & Sessions’**

Worth to add that issue of *education* after induction of Article 25-A became a *fundamental right* hence the Government was left with no option but to make such *fundamental right* available to *all* and any deviation thereto shall now *open* the door of apex Court as well this court. Reference may well be made to the *Petition regarding Miserable Condition of the Schools: In the matter of* 2014 SCMR 396 wherein it is held as:

“154. .... Article 37(a) of the Constitution requires the State to promote with special care, the educational and economic interest of backward classes or areas whereas clause (b) of said Article makes it incumbent upon the State to remove illiteracy and provide free and compulsory secondary education within minimum possible period. However , with the introduction of Article 25A, the scenario has been changed and now the State of Pakistan is called upon to ensure free and compulsory education to all children of the age of five to sixteen years in such manner as maybe determined by law. The direction on imparting education contained in the Constitution by way of a Directive Principle has now been translated into a Fundamental Right, which is enforceable by the superior courts in exercise of the jurisdiction vested in them under Article 199 and Article 184(3) of the Constitution.

Thus, the above was / is always sufficient to conclude that:

- i) Government was / is always required to promote with special care, the *educational & economic* interest as well *removal* of illiteracy;
- ii) Government is called upon to ensure *free* and *compulsory* up-to *secondary* education;
- iii) Education up-to *secondary* education is *now* fundamental right;
- iv) The Chief Secretary & Secretary Education are the *executing* authorities in achieving true object of above *Articles* as well directions of apex court;
- v) Lower Judiciary, being ultimate custodian of rights of people at *local* level, can well be used as *temporary arrangement*;

The *importance* and *vitality* of education for a *nation* cannot be denied nor disputed which *however* can never be achieved only by use of words on *papers*. A *dream* shall always remain a *dream* if one does not prepare to part himself of the *coat* to dress it *up*. The *vitality* was reaffirmed in proceeding of instant matter while recording order dated 29.7.2016 as:

....Suffice to say that none can deny the significance and importance of education for a better society. In case *Liaquat Hussain and others v. Federation of Pakistan through Secretary Planning and Development Division, Islamabad* PLD 202 SC 225) that:

“Art. 25-A.. Right to education—Education plays an important role in the successful life of an individual. Generally, Education is considered to be the foundation of society, which brings economic wealth, social prosperity, political stability and maintaining healthy population. Further progress of society is stopped in case of deficit of educated people, who enjoy respect among their colleagues and can effectively contribute to the development of their country and society by inventing new devices and discoveries. Islam is a scientific religion emphasizing on the need of scientific inquiry. While quoting several verses of Holy Quran and the Ahadith of Holy Prophet Hazrat Muhammad (S.A.W.W). **It was concluded that in the success of individual and the society as whole the education plays a very important role and is considered to be foundation of the society.** In almost all societies, receiving education and attending school is necessary to achieve success. It is the key to move forward and ultimately success in life.”

4. A *guarantee* to prosperity and development of a *nation* cannot be hoped by insisting *school* education only therefore, it (education system)

normally is in two sections i.e **school education system** and **college education system**. Earlier, the *higher education system* was not there school education was *earlier* limited *secondary education* only. Since, the prosperity and *growth* of a nation so as to meet the *challenges* of 21<sup>st</sup> Century can never be achieved only by focusing onto *school education* only hence the government was always to establish new **colleges** and **universities** gradually which too at District levels and **universities** at Division levels.

5. *Perhaps*, it was not practicable for the government to establish *colleges* at each Talukas therefore, as a *temporary* arrangement the **higher education** was introduced. Government of Sindh, Education Department vide notification date 12<sup>th</sup> June, 1989 introduced the *role* of **Higher Secondary schooling** had approved the following TOR(s):-

i) *that, the Regional Directors and all the concerned are responsible to follow the conditions strictly and submit monthly progress report to the Secretary without fail;*

ii) *that, Comprehensive / Higher Secondary will be established / created on need basis in existing High Schools where enrolment is more than 1000 and there is no college within the radius of 2.5 kms;*

iii) *that, the Comprehensive Schools will be established in rural / far-flung arrears of the province only without exception, to impart only intermediate education and the staff (BPS-17 and above) will be appointed on adhoc / contract basis as this scheme is purely on Development side till the year 2000, unless extended through an Act from the Sindh Assembly depending on the analytical progress of each school;*

iv) *that, where dire need two classes will be constructed in that High School, but if within the radius 2.5 kms then any college is established, either the High Secondary will be shifted along with staff or closed and the staff will be merged as BPS-1 to 16 with school side and BPS-17 and above with college side;*

v) *that, all the Higher Secondary Schools will impart Science (Pre-Medical / Pre-Engineering) Education in the province comprising teachers as, Principal BPS-18-one, Assistant Professor BPS-18-two , Subject*

*Specialist BPS-17-seven (Physics, Chemistry, Mathematics, Zoology, Botany, Sindi and Urdu one each - no other subject);*

*vi) that, the post of H.M will exist and he / she will look after Secondary classes and will look after overall school if senior,*

*vii) that, the introduction of Higher Secondary Schools shall in no way discourage college Education but will assist the system and its over all impact and pros and cons will be assessed after 10 years in the year 2010;*

*viii) that, SS and other higher posts of Comprehensive cadre, will be non-transferable and non-promotional till they are on development side*

From above, it was / is quite obvious that such *introduction* was purely temporary and was never aimed to prejudice the college-sector as well responsibility of the government to establish colleges but *prima facie* the TOR(s) of above notification were never followed. Since, such *temporary* arrangement never prejudiced the *bounden* obligation *rather* duty of the Government to establish '**colleges**' which *however* were never created / established as per *needs* of the day, therefore, this court had hammered for performance of such obligation. In response thereto, the *negligent* attitude of the quarter concerned in controlling and *supervising* its *own* policies resulted into an *admission* by the Secretary Education which was made part of the order passed in this petition. The relevant portion of the order passed in this petition on 14.12.2016 which is:

"4. **At this juncture Secretary, Education contend that concept of high secondary schools and appointment of subject specialists have created serious problems.** He also contends that earlier in education department there was mechanism of primary, middle and high school and thereafter colleges, but since eight years back, there concept of higher secondary school was introduced, therefore, that has created *havoc* therefore, **he suggests that old system shall be revised;** staff of higher secondary school can be transferred to the colleges with their seniority list can be maintained separately as subject specialist cadre, Secretary Colleges also endorsed this proposal.

Since, making *policies* is domain of the Executives with which the Courts got nothing to do unless same fail to stand well with chalked out lines hence above *plea* of Secretary Education was responded in same order as:

“ 6. The dare to acknowledge havoc by the Secretaries due to present education system though is worth appreciating but at the same time raises a serious question over responsibilities of such authority which otherwise meant to mechanize the system by chalking out suitable policies so as to achieve the ultimate object. **The framing of policies is exclusive function and domain of the institutions** unless found to be arbitrary, against law or malafide, therefore, it is not enough to make proposals in Courts but should materialize at their won particularly when they (Secretaries) acknowledge present one as havoc and **have acknowledged needs of separate secondary high school for boys and girls and at least separate degree college for girls and boys in every Taluka head quarter**. Thus, it is hoped rather believed that the present **Secretaries shall not only frame such policy but shall also expedite the same**. The Chief Secretary, Sindh, being ultimate authority of province, is expected to extend his full cooperation in this regard so that education system may no longer be acknowledged by the Secretaries as a havoc

At this point, it is also worth adding that the Article 25-A as well 37 of the Constitution does not speak of any *gender* difference hence this Court while following *true* spirit thereof had insisted for proper and *preferably* separate Schools and colleges for *girls* and *boys*.

6. Resuming, since it was domain of the Education department to come with *better* and *fruitful* policies so as to achieve the ultimate object i.e *educating* the *nation* while keeping in view objectives thereof as well relevant *Articles* couple with directives of apex Court as well this Court without making any complaint of failure of its own *policy* or framing of improper policy of *past* even. However, since this Court was always conscious of the legal duty of the Government regarding establishing *new* colleges hence this court continued with its *obligations*. In consequence thereto it was claimed during proceedings that the policy was changed whereby 300 Higher Secondary Schools are bifurcated in two ways i.e.

176 Higher Secondary Schools would be handed over to college side whereas 114 Higher Secondary Schools would be converted into campus but on 29.8.2017 Secretary Colleges appeared and while submitting list of *new* approved colleges had raised certain contentions. In consequences whereof same were made part of the order, so passed on such date of hearing. Relevant portions whereof that are:

“2. Pursuance of order dated 23.08.2017, Secretary Education (Colleges) is present, submits list of colleges. According to that list, **in present budget 29 colleges have been approved on various places in whole Sindh** however, S.N.E(s) whereof is not *yet* approved. It is further contended by him that **besides this 15 colleges were approved in year 2015**. We would add that **an approval of new colleges is an admission of the need as well a step in achieving the spirit of Article 37 of the Constitution but leaving them approved only is not understandable**. It is not the *approval* which would satisfy the *need* but positive and practical working only. When confronted, the Secretary stated that with regard to these *schemes* that *necessary* summaries are floated for approval of SNE, **these colleges buildings will be completed in this year**, and SNE(s) would be approved accordingly.

3. He added that in last year 2015 S.N.E(s) were processed. **Out of 46 S.N.Es, fifteen (15) S.N.Es of colleges have been sanctioned**. The *open* statement, being worth appreciating, is taken but with a *clear* expectation that the Education department (*Secretary*) would not come with a statement of *approval* of colleges only i.e *papers* **but would be in a position to refer practical and physical works in that regard**.

5. Precise, he contends that yet 176 Higher Secondary Schools, under the control of School side have not been handed over to them. It is always equal responsibility of *both* ends to show vigilance. **Accordingly, Secretary Schools & Colleges shall ensure that handing & taking over process shall be completed within 3 months** and if anybody attempts to delay or defeat this process, the Secretary, shall report such conduct.

Such claimed *policy* of conversion and handing over of *higher secondary* schools resulted in compelling the *interveners* to appear before this court while questioning and challenging the same.

7. Having made a brief reference to so far proceedings, we would now take up the *today's* position.



8. At the very *first*, we would take up the matter of handing over of *higher secondary schools* to colleges as well the conversion thereof into *campus*. At this point, it is material to refer that the:

- i) the *introduction* of higher secondary education was *temporary* in nature as same were established in **existing secondary schools**;
- ii) up-gradation of Secondary schools into *higher secondary / comprehensive* was never aimed to prejudice needs of *colleges*;
- iii) the TOR (s) of notification dated 12<sup>th</sup> June, 1989 were never followed as *appointments* were to be made on *adhoc / contract* basis;

However, since *prima facie* the **Higher Secondary Schools** were established in '**existing High schools**' therefore, handing over of such *higher secondary schools* to colleges or conversion thereof into *campus* was / is to seriously prejudice the *secondary*(High school) education even. Not only this, but such act appears to be not in line with notification, issued by Chief Secretary, vide No.SORI(S&GAD)2-4/2016(Education) whereby Director General of Colleges is to be headed by Director General Colleges while the **school Education Department** will work into Directorates of Schools Education / Primary/ Elementary , **Secondary and Higher Secondary** to be headed by Director Schools Education, Primary Elementary, Secondary and *Higher Secondary*. This notification *prima facie* keeps the *higher secondary* education under *school education department* therefore, handing over of it to *colleges* (different department) would also prejudice structure of running thereof as well to service structure of those *appointed* for *higher secondary education*. Therefore, we find it appropriate to direct that no single Higher Secondary School be disturbed till a *uniform* and executable policy is framed by quarter concerned i.e Chief Secretary as well **Education Department** which

controls and governs both School Education Department as well College Education department/section. Since, the Chief Secretary also has to play its role being *declared* one of executing authority by the apex Court. The importance of the *task* as well admission of it being a *havoc* makes us to order for constitution of a committee, which shall consist of Secretary Schools, Colleges, Mr Nisar Ahmed Sidiqi Director IBA Sukkur, Director IBA Karachi, Ms Naheed Durrani Managing Director SEF, Mr Fazullah Qureshi ex Federal Secretary and two other members (nominated by Chief Secretary), having expertise in Education field. They shall examine the policy running in other provinces and decision of Higher Education Commission. They shall also seek guidelines from Higher Education Commission and no policy, in a slipshod manner, be introduced because a *policy* always has its long lasting consequences and *normally* is aimed to stand well with future development. Needful to add that as it has already come on record by the stance of secretary Colleges and Secretary Schools that the policy, introduced in 1989, created havoc in the education system hence it is believed that *policy*, so framed / recommended, shall not be *aimed* as a paper work but shall ensure fruits thereof. Regrettfully, it is added that because of such policy (introduction of higher secondary education) new degree colleges were not approved and 29 Talukas of Sindh were deprived from degree colleges of boys/girls only because of a temporary arrangement which in the end acknowledged as a havoc. The Committee shall submit its recommendation to the Government of Sindh Education department which shall not delay approval thereof by making any addition or *improvement*, if needed. This process *however* should not take a time more than six (06) months. With regard to constitution of committee representative of Chief Secretary seeks three weeks' time which is accordingly granted. This *however* shall not prejudice the creation

of new college's summary whereof either approved or pending. The Secretary colleges shall continue with his *statement* regarding completion of buildings and approval of SNEs in this year. Failure thereof will bring its *legal* consequences. As well Higher Secondary Schools shall be provided science teacher as well computer labs as already ordered without fail.

9. Since this Court has not passed any order with regard to transfer of any teaching staff / subject specialist to college side *which* otherwise is pure function of government hence every one shall continue under the same *structure* as he was / is. Accordingly that aspect shall be re-examined by the committee till then the old system shall continue and any promotion which is due in that regard department may proceed in accordance with law without being influenced by the order of this Court. However, it is hoped that since every single *individual* of education system shall always keep object of *imparting* education at top and would not let any *temporary* inconvenience for achieving a *greater* cause.

10. It is also contended that though Higher Secondary School were announced and upgraded but in majority of schools separate buildings are not in existence and only limited number of rooms were reserved for that purpose whereas simultaneously it is pleaded by Syed Rasool Bux Director Schools that in majority of cases Higher Secondary School are established in independent buildings however there is dearth of teaching staff particularly science teachers. Needless to add that since it is a matter of record that the Government while acknowledging the importance of the *education* has been claiming *emergency* but attitude speaks *otherwise* as no **Accreditation Board** so far is notified which is contempt of apex court order in suo motu case of miserable conditions of Schools therefore, it is quarter concerned shall prove so from its conduct and Higher Secondary

School shall be ensured all facilities of **college level** within a period of three months which facilities could *however* be used on making a proper mechanism / policy with regard to status of Higher Secondary school for which the quarter concerned shall have all competence as Executives does for forming a *policy*

11. Now, we would take up *other* plea of learned counsel for petitioner that Secretary Colleges appeared before this Court and had stated that in girls degree colleges there is sufficient female teaching staff, therefore, they will replace the male staff by posting female staff. He has placed newspaper clippings showing therein that some colleges have been closed because of transfer in male teaching staff. The *aim* and *object* of providing a *free* and *convenient* atmosphere for *teen-ager girls* in colleges/ higher secondary schools shall always be insisted as same assures *teen-ager* girls protected from any exploitation hence same shall continue holding the field, however, it is always subject to availability of proper and *adequate* female staff which the department claimed / claims. The orders of the Courts should always be taken keeping its *spirit* alive hence transferring *male* staff from a college / higher secondary school without proper adjustment of / replacement with *female* staff was / is never worth appreciating nor can be taken as a *compliance*. Accordingly, the Secretary Colleges shall ensure that transfer of male teaching staff from a female college should always be with replacement with *female* staff and if there is no female teaching staff available for *immediate* replacement the male teaching staff may continue so as to keep the institution continue , however, *positive* efforts be taken to ensure compliance of directives of this court in this regard in its *true* spirit without taking things in a manner which may not only prejudice the *spirit* of the order of this Court but may also frustrate the purpose of institution *itself*.

12. Government of Sindh though has notified that education up to intermediate is free of cost, however, proper arrangements shall be made to provide budget allocation to the boards to cope up the situation and not a single kid shall be deprived because of his financial position. It is also surfaced that there are inspecting officers in colleges. Accordingly they shall submit reports of previous 05 years with regard to their visits and recommendations to their officers and that report shall come on record within three weeks.

13. While parting, we *regretfully* add that the Accreditation Board though was to be established right after announcement of the judgment of the apex court but only *notification* is issued (22<sup>nd</sup> November, 2016) which *too* after hammering of this Court yet it is not functioning. The objective whereof, per notification, covers almost all *spheres* of education which are:

- a) Develop quality assurance and accreditation system based on Standing Operating procedure for effective delivery of education service at primary, elementary, secondary, higher secondary and college level;
- b) Assure quality of education offered by education institutions based on key performance indicators through effective internal and external processes focusing on outcomes and impact;
- c) Accredit delivery of services such as curriculum, classroom assessment, annual internal / external examination and teacher preparation etc. based on quality assurance framework;
- d) Strengthen / improve school inspection, classroom assessment, external examination and evaluation for assuring delivery of quality services;
- e) Monitor performance of the School / college Education Department and its line departments **including Directorate of Curriculum, Assessment and Research, Provincial institute of Teacher Education, Reform Support Unit, Sindh Education Foundation, Sindh Teacher Education Development Authority, Sindh Textbook Board and Directorate of School / college Education and their coordination;**

f) Ensure sustained culture of **professionalism and accountability**;

Accordingly, till the notification and proper *functioning* of Accreditation board, up-to district levels, we find it in all *fairness* that it would be appropriate to involve the District & Sessions Judge(s) for monitoring / supervision purpose. We therefore direct that in each district learned District & Sessions Judge shall form a committee at District level consisting on Deputy Commissioner, Director Schools, and three other members including President District Bar Associations purpose of monitoring:

- i) Proper functioning of the schools / colleges of public sector including Sindh Education Foundation Schools within their jurisdiction;
- ii) Attendance of the staff;
- iii) Utilization of funds;
- iv) Any encroachment or trespassing schools' property/building;
- v) *Harassment or influence, if any, to the management of schools/colleges from any corner,*

The District & Sessions Judge shall call a meeting on every suitable day of every month and reports shall be submitted; discussed and if it is found that there is any complaint of *misuse of funds; encroachment; influence or harassment to school management* etc then District & Sessions Judge shall be competent to report the matter to concerned quarter for initiating necessary action as per law; as well pass necessary orders. Besides learned District and Sessions judge shall also direct magistrate for surprise

visits randomly or any complaint. Monthly reports shall be sent through M.I.T. of this court who shall keep record separately.

Adjourned to **19.10.2017**.

JUDGE

JUDGE

karar\_hussain-memon/PS\*