

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Suit No. 1243 of 2015**

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Date	Order with signature of Judge
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**For hearing of CMA Nos:**

1. 10499/2015 (U/O 39 R. 1 & 2 CPC).
2. 10993/2015 (U/S 34 of Arbitration Act, 1940).
3. 10079/2020.
4. 10080/2020.
5. 12850/2020.
6. 12851/2020.
7. 8728/2021.

**For orders on CMA Nos.**

8. 13667/2020.
9. 14083/2020.
10. 187/2021.
11. (Compliance report by Dy. Commissioner Larkana filed against Court order dated 16.08.2021)

**20<sup>th</sup> September 2021**

**APPEARANCE :**

Mr. Ali Safdar Depar, Asst. A.G. Sindh.  
M/s. Shoaib Mohiuddin Ashraf and Ameeruddin, advocates for Karachi University alongwith Dr. Abdul Waheed, Registrar University of Karachi  
Mr. Asif Mukhtar, Director Legal, University of Karachi.  
Malik Altaf Jawed and Mr. Muhammad Nasir advocates for S.E.F.  
Mr. Ghulam Akbar Legari, Secretary SELD & Mr. Jawed Ali Khawaja, Deputy Secretary (Law) (SELD). Mr. Noor Ahmed Soomro, Deputy Program Manager RSU SELD.  
Mr. Asadullah Abro, Addl. Secretary B & U.  
Mr. Khalid Hyder Shah, Secretary Colleges.  
Mr. Faqeer Muhammad Lakho, Additional Secretary, Colleges.  
Mr. Sikandar Hassan, Deputy Secretary (Legal), Finance Department and Mr. Mangraj Mal, R.E. (Legal-1) Government of Sindh, Department Karachi.  
Dr. Mansoor, Secretary Universities and Boards Department, Government of Sindh.  
Dr. Masroor, Sindh Technical Board.  
Mr. Tehseen Hameed Qureshi, advocate alongwith Mr. Jamil Qureshi, Syed Israr Ahmed Shah, Abdul Rasheed, Zahid Hussain, Qurban Ali Bhatti and Illahi Bux Shaikh, Interveners.  
Mukhtiarkar Sajjad Ahmed Leghari, Taluka Hussain Bux Mari, Distt. Mirpurkhas.

**ORDER**

**SALAHUDDIN PANHWAR, J.CMA** No. 12850/2020 is not falling within the purview of suit, hence, dismissed.

2. At the outset, pursuant to earlier order dated 16.08.2021, Secretary School(s) Education present contends that they have notified Compulsory Education Council as provided under the Act. The issuance of *notification*, though required number of hammering by this Court, yet is appreciated because it was always the demand of the Act *itself* which, one in authority, must appreciate that was / is always purposeful.

3. With regard to directions, recommendations and implementations council, Secretary Colleges and Secretary Schools contend that council may be separated from the recommendations of Universities. The contention / suggestion appears to be well reasoned because none can deny that educational system(s) for Schools and colleges may fit together but Educational system at *University* level requires different approach and atmosphere, therefore, it shall be well justified if two committees independently work for achieving *aimed* objectives at both levels. Accordingly, Chief Secretary Sindh shall notify two committees one with regard to schools as well colleges and another for universities and technical education. The committee with regard to colleges and schools' side shall be headed by the Chief Secretary Sindh and Secretary Schools will be the Secretary and in his absence Secretary Colleges will be the Secretary; that committee shall also include Dr. Iqbal Hussain Durrani, Mr. Mushtaq Chhapra, Ms. Naheed Shah Durrani, former Managing Director, Sindh Education Foundation, Government of Sindh (SEF) and Mr. Ali Safdar Debar, advocate, and Secretary School, Secretary Colleges , Secretary Universities and the Chief Secretary shall ensure both notifications in view of recommendations by Dr. Iqbal Hussain Durrani, Chairman Education Committee, are issued as well and shall ensure that educationalist, who are willing, shall be the members of that committee including officials as recommended by Mr. Durrani Committee.

3. With regard to Administrative posts in Education and College's side in school education, as contained in para-9 of order dated 28.01.2020, which is that:-

"9. Since, administrative post(s) always demand different *attitude* if compared to imparting education. The subject specialist(s) are always appointed *specifically* to make the students *masters* of such subject(s) but it has been learnt that they are also entrusted administrative posts at cost of object of their appointment. Accordingly, Chief Secretary Sindh, and Secretary College and Schools are hereby directed that subject specialist shall not be posted on administrative posts and they shall be relieved to impart education in the field of their expertise. This exercise shall be concluded within one month. Secretary Schools contends that rules are not clear with regard to criterion and yet Midcareer Management is to be introduced in Education Department for the postings, however, till this program is launched at least three years experienced Officers in grade-19 be considered in this behalf."

4. Secretary Schools repeated the above i.e that rules are not clear with regard to criterion and yet Midcareer Management Course is to be introduced in Education Department for the postings, however, till this program is launched at least three years experienced Officers in grade-19 and other respective grade administrative posts be considered. It is worth mentioning here that absence of the *rules / criteria*s alone can't be an excuse to let an *illegality* or *irregularity* continue, particularly if the same was / is likely to prejudice the purpose and objective of the '**post/designata**'. The obligations were / are always meant to do all acts so as to achieve the objective even if the *criteria*s / *rules* are not defining the playing field which (*playing field*) however shall never include what is prohibited or a declared *illegality*. Guidance is taken from the case of Saif-ur-Rehman v. Addl. District Judge, TobaTek Singh & 2 Ors 2018 SCMR 1885 wherein it is held as:-

... It is now settled law that a purposive rather than a liberal approach to interpretation is to adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference, in this behalf, may be made to the judgments reported as....

Accordingly, Secretary Schools shall ensure compliance as per statement filed today.

5. With regard to allowances this court has vide para-6 of order dated 11.01.2021 already directed that Civil Servant is not entitled to receive any additional allowance if posted from other department in Education

Department for temporary arrangement. Though a directive of this Court, being binding, is not necessarily to be repeated again and again for compliance thereof yet the referred paragraph is reproduced as under:-

6. At this juncture, Mr. Zain-ul-Abidin, General Secretary, Gazetted Officers Association Sindh, has placed on record order dated 22<sup>nd</sup> October 2015 issued by Finance Department, Government of Sindh, which speaks about Special Incentive Allowance to the officers inducted in Education Department on executive positions. *Legally*, there should not be any discrimination among the same grade officers who are working in Education Department. The officers, inducted from other departments, have been given extra benefits in name of incentive which, *undeniably*, would hurt the officer (s) of same grade working in education department which, I would insist, is not a good sign particularly when such inducted officers of other department are bound to go back to their own departments. If officers from other department(s) themselves volunteer to serve then there appears no reason to claim *incentive*; and if they are asked to serve (without having any expertise in *education*) even then there appears no justification to give *incentive* to such officials who, otherwise, have been receiving their due pay. Accordingly, operation of this letter is suspended. Secretary Finance shall ensure that the person, if posted in Education Department from other department, would be entitled to receive his pay *only* from his own department as per entitlement."

Hence, Finance Secretary shall take effective measures in this regard and submit report. In case of failure, contempt proceedings can be initiated.

6. With regard to affiliation fees order dated 26.05.2021 para 17 states that:-

*"17. CMA No. 8728/ 2021 seeks suspension of fees imposed by Karachi Intermediate Board, since state is required to provide education free of cost upto 16 years, hence, affiliation fees imposed by the Board appears to be unjustified, let notice be issued to Chairman Board, till then notification with regard affiliation fees is suspended and examination form shall be accepted accordingly."*

Hence, above order shall be applicable on all boards of Higher Secondary Schools and this Court appreciates the implementation by Karachi Board. Secretary University shall ensure compliance of this order.

7. With regard to appointment of Additional Secretary from Education hierarchy, Secretary Schools contends that they have filled the posts on school side and further Secretary Schools contends that they will change the nomenclature of the cadre of that post and Finance Department shall ensure that technical posts are created as applied in Health Department. Needless to

mention that those appointments shall be based on experience and seniority on administrative side of education (secondary and higher secondary).

8. Secretary School shall ensure that such issue is resolved accordingly and shall also pursue the summary with regard to up-gradation from high schools to higher secondary schools.

9. With regard to apprenticeship there was direction vide order dated 16.08.2021 to hire internees, which is reproduced as under:-

“8. With regard to paragraph on appointment and promotion of the Subject Specialists, Additional Secretary Colleges, contends that they have placed a summary with the Worthy Chief Secretary with regard to hiring of internees to make all colleges functional as appointment through SPSC will take time. This court appreciates their steps and further directs the Secretary Colleges and Secretary Education (Schools) to ensure compliance within fifteen days. **Needless to mention that preference must be given to science graduate with regard to appointment of subject specialists.**”

10. *Prima facie*, the suggestion of introduction of *internees* was to make colleges functional till proper appointments are made through SPSC therefore, the same was appreciated because the *students* should not suffer for the acts and omissions of authorities as **‘every single moment of the studying student matters’** which none can stop under any excuse. The temporary arrangements are always meant to meet an exigency therefore, even adoption thereof can't be a substitute to what law and procedure commands. The *internees* are aimed to educate hence the same, *too*, must possess merit and qualification even if they were / are to be appointed / hired for temporary period. Accordingly, Schools and College Departments shall engage the graduates in respective fields, as earlier ordered, for 10 months in each year. At this juncture, Secretary Colleges contends that they have floated summary. Accordingly he shall pursue the same and Secretary Schools shall also float that summary likewise. Accordingly, Finance Department shall provide the budget to the college department as well. Needless to mention that those hiring shall not be subject to regularization or extension until subject specialists are appointed through the Public Service Commission and they will not claim perks and privileges as received by the regular appointees. These all interns shall be with regard to all fields with 60% of science, 20% English and rest of 20% in other fields. It is expected that this exercise shall be completed preferably within one month. Secretary Finance shall ensure that budget is provided and that may be deducted from

available budget as approved SNEs. It is pertinent to mention that merit shall not be compromised; even internees shall be hired as per that qualification only and preference shall be given to the fresh graduates.

11. With regard to earlier direction of approval of SNEs vide order dated 26.05.2021, which is reproduced here as under:-

7. At this juncture, it is pointed out that there is routine practice of change of SNEs and reshuffling of staff of Higher Secondary Schools, on directions to form a committee and examine the schools at the site for their up-gradation from High school to Higher Secondary School. Secretary Schools present submits report with the recommendations that 100 schools are fulfilling the criterion, therefore, they are upgraded. Accordingly, Secretary Schools shall ensure that these 100 schools are upgraded and their SNEs are submitted with the Finance Department within one month, thereafter Finance Department shall ensure approval of SNEs within one month after receiving the proposal.

Deputy Secretary Finance present contends that yet schools department has not submitted any request for approval of SNEs. Surprised hearing so because the Secretary Schools was specified his role in *categorical* terms. Such attitude, that is not worth appreciating rather requires legal action which, however, is held as *last* chance. Accordingly, Secretary Schools shall ensure that all up-gradations of middle schools and higher secondary schools working at the field and they are having SNEs approved by the Finance Department. This exercise shall be completed within three months.

12. With regard to increase of endowment funds, Deputy Secretary Finance present contends that they have placed summary with the Finance Department and he undertakes that the same will be placed before the competent authority within 15 days, thereafter, Secretary Colleges and Secretary Finance shall also pursue the same. The contention is taken on record as '**undertaking**' with all its legal effects which all the concerned must note.

13. With regard to direction for establishing digital libraries in terms of para-7 of order dated 28.01.2020 in every college, Secretary Colleges contends that they have established 16 labs and Deputy Secretary Finance contends that they have further allocated Rs.335 million in respect of digital libraries. The same is taken on record with appreciation, however, Secretary Colleges shall ensure that rest of colleges are with the facility of digital libraries.

14. With regard to pursuing the summary placed by the Chairman Technical Board in terms of para-4 of order dated 28.01.2020, Secretary Universities and Board contends that he will pursue that summary in accordance with law. The contention is taken on record as '**undertaking**' with all its legal effects which the concerned must note.

15. M.D. STEVTA present contends that they have completed the task of establishing libraries in 25 colleges and introduced four years degree program on technical side in 03 colleges of Nawab Shah, Larkana and Hyderabad and further process of affiliation of these colleges with different universities has also been affected. He while identifying 06 institutes contends that they will also apply for affiliation thereof within a week and will also fulfill all legal and codal formalities in this behalf preferably within one month. He further contends that they will launch/introduce 16 years based education on technical side in all technical institutions. Further M.D. STEVTA submits that they will complete all directions given by this Court from time to time preferably within two months. The efforts, being positive, are not only appreciated but are taken on record as '**undertaking**' with all its legal effects.

16. With regard to 16 years basis education, reports are filed by Secretary Board and Universities as well as Registrar, Statement of Karachi University is very categorical, whereas, other universities are in complete defiance of order passed by this Court to close 14 years Associate Degree except Karachi University. The conduct of other universities in not giving honour to specific and categorical order of this Court, based on Higher Education Commission, is not worth appreciation because all those were / are supposed to act in aid of legal directives, particularly when the same was / is aimed to make such *degree* applicable at **national** and **international level**. Accordingly, all public universities shall publish disclaimer that Associate Degree is not equivalent to BSc, B.Com and B.A (16 years). Hence, they shall not enroll/admit from 2022 and discontinue Associate Bachelor degree program(s). At this juncture, Secretary Colleges contends that they will apply with universities for 60 colleges to impart 16 years based degree as they have all requirement of facilities of different subjects. Accordingly, Secretary Board and Universities present shall ensure temporary affiliation within 15 days by the Universities.

Regional Directors and Secretary Colleges shall take all efforts to make it practical.

17. With regard to digital libraries, MD STEVTA contends that in first phase they will digitalize four libraries preferably within two years. Besides, M.D., STEVTA shall ensure any interference by the Chairman directly to the institutions as ordered earlier.

18. Statement filed on behalf of University of Sindh, compliance report of Finance Department, Progress report by Secretary University and Boards Department, alongwith documents, statement on behalf of University of Karachi, Progress report by STEVTA, statement with regard to availability/utilization of funds, Compliance report by Secretary College Education Department, Statement filed by Registrar, Shah Abdul Latif Bhitai University Khairpur, Progress report by Secretary, SELD filed are taken on record.

To come up on **04<sup>th</sup> October 2021** at 11.00 a.m. Needless to mention that this is a part heard matter.

**J U D G E**

Sajid