IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.16 of 2020
[Muhammad Ahmed Kausar v. Federation of Pakistan through Secretary Ministry of Energy (Petroleum Division) and others]

1. **For hearing of CMA No.133/2020 (U/o XXXIX Rules 1 & 2 CPC)**
2. **For hearing of CMA No.14334/2020 (U/o XXXIX Rule 4 r/w 151 CPC)**

Suit No.41 of 2020
[Syed Ehtesham Ahmed v. Pakistan Petroleum through Managing Director and others]

1. **For hearing of CMA No.288/2020 (U/o XXXIX Rules 1 & 2 CPC)**
2. **For hearing of CMA No.14328/2020 (U/o XXXIX Rule 4 r/w 151 CPC)**

Suit No.54 of 2020
[Ayesha Chaudhry v. Pakistan through Secretary Ministry of Energy (Petroleum Division) and others]

1. **For hearing of CMA No.248/2020 (U/o XXXIX Rules 1 & 2 CPC)**
2. **For hearing of CMA No.249/2020 (U/o XXXIX Rules 1 & 2 CPC)**
3. **For hearing of CMA No.14330/2020 (U/o XXXIX Rule 4 r/w 151 CPC)**
4. **For hearing of CMA No.10916/2021 (U/o XXXIX Rules 1 & 2 CPC)**

Dates of Hearing	:	25.03.2023, 01.04.2023, 06.05.2023 & 20.05.2020
Plaintiffs	:	Through Malik Naeem Iqbal and Mr. M. Saleem Khaskheli, Advocates (in Suit No.16/2020), Mr. Khurram Memon, Advocate (in Suit No.41/2020) and Mr. Ravi R. Pinjani, Advocate (in Suit No.54/2020)
Defendant PPL	:	Through M/s. Taha Alizai, Fawad Syed and Shaezer Azmat, Advocates Mr. Akbar Suhail, Advocate for defendant No.2 (in Suit No.41/2020)

O R D E R

Zulfiqar Ahmad Khan, J:- By this common order I intend to dispose of following injunction applications moved by the rival parties:-

1. **CMA No.133/2020 (in Suit No.16/2020).** The plaintiff in Suit No.16 of 2020 has filed the instant application

under Order XXXIX Rules 1 & 2 read with Section 151 CPC with the prayer that defendants be restrained from taking any action against the plaintiff on the basis of impugned charge sheet dated 13.12.2019 and enquiry notice dated 03.01.2020, till final adjudication of the instant suit.

2. **CMA No.288/2020 (in Suit No.41/2020).** The plaintiff in Suit No.41 of 2020 has filed the instant application under Order XXXIX Rules 1 & 2 read with Section 151 CPC with the prayer that this Court may be pleased to suspend operation of the impugned letter re-designating the plaintiff as OSD and impugned charge sheet and inquiry notice and in the alternative defendants be restrained from taking any action against the plaintiff on the basis of impugned orders, till final adjudication of the instant suit.

3. **CMA No.248/2020 (in Suit No.54/2020).** The plaintiff in Suit No.54 of 2020 has filed the instant application under Order XXXIX Rules 1 & 2 read with Sections 94(e) and 151 CPC with the prayer that the defendants be restrained from taking any action against the plaintiff on the basis of impugned charge sheet dated 13.12.2019 and inquiry notice dated 06.01.2020, till final disposal of the instant suit.

4. **CMA No.249/2020 (in Suit No.54/2020).** The plaintiff in Suit No.54 of 2020 has filed the instant application under Order XXXIX Rules 1 & 2 read with Sections 94(e) and 151 CPC with the prayer that this Hon'ble Court may be pleased to suspend operation of Re-designation letter dated 13.12.2019 and the defendants be restrained from treating the plaintiff as an Officer on Special Duty and to assign work to the plaintiff in the light of plaintiff's experience and capabilities, until final disposal of the instant suit.

5. **CMA No.10916/2020 (in Suit No.54/2020).** The plaintiff in Suit No.54 of 2020 has filed the instant application under Order XXXIX Rules 1 & 2 CPC read with Sections 94 and 151 with the prayer that the defendants be restrained from withholding the release of Discovery Bonus to the plaintiff on account of the charge sheet dated 13.12.2019 and Enquiry Notice dated 06.01.2020.

6. **CMA No.14334/2020 (in Suit No.16/2020).** The defendant No.2 in Suit No.16 of 2020 has filed the instant application under Order XXXIX Rule 4 read with

Section 151 CPC with the prayer to discharge and/or *set aside* the injunction order dated 07.01.2020.

7. **CMA No.14328/2020 (in Suit No.41/2020).** The defendant No.1 in Suit No.41 of 2020 has filed the instant application under Order XXXIX Rule 4 read with Section 151 CPC with the prayer to discharge and/or *set aside* the injunction order dated 13.01.2020.

8. **CMA No.14330/2020 (in Suit No.54/2020).** The defendant No.2 in Suit No.54 of 2020 has filed the instant application under Order XXXIX Rule 4 read with Section 151 CPC with the prayer to discharge and/or *set aside* the injunction order dated 13.01.2020.

2. All above listed applications are linked with each other therefore disposal of these applications with a unitary order appears to be most efficient and proper hence dealt as such.

3. At this juncture, while deciding aforesaid applications, background of the pleadings in nutshell would be helpful for proper understanding and inference thereof. All these suits seek declaration, mandatory and permanent injunction against charge sheet dated 13.12.2019 and enquiry notices dated 03.01.2019 and 06.01.2020. Per injunction applications, the plaintiffs were holding key posts and have been doing their jobs honestly and with full dedication with the zeal to improve the department, wherein plaintiff in Suit No.41 of 2020 was working with the defendant Pakistan Petroleum Limited (PPL) as Chief Financial Officer and by taking his special skills and his reputation for integrity, he was appointed by the Board to lead the investigation into the allegations in respect of major corruption scandal in the purchase of the foreign company MND by the defendant PPL in the year 2013, wherein a detailed forensic report produced by the team led by the plaintiff was subsequently

submitted to the NAB. The cause arose when in the month of May, 2019 a complaint was filed with the Prime Minister's Pakistan Citizen's Portal and plaintiffs received charge sheet on 13.12.2019, wherein they were charged of sending information against the senior management captioned "COMPLETE CHAOS IN PAKISTAN PETROLEUM LIMITED (NEEDS IMMEDIATE INTERVENTION OF PRIME MINISTER)" being defamatory and malicious. It is alleged that the complaints were not investigated by the management through an impartial inquiry and even the plaintiffs despite repeated requests were never provided with a copy of the forensic report on the basis of which charge was framed connecting them with the aforesaid message, to which the defendant No.2 (PPL) went on silent however suddenly on 03-01-2020 and 06.01.2020 the said defendant ordered an inquiry, which is sheer violation of the fundamental right of fair trial, per counsel.

4. On the other hand, through CMAs under order XXXIX rule 4 read with Section 151 CPC the contesting defendant (i.e. PPL) seeks *setting aside* of ad-interim order dated 07.01.2020 *inter alia* on the ground that the plaintiffs are still receiving their full salaries from the Company despite being re-designated as Officers on Special Duty (OSD) and undertaking no work. It was alleged that the injunction orders have stalled the process of domestic enquiry.

5. Learned counsel for the plaintiffs in Suit Nos.16 and 41 of 2020 contended that the charges are not only baseless, as well tainted with *malafides* and smacks of personal animus of certain vested interests as contents of the information addressed to PM Portal were never investigated by the management through an impartial inquiry

so also the plaintiffs are not charged of circulating the said info on social media/WhatsApp rather they have been roved on the basis of alleged contribution in its preparation. Per learned counsel, the plaintiffs from time to time were being harassed, victimized and humiliated before such an arbitrary action as an offshoot of sending reference to NAB regarding major corruption scandal in the purchase of the foreign company MND by the defendant PPL in the year 2013 against some of the Board members, which led to registration of an FIR. Per learned counsel, plaintiff in Suit No.41 of 2020 namely Syed Ehtesham Ahmed was holding statutory position as CFO and in terms of Rule 13 of the Public Sector Companies (Corporate Governance) Rules, 2013 CFO is to be appointed by the Board and he could be removed by the Board only and there is no any provision in the rules which provide for making a CFO as OSD. They contended that the charge sheets as well as enquiry notices are against the principles of natural justice, equity and fairness, and in particular these are in contradiction to sub-rule 2(s) of Rule 7 of the Public Sector Companies (Corporate Governance) Rules, 2013 as under sub-rule 6(o) of Rule 21 of the aforesaid Rules, the Board of Directors of PPL has laid down a Whistle Blowing Policy to encourage all stakeholders to raise concerns without fear of retribution and with full confidence that their identities will not be revealed. Per learned counsel, according to paragraph-5 of the said Policy the company has to ensure that the complainant is not subjected to any form of detrimental treatment, including dismissal and/or disciplinary action in absence of impartial inquiry.

6. Learned counsel added that re-designation letter dated 13.12.2019 putting the plaintiffs as 'OSD' is baseless, arbitrary and unlawful, inasmuch as plaintiffs' removal is not necessary to allow the impugned enquiry to proceed. They further contended that the re-designation is unprecedented more particularly when there is no charge of corruption or inefficiency on the plaintiffs.

7. Learned counsel for the plaintiff in Suit No.54 of 2020 adopted the arguments of Mr. Malik Naeem Iqbal, learned counsel for the plaintiffs in connected suits.

8. Learned counsel for the defendant PPL contended that the injunction applications are not maintainable as they seek restraining order against domestic inquiry, as it is settled proposition that courts cannot interfere in the matters of domestic inquiry and in this regard he has placed reliance on **2007 PLC 350 [Karachi]** *(Muhammad Aslam Khan v. Messrs International Industries Limited)*, **2020 PLC (C.S) Note 9 [Sindh High Court]** *(Abdul Latif Mughal v. Government of Sindh and others),* **2019 PLC (C.S) 975 [Sindh High Court]** *(Ms. Serwat Azim v. Sindh Bank Limited through President/CEO and 7 others),* **2015 MLD 289 [Sindh]** *(Messrs Aman Associates through Sole Proprietor v. Government of Sindh through Secretary Excise and Taxation and others)* he contended that the final relief could not be granted at an injunction stage.

9. Learned counsel for the defendant PPL further contended that there is no *malice* on the part of the defendant PPL as the said defendant simply could have exercised its powers to terminate the

plaintiffs' employment under clause 12 of their respective Continuous Agreements without assigning any reason however it chose to initiate domestic enquiries to enable the plaintiffs to clarify their position and/or substantiate the allegations that were ostensibly leveled against them, for which full chance is being given to the plaintiffs, including them to produce witnesses and other evidence. Per learned counsel, the suits are not maintainable as the relationship between the plaintiffs and defendant is that of 'master and servant' as well as plaintiffs' employment is governed by Continuous Agreement dated 12.06.2017 and policies of defendant No.2 PPL and plaintiffs have to follow internal rules and regulations. Per learned counsel, no coercive action of dismissal from service has been taken pursuant to the charge sheets and enquiry notices as such these suits are premature. Per learned counsel, the plaintiffs have come to this Hon'ble Court with unclean hands having suppressed material facts and having obtained the injunction order without properly assisting the Court.

10. As to the issue of OSD, learned counsel for the defendant PPL contended that in terms of clause 15 of the Continuous Agreements, the said defendant has the right to transfer any employee to another sphere of operation and this would include designating them as OSD, as it is the prerogative of the defendant due to the nature of employment relationship.

11. In rebuttal, learned counsel for the plaintiff submitted that the suits are fully maintainable, as it is a settled proposition that if a charge sheet is malafide, without jurisdiction, issued in apparent

violation of law or abuse of process, the same can be challenged before competent court of law.[1] As to the principle of master and servant, learned counsel for the plaintiff contended that since the plaintiff is still in service and is seeking enforcement of his legal right of fair trial and due process as such principle of master and servant is not attracted in the facts and circumstances of the case.[2] For alleged irregularities in the appointments either by way of direct or by promotion, learned counsel contended that it is settled proposition that the competent authority is to be punished and not an employee.[3]

12. Heard the counsel for the contesting parties and perused the material available on record with their valuable assistance from counsel on both sides. I would like to take up injunction applications filed by the plaintiffs and the applications filed by the defendant PPL under Order XXXIX Rule 4 CPC for vacation of the interim injunctive order dated 07.01.2020 and 13.01.2020 together to serve the interests of justice. It is considered expedient to illustrate here that the applications filed by the plaintiffs will be collectively referred to as injunction applications while the applications filed by the defendants under Order XXXIX rule 4 CPC will be collectively referred to as application for the vacation of injunction, respectively. Before proceeding any further, it is considered pertinent to reproduce the interim injunctive orders (It is expedient to mention here that in trio suits similar ad-interim relief was conferred to the plaintiffs) dated 07.01.2020 and 13.01.2020 hereunder:-

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[1] 2011 PLC CS 562, 1984 PLD Karachi 114, 1982 PLC 1 and 2019 PLD Sindh 516.
[2] 2022 SCMR 1598, 2020 PLC (CS) 483, 2018 PLC (CS) 975, 2016 PLC 335 and 1997 CLC 1936.
[3] 1996 SCMR 413, 1996 SCMR 1350, 2004 PLC (CS) 1, 2004 SCMR 303 and 2005 SCMR 85.

> "Let notice be issued to the defendants as well as DAG for 28.01.2020. Till then, the Defendants as well as Inquiry Officer are restrained from proceeding further pursuant to the Charge Sheet dated 13.12.2019 and Inquiry Notice dated 03.01.2020"

13. It is sine qua non as to whether the plaintiffs in facts and circumstances of the case should or should not be granted an injunction and to consider this question, one has to go through full spectrum of the case in the light of the old age golden rule of granting injunction which requires:

> (i) Prima facie existence of right in the plaintiff and its infringement by the defendants or the existence of a prima facie case in favour of the plaintiff;
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> (ii) An irreparable loss, damages or injuries which ay occur to the plaintiff if the injunction is not granted;
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> (iii) The inconvenience which the plaintiff will undergo from withholding the injunction will be comparatively greater than that which is likely to arise from granting it or in other words the balance of inconvenience should be in favour of the plaintiff.

14. It is prescription of law that all above three essential ingredients must be present together for a favorable order and absence of any one of these ingredients does not warrant grant of injunction. Court at this stage is to make a tentatively, assessment of the case for enabling itself to see whether these three requisites are met or not. Relief of injunction is known to be discretionary and it is to be granted following sound legal principles and ex-debito justice. The term "prima facie case" is not specifically defined in the Code of Civil Procedure but the consensus is that in order to satisfy about the existence of a prima facie case, the pleadings must contain facts

constituting existence of some right of the plaintiff and its infringement at the hands of the opposite party. Balance of convenience is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that would be caused to the defendant, if the injunction is granted. It is thus for the plaintiff to show that the inconvenience caused to it would be greater than that which may be caused to the defendant. Irreparable loss is held to mean to be the loss, which is incapable of being calculated on the yardstick of money.

15. While I have already enumerated above three ingredients of injunction while deciding CMA No.10833/2022 in Suit No.1056/2022 (Mrs. Zulekha & another v. Province of Sindh & others) and the same has also been reported as **2023 CLC 954**, the pertinent constituent of that order is reproduced herein below:-

> "An injunction is an equitable relief based on well-known equitable principles. Since the relief is wholly equitable in nature, the party invoking the jurisdiction has to show that he himself was not at fault. The phrase prima facie case in its plain language signifies a triable case where some substantial question is to be investigated or some serious questions are to be tried and this phrase „prima facie" need not to be confused with prima facie title. Before granting injunction the court is bound to consider probability of the plaintiff succeeding in the suit. All presumptions and ambiguities are taken against the party seeking to obtain temporary injunction. The balance of convenience and inconvenience being in favour of the defendant i.e. greater damage would arise to the defendant by granting the injunction in the event of its turning out afterwards to have been wrongly granted, than to the plaintiff from withholding it, in the event of the legal right proving to be in his favour, the injunction may not be granted. A party seeks the aid of the court by

> way of injunction must as a rule satisfy the court that the interference is necessary to protect from the species of injury which the court calls irreparable before the legal right can be established on trial. In the technical sense with the question of granting or withholding preventive equitable aid, an injury is set to be irreparable either because no legal remedy furnishes full compensation or adequate redress or owing to the inherent ineffectiveness of such legal remedy. Ref: (C.M Row Law of Injunctions, Eighth Edition)".

16. Reverting to the merits of the *lis* at hand, Mr. Ali Zai resented the defendant PPL and during course of his arguments challenged the very maintainability of the case arguing that the relationship between the plaintiffs and defendant PPL is that of 'master and servant' and that master is always open to terminate the services of its servants upon not being so satisfied by their performance. I am unswayed with the submission of the learned counsel on the ground that the plaintiffs employees have not been terminated *hitherto* which is an admitted position and are seeking enforcement of their fundamental right of fair trial and due process hence the principle of master and servant is not attracted at this stage of the case at hand. A suitor is required to show that not only a right had been infringed in a manner to entitle him to a relief but also that when he approached the court the right to seek relief was in existence. Cause of action means every fact which would be necessary for plaintiff to prove and it has no relation to the defence that may be setup nor does it depend upon the character of the relief prayed. A scant view to the averments of the plaint unequivocally demonstrate that the plaintiffs invoked the jurisdiction of this court in a civil suit for challenging their redesignation as OSD from CFO in the defendant PPL without any cause. It is sine qua non as to whether the plaintiffs in

facts and circumstances of the case should or should not be granted a declaration. Looking into down-to-earth and pragmatic perseverance in this forward-looking advance era, one should not stick to the rigidities and complexities or acid test of legal character but it needs some more generous comprehension to meet up all exigencies. Lord Cottonham said, in Taylor v. Salmon:

> "It is the duty of a court of equity to adapt its practice and course of proceedings, as far as possible, to the existing state of society and to apply its jurisdiction to all those new cases, which from the progress daily made in the affairs of men, must continually arise and not from too strict an adherence to forms and rules established under very different circumstances, decline to administer justice and to enforce rights for which there is no other remedy.
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> (1838) 4 Myln and Cr 134. (C M Row. Law of Injunctions, Eighth Edition.)"

17. In the case of Arif Majeed Malik & others v. Board of Governors, Karachi Grammar School[4] unequivocally held that wherever there is a right there must be a remedy to enforce it. Persuaded courts not to remain bound within the technicalities of section 42 of Specific Relief Act. The reason for the divergence of judicial opinion is that when Specific Relief Act, 1877 was enacted concept of rights which could be enforced through courts was largely confined to status as understood in feudal social context, as there were no constitutional guarantees available at that point in time.

18. In the United States, both in the Federal and Uniform laws, the word "right" alone is used, so that a party may obtain a declaration as to any legal rights which, of course, mean justiciable rights. Ref:

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[4] Per Sabihuddin Ahmed.J in Arif Majeed Malik & others v. Board of Governors (2004 CLC 1029).

Cf. Ashwender v. Teinessee Valley Authority, 297 U.S. 288 at p. 325: L, Ed. 688 at p. 699. In keeping with Cf. 62 Harvard Law Review at pp. 875-76. (Ref: Anand & Iyer's, Commentary on Specific Relief Act. 11th Edition. Page 927), the word “right” has been interpreted to include 'liability' also, so that actions have been entertained against the Government and other public bodies to determine their liability, duty or power. Right also includes immunity, e.g. that a statute is not applicable to the plaintiff. Since the word “right” is not confined to proprietary right, the courts have had no difficulty in making a declaration as to contractual right or a right to practice a profession or the like.

19. Per Rule 13 of Public Sector Companies (Corporate Governance) Rules, 2013, (“Rules 2013”) the CFO is to be appointed by the Board and the post of CFO in any public limited company is to be considered as executive and placing/posting a person (who is already a CFO) as OSD has not been introduced anywhere in the Rules *supra*, therefore, posting of plaintiffs as OSD is against the very spirit of the above statute. Per Rule 5(7)(n) of Rules, 2013 the Public Sector Companies shall formulate Whistle Blowing Policy and in deference of the Rules, 2013, the defendant PPL also framed Whistle Blowing Policy (available at page 133 of Suite No. 16 of 2020) with an object to allow staff to disclose information that they see malpractice, unethical conduct or illegal practices in the workplace, without being penalised in any way. The said Policy also includes protecting staff from any detriment or discrimination if they do report (ie ‘blow the whistle on’) improper or illegal conduct within the defendant PPL. The aim of this policy is to provide an internal mechanism for

reporting, investigating and remedying any wrongdoing in the workplace. In most cases staff should not find it necessary to alert anyone externally. However, the law recognizes that in some circumstances it may be appropriate for staff to report their concerns to an external body i.e. P.M. Portal. Apart from above, the defendant PPL had also formulated Code of Conduct and clause 27 of the said Code of Conduct connotes that:-

> "27. REPORTING VIOLATIONS/DISCIPLINARY ACTIONS.
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> ……. **Where a violation falls within the ambit of the Whistle Blowing Policy, staff should utilize the channels for communication given in the Whistle Blowing Policy for registering the complaint. In such an instance, Human Resource Department shall not be informed.** For details, complete procedure of Whistle Blowing Policy of the Company may be consulted."

20. It is gleaned from appraisal of the foregoing that clause 27 of Code of Conduct of the defendant PPL unequivocally lets its staff to report any of the malpractice having seen in the public company without informing to the H.R. Department or any of its Director/ company Executive. Furthermore, it is also gleaned from the record as well as there is a saving clause in the Whistle Blowing Policy of the defendant PPL which clearly states that the whistle blower/ complainant would not be victimized/penalized unless it is established through an external inquiry/investigation that the contents of Info/ complaint so lodged are false. Mr. Ali Zai is unable to introduce on record that the contents of Info alleged to have been lodged by the plaintiffs (per defendant PPL) at PM Portal that the contents of the said info are false though in the impugned charge sheet issued to the plaintiffs the defendant PPL enumerated that

they have reliable sources that the plaintiffs are involved in maligning the superiors management of the defendant PPL, unless a tangible evidence is introduced on record regarding the involvement of the plaintiffs, persecuting/penalizing or taking any adverse action or initiating a disciplinary proceedings against the plaintiffs would be termed to be an illegal, unlawful acts on the part of the defendant PPL though there is a saving clause per Whistle Blowing Policy in their favour. Perusal of info/complaint addressed to PM portal, it transpires that though it has addressed to P.M. Portal but the shipper/complainant/signatory is not mentioned in the said complaint, therefore, victimizing and penalizing the plaintiffs is an afterthought. If one could imagine a scenario where the said portal did not exist, hence no cause to take action against the plaintiffs would have arisen, to the contrary PPL also failed to show any loss caused to it by such disclosure (whether made by the plaintiffs or not). It is an established legal position that no act of state to prejudice anyone unjustly, so as an act of the state functionaries. Safe administration of justice is interrelated and intertwined with the duty of Courts which are under obligation to reverse the wrong done to a party by the act of state which is an elementary doctrine and tenet to the system of administration of justice beyond doubt. This is a de rigueur sense of duty in the administration of justice that the State and the Courts should be conscious and cognizant that nobody should become a victim of injustice as a consequence of his/her volunteering with information in good faith, in the event of any

injustice or harm suffered by the wrongdoings of the latter, the same should be remedied by making the necessary correction forthwith.[5]

21. Case law cited by the learned counsel for the defendant PPL are quite distinguishable from the facts and circumstances of the matter at hand and do not attract as such.

22. The above discussion leads me to the conclusion that plaintiffs have made out a prima facie case, whereas, balance of convenience also lies in their favor and whereas the acts of the Defendant PPL are calculated to cause irreparable loss to the plaintiffs, therefore, the Injunction Applications under Order XXXIX Rules 1 & 2 CPC are hereby allowed and interim orders dated 07.01.2020 (in suit No.16 of 2020), 13.01.2020 (in suit No.41 of 2020) and 13.01.2020 (in suit No.54 of 2020) are confirmed. Resultantly CMAs filed by the plaintiffs seeking payment of discovery bonus and assignment of work are also allowed. Whereas, applications filed by the defendants under Order XXXIX rule 4 CPC for the evacuation of interim injunction are hereby dismissed.

Karachi
Dated:01.11.2023 JUDGE

Aadil Arab

[5] Ref: Homoeo Dr. Asma Noreen Syed Vs. Government of the Punjab through its Secretary Health, Department & others (2022 SCMR 1546 = 2022 PLC (C.S) 1390.