

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 2011 of 2023

Date	Order with signature of Judge
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1. For orders on CMA No. 20221 of 2023 (U/S. 94)
2. For orders on CMA No.20151 of 2023 (Stay/A).

Date of hearing: 13th December 2023

Date of order : 15th January 2024.

Mr. Muhammad Ali Lakhani advocate for the plaintiff

Salahuddin Panhwar, J:- Through instant suit, the plaintiff seeks declaration(s) and injunction(s). By dint of this order, I intend to decide application(s) under Order 39 Rule 1 & 2 CPC read with Section 151 CPC and under Sections 94 of CPC read with Section 151 and Order 39 Rule VII CPC filed by the plaintiff.

2. The relevant facts are that plaintiff who was working Assistant professor was assigned the charge of Chairman of Board of Intermediate & Secondary Education Shaheed Benazirabad on acting charge basis till appointment of regular Chairman through Search Committee vide Notification dated 13.02.2020. However, according to the plaintiff after taking over charge by the caretaker Government, a summary was floated by the Secretary, Universities and Boards Department, Government of Sindh wherein it was proposed to withdraw Notification dated 13.02.2020, whereby the plaintiff was assigned the charge of Chairman, Board of Intermediate & Secondary Education Shaheed Benazirabad and proposals were made for assigning such charge, under stop-gap arrangement till appointment of regular incumbent. Caretaker Chief Minister vide order dated 08.12.2023, assigned such charge to the Commissioner Shaheed Benazirabad Division under Section 15(2) of Sindh Board of Intermediate & Secondary Education Ordinance, 1972 as a stop-gap arrangement, such Notification dated 11.12.2023 was issued by the Chief Secretary Sindh, hence, the plaintiff has prayed for suspending the operation of the summary dated 24.11.2023 and the Notification dated 11.12.2023 whereby the Commissioner, Shaheed Benazirabad Division was assigned additional charge of Chairman Board of Intermediate & Secondary Education, (BISE) Shaheed Benazirabad in

addition to his own duties, till further orders as a stopgap arrangement under Section 15(2) of Sindh Boards of Intermediate & Secondary Education Ordinance, 1972.

3. Learned counsel for the plaintiff contended that assignment of additional charge of the Chairman of BISE Shaheed Benazirabad to the Commissioner is nothing but transgression in the limitations imposed by law; that appointment of Chairman can only be made in terms of Section 15(1) of Ordinance, 1972 after approval from the Cabinet, which is elected, but in the instant case; that caretaker Government cannot appoint or notify a Chairman in any capacity, therefore, it is prayed that captioned applications may be allowed as prayed. In support of his contention he has relied upon case laws reported as 2004 CLC 1029 Karachi, PLD 2021 SC 313, PLD 2016 SC 637.

4. Heard and perused.

5. The plaintiff has claimed that he has been assigned charge of Chairman, Board of Intermediate & Secondary Education, SBA on acting charge basis till appointment of Regular Chairman through Search Committee, therefore, according to the plaintiff such assignment cannot be withdrawn. Claim of the plaintiff appears to be without any substance as assignment of charge of Chairman BISE to the plaintiff on acting charge basis does not create vested right in his favour. If for the sake of arguments, it is assumed that plaintiff who is holding the post of chairman is a tenure post even then, it does not mean that the appointing authority cannot determine or terminate his engagement. In any event holding of acting or additional charge is always meant for stopgap arrangement till such time the regular appointment or induction is made. During course of arguments, it has been informed that appointment process for the posts of Chairman has been started, which is not refuted by the counsel for the plaintiff. There is nothing wrong if the controlling authority now has decided to make the appointments on merits through competitive process across the board, so that the best persons may be chosen to hold the important posts of Chairman. In the case of **Abdul Sami Soomro and others vs. Province of Sindh through Chief Secretary and others (2016 PLC (C.S) 787)**, Division Bench of this Court dismissed the petitions of the petitioners amongst them some were given additional charge of the post of Chairman. However, in the

said judgment the Controlling Authority was directed to recruit Chairman of the Boards as well as other posts of Secretary and Controller of Examination through Search Committee. In my opinion this Court even under the original jurisdiction cannot sit over the judgment passed by Division Bench. It is then argued that a Caretaker Government cannot withdraw the assignment of Chairman from the plaintiff as mandate of a caretaker Government is only to carry out day to day affairs of the State with the help of available machinery/resources/manpower and it cannot take policy decisions including transfers and postings. However, I am not in agreement with the contention raised by the counsel for the plaintiff. It would be pertinent to mention here that Section 230 (2)(e) of Elections Act 2017 provides that caretaker Government shall not make promotions or major appointments of public officials but may make acting or short term appointments in public interest. However in the present case, stopgap arrangement is made by the Chief Minister/Authority by assigning charge of Chairman, BISE Shaheed Benazirabad to Commissioner Shaheed Benazirabad. The expression 'stopgap' means a temporary way of dealing with a problem or satisfying a need and/or something that can be used until something better or more permanent can be obtained. A look-after/acting or additional charge is given, under exceptional situations as a stopgap arrangement for a limited period. Record reflects that plaintiff is holding charge of Chairman BISE Shaheed Benazirabad since last 02 years and the plaintiff cannot be allowed to be continued for an unlimited period of time on the basis of acting charge basis as it would amount to deflecting and frustrating the very spirit of law. Assignment of such charge does not entitle the incumbent to claim any benefit on account of such arrangement which can be revoked or withdrawn by the competent Authority at any time. Nevertheless, in the Summary floated by the concerned Department, it was specifically mentioned that vide letter dated 21.11.2023, a formal request has been forwarded to Election Commission of Pakistan for soliciting necessary concurrence for initiating appointment process for filling up all important vacancies in Educational Boards including Chairman, BISE, Shaheed Benazirabad through Search Committee which in fact demands of statute and compliance of judgment passed by this court in writ petition. The plaintiff has failed to point out malafide on the part of the Chief Minister, who assigned the additional charge of the post of Chairman, BISE Shaheed

Benazirabad to Commissioner under Section 15(2) of the Sindh Board of Intermediate & Secondary Education Ordinance, 1972. Thus, I do not see any merit in the listed applications, which are hereby dismissed.

6. Before parting with this order, the Secretary, Universities & Boards Department, Government of Sindh is directed to conclude the process of appointment of posts of Chairman(s), BISE(s), which is/are lying vacant on urgent basis in accordance with the relevant Rules/Law within shortest possible period after completing all codal formalities.

JUDGE

Sajid