

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No. 1326 of 2023**

---

<b>Date</b>	<b>Order with signature of Judge</b>
-------------	--------------------------------------

---

For hearing of CMA No. 11662/2023

**Date of hearing:** 08<sup>th</sup> December 2023  
**Date of order :** 15<sup>th</sup> January 2024

Mr. Muhammad Ali Lakhani advocate for the plaintiff.  
Syed Hussain Shah AAG  
Mr. Sirichand advocate for defendant No.3

-----  
**ORDER**

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

2. The relevant facts are that plaintiff, who was working as Deputy Secretary (BS-18) Board of Intermediate and Secondary Education, Larkana, was transferred and posted as Controller of Examination (BS-19) Board of Intermediate and Secondary Education, Larkana till further orders, vide Notification dated 07.06.2012. However, it is further stated that vide Notification dated 10.08.2023, Defendant No.4 was inducted into the office of Controller of Examinations on deputation for a period of one year or till the appointment of regular incumbent. The claim of the Plaintiff in this case is that by virtue of his seniority, educational qualification and the rules of the Board, he is entitled to be promoted permanently as Controller of Examinations in Grade 19 but instead Defendant No.4 was inducted as Controller of Examination, BISE, Larkana in violation of Ordinance 1972 and Rules framed therein. It is further claimed by the plaintiff that he is a permanent employee of the Board of Intermediate and Secondary Education, Larkana and by virtue of Sindh Boards of Education Employees Service Rules, 2013, the appointing authority of Controller of Examinations is Board through Appointment Committee. Though the plaintiff is working as Controller of Examinations, Board of Intermediate and Secondary Education, Larkana as an interim arrangement, but the regular appointment to this post

may be made only through promotion, a post which is to be filled by promotion cannot be filled by induction on deputation by a Civil Servant, who has neither expertise nor qualifications to oversee such sensitive assignment. It is vehemently submitted that plaintiff has been denied his right of promotion to the post of Controller of Examinations (BS-19).

3. Heard and perused the record.

4. Counsel for the plaintiff vehemently stated that the powers to appoint the Controller of Examination is entrusted to the appointment authority of the Board which can be made by promotion only and not through direct induction or on deputation. However, under the law, power to appoint the Controller of Examination is vested in the controlling authority and nothing is mentioned that in the Ordinance 1972 that the post of Controller of Examinations shall be filled by promotion. The counsel for the plaintiff then referred to schedule attached to Sindh Boards of Education Employees Service Rules, 2013 (as amended), which stipulates that the Controller of Examinations shall be appointed by promotion but the learned counsel for the plaintiff failed to show that whether said rules have any statutory recognition or backing. The rules despite having statutory backing or the force of law cannot override the express provisions of Act and or Ordinance, and in case of any conflict, the provisions of parent law would prevail. Though under Section 17 of the Ordinance, 1972, the Board has powers to make regulations, including rules of service and rules regulating disciplinary action, grant of leave, and retirement of the employees of the Board, but under subsection (2) it is clearly provided that regulations approved by the Board shall be submitted to the Government and shall not take effect until they are approved by the Government, which means the rule making powers enumerated or classified under Section 18 are quite limited and it does not include the rules relating to the appointment or induction of any post by direct appointment or through promotion. Such question was also came up before Division Bench of this Court in the case reported as Abdul Sami Soomro and others vs. Province of Sindh through Chief Secretary and others (2016 PLC (C.S) 787), wherein this Court inter-alia observed that:

*“15. Though under Section 17 of the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972 the, Board has powers to make regulations including rules of service and rules regulating disciplinary*

*action, grant of leave and retirement of the employees of the Board, but under subsection (2) it is clearly provided that regulation approved by the Board shall be submitted to the Government and shall not take effect until they are approved by the Government. In our discernment and understanding, the rule making powers enumerated or classified under Section 18 are quite limited and it does not include the rules relating to the appointment or induction of any post by direct appointment or through promotion. Even otherwise, the rule making powers were given to Board under Section 17 which is subject to the approval of the Government. No such approval is placed on record to show that 2013 Rules were framed under Section 17 or 18 and rules were approved by the Government. So we have no hesitation in our mind to hold that the Chairman, Secretary and Controller of Examinations are to be appointed by the controlling authority through direct induction and we are not convinced with the arguments progressed before us that the posts of Controller of Examinations and Secretary can only be filled by promotion."*

Underlining has been supplied for emphasis.

5. During course of arguments, it has been informed that the appointment process for the posts of Controller of Examination 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 a competitive process across the board, so that the best persons may be chosen to hold the important posts of Controller of Examination. In the case of **Abdul Sami Soomro and others** (*supra*), this Court dismissed the petitions of the petitioners amongst them some were given additional charge of the post of Controller of Examination. However, in the said judgment, the Controlling Authority was directed to recruit Controllers of Examination of the Boards as well as other posts through Search Committee. In my opinion, this Court, even under the original jurisdiction, cannot sit over the judgment passed by Division Bench. In the present case, the plaintiff is holding the charge of the post of Controller of Examination, BISE, Larkana since 2012 and in my opinion, the plaintiff who has been assigned such charge, cannot claim any vested right to promotion to it. With regard to the induction of defendant No.4, it is observed that holding an acting or additional charge is always meant as a stopgap arrangement till such time as regular appointment or induction is made. 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 who has been holding charge of Control of Examination, BISE, Larkana since 2012,

cannot be allowed to continue for an unlimited period of time on the basis of acting charge, 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.. Thus, I do not see any merit in the listed application, which is hereby dismissed.

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

**JUDGE**

Sajid