

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 2038 of 2023

Date	Order with signature of Judge
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For hearing of CMA No. 2038/2023

Date of hearing : 18th December 2023
Date of order : 15th January 2024.

Mr. Muhammad Mazhar Iqbal advocate associate of Mr. Zaigham Hussain,
advocate for plaintiffs

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 Director Public Relation & Information (BS-19) vide Notification dated 14.12.2021 issued by Chairman, Board of Intermediate Education, Karachi, in pursuance of letter dated 14.12.2021 received from Section Officer (Boards), Universities & Boards Department, Government of Sindh, assigned him additional/lookafter charge of Secretary/DDO on stopgap arrangement basis till appointment of the Secretary by the Controlling Authority of the Boards. However, it is further stated that vide Notification dated 23.11.2023, the post of Secretary, Board of Intermediate Education Karachi was withdrawn in terms of Section 14(2) read with Section 15(2) of the Sindh Board of Intermediate and Secondary Education Ordinance, 1972 and he was relieved with immediate effect with direction to work against his original posts in Board of Intermediate Education, Karachi. It is vehemently stated that being caretaker has no power to transfer the plaintiff from the current position of his service as it is the only duty of the caretaker Chief Minister to run day to day affairs of the province. It is further submitted that no reasons have been advanced for transferring the plaintiff from his present position.

3. Heard and perused the record.

4. The plaintiff has claimed that he has been assigned additional/lookafter charge of Secretary/DDO on the basis of stopgap arrangement as

such the plaintiff could not claim vested right against such assignment. During course of arguments, it has been informed that appointment process of the different posts in the Boards of Secondary and Intermediation Education of the Province 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 who were holding different posts in the Boards. However, in the said judgment the Controlling Authority was directed to recruit different posts through Search Committee. In my opinion this Court even under the original jurisdiction cannot sit over the judgment passed by Division Bench of this Court. With regard to the power of the caretaker Chief Minister, main argument of the counsel for the plaintiff 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, the plaintiff was transferred from the post of Secretary Board of Intermediate Education Karachi, whose additional/ lookafter charge was assigned to him on the basis of stopgap arrangement. 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. Thus, Record reflects that plaintiff is holding charge of Secretary/ DDO, Board of Intermediate Education, Karachi since 14.12.2021 and the plaintiff cannot be allowed to be continued for an unlimited period of time 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. The plaintiff has failed to point out malafide on the part of the Controlling Authority. Thus, I do not see any merit in the listed application, which are hereby dismissed.

5. Before parting with this order, the Secretary, Universities & Boards Department, Government of Sindh is directed to initiate process of appointment of posts which are lying vacant in the Boards of Secondary and Intermediate Education of the Province on urgent basis in terms of relevant Rules within shortest possible period after completing all codal formalities.

JUDGE

Sajid