

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P No.D-1538 of 2021
C.P No.D-114 of 2023

| | |
|------|-------------------------------|
| Date | Order with signature of Judge |
|------|-------------------------------|

1. **For hearing of CMA No.5967/2023**
2. **For hearing of main case.**

12.10.2023

Syed Zafar Ali Shah, advocate for Petitioner in C.P No.D-114 of 2023

Mr. Sarmad Hani, Advocate for the Applicant/ Intervener
Mr. Ali Raza Balouch, AAG along with Focal Person Dr.
Anwar Ahmed, DHO Sukkur

This petition was filed for seeking following relief(s):-

“a) That this Hon’ble Court may be pleased to call the detailed report from Respondent No.2 with respect to the Budget and the facilities of the Government Hospital Taluka Pano Aqil.

b) That this Hon’ble Court may be pleased to direct the official Respondent No.6 to start the machinery i.e. Ultrasound, O.T, Postmortem, Dialysis immediately.

c) That this Hon’ble Court may be pleased to direct the Official Respondent No.7 to provide the record of the medicine bought and provided to the patient in the Government Hospital Pano Akil.

d) That this Hon’ble Court may be pleased to direct the official Respondent No.7 to provide the Medicine to the patients coming in the Government Hospital Pano Aqil and such record may be maintained and same may be inspected by the Respondent No.4 or Magistrate of local jurisdiction of the Government Taluka Hospital Pano Aqil, District Sukkur”.

2. However, during pendency, this petition was tagged with C.P No.D-114 of 2023 and during hearing different issues were raised by the advocates. On 03.03.2023, when the Focal Person on behalf of the Secretary, Health was present, he was asked by the Bench about posting of Director (s) Finances, in different Tertiary Hospitals in Larkana and Hyderabad. Name of applicant was taken by the Focal Person to be the Director, Finance, at LUMHS Hyderabad. His credentials were also discussed and the Bench came to know that he had not been appointed by the Board constituted under “The Sindh Teaching Hospital (Establishment of Management Board) Act, 2020 or the Chief Minister, Sindh, and that he had been removed by the Service Tribunal and that judgment was maintained by the Apex Court vide judgment dated 20.04.2021, passed in Civil Appeal No.1167/2020. Apparently influenced by these facts, the Secretary Health was directed to notify a committee, who shall decide the fate of his cadre, and that he shall not be appointed in University Tertiary Hospital.

3. Learned Counsel representing the applicant submits that neither the issue of cadre of applicant was under consideration before this Court nor his appointment in University Tertiary Hospital. Besides, he was not even a party in the petition nor was present in the Court when this order was passed and that information communicated to the Court against him was false/wrong as he was not removed from the service by the Service Tribunal. But the issue before the Service Tribunal was of his up-gradation to grade-20, which was challenged by one of his colleagues, which was accepted by the Service Tribunal and the appeal filed by him in the Supreme Court was dismissed. Consequently, his up-gradation was withdrawn and he was placed in grade-19.

4. He further submits that being aggrieved by the order dated 03.03.2023, passed by this Court, in the present matter, applicant filed a CP No.1330 of 2023 before the Supreme Court of Pakistan, which was decided vide order dated 07.06.2023 in the terms whereby it was held that an ex-party order has a remedy in the first instance before the Court that passed the same. And that the petitioner may avail his remedy before the High Court in the first place. Further, there is no need to approach this Court against the said interim order. And, it goes without saying that if so approached, the High Court shall consider the plea taken by the petitioner in light of the record of the case.

5. At the very outset, we have asked learned Counsel as to how when applicant is not a party in these proceedings, his application can be entertained; he has replied that in light of order passed by the Supreme Court, he has approached this Court and this Court in light of observations of the Supreme Court can hear the applicant and decide this application without formally impleading him as a party because there is no observation or condition by the Supreme Court for applicant to become a party in these proceedings first and then file application. He has further submitted that even otherwise applicant is neither a necessary nor a proper party as no relief has been sought against him, nor the cause of action on the basis of which this petition has been filed pertains to the applicant in any capacity, nor his name transpires in the entire petition. More so, this ex-party order was passed

without even issuing a notice first to the applicant for making him party to appear and explain his position.

6. On the last date of hearing, noting some of such submissions of learned Counsel, a notice was ordered to be issued to the respondents as well as petitioner. Learned AAG has filed comments of Secretary (Health). In the comments, neither the Secretary (Health) has opposed this application nor supported it. Yet, learned AAG submits that he may be given some time to call the Focal Person and seek instructions from him to know as to why issue of applicant was brought up before the Court and why these observations against him were made. At his request and so also request of learned Counsel for the petitioner, we adjourn this matter. However, meanwhile the observations in the order dated 03.03.2023, impugned in the application, concerning direction to the Secretary Health to notify a committee to decide the fate of cadre of applicant; and observation that he shall not be appointed in University Tertiary Hospital shall remain rescinded, not to be read as a part of the order. Since, somehow, such observations were passed by this Court against the applicant in his absence without making him even party, we make him party in this case in order to afford him an opportunity of audience, and direct Petitioner's Counsel to file amended title adding him as Respondent No.8 within one week.

7. Adjourned to **28.11.2023**. Office is directed to place a signed copy of this order in captioned connected matter.

JUDGE

JUDGE