

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 689 of 2022

Date	Order with signature of Judge
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For order as to maintainability of suit

1. For hearing of CMA No. 7043/2022 (stay)
2. For hearing of CMA No. 8681/2022 (stay)
3. For hearing of CMA No. 12644/2022 (contempt)
4. For hearing of CMA No. 11441/2022 (Order 7 Rule 11 CPC)
5. For hearing of CMA No. 2647/2023 (fast track)

Date of hearing: **13th December 2023**

Date of order : **08th March 2024.**

M/s. Shahzaib Akhtar Khan and Bilal Khawaja advocates for plaintiff

Barrister Zeeshan Adhi, Addl. A.G

Mr. Haq Nawaz Talpur advocate for Defendant No.3

Mr. Arshad M. Tayebaly advocate for Defendant No.4

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SALAHUDDIN PANHWAR, J.- By the dint of this order, I intend to dispose of listed applications.

2. Brief facts of the present suit are that the plaintiff is employed at the Jinnah Sindh Medical University (hereinafter referred to as JSMU) as Professor (Community Medicine) and is also the Chairperson of Institute of Public Health; that plaintiff was also remained Pro-Vice Chancellor for four years from December 2015 to December 2019 and Dean of Public Health for six years; that she has also vast experience in the field and on the basis of the experience, the Plaintiff qualifies the prescribed criteria laid down for the purpose of appointment as the next Vice Chancellor of JSMU; that Defendant No. 1 published advertisement dated 13.09.2020 calling for applications to the position of Vice Chancellor of JSMU, however, it is claimed that due to lack of transparency, Constitution Petition No. D-2209 of 2021 was filed by one Dr. Umar Farooq, which came up for hearing before Division Bench this court wherein vide order dated 30.03.2021, the Committee was permitted to conduct interviews of shortlisted candidates with direction that the committee would not make a final list in respect of selected candidates; that plaintiff also filed Suit No.772 of 2021 wherein it was alleged that there was lack of transparency

in the process of appointment and that selection was being made in order to induct undeserving persons in the process, as such plaintiff prayed for transparent process. On 02.04.2021, learned Single Judge of this court passed orders on the injunction applications to the effect that no final list would be made from the shortlisted candidates interviewed. It is further submitted that Faculty members and alumni of JSMU preferred CP No. 2501 of 2021 calling in question composition of the search Committee and the improprieties committed by way of unauthorized persons presiding over its meetings in the absence of its Chairman and short listing the candidates in such manner for the proposed appointment; that during pendency of the above petition and the suit a Summary dated 25.05.2021 was forwarded by Defendant No. 1 to the Chief Minister wherein it was alleged that petition filed by Dr. Umar Farooq and the suit filed by the Plaintiff had been disposed of. However, said summary clearly indicated that the Plaintiff having the highest marks on merits. Surprisingly, through Notification dated 22.06.2021 under the directions of the Chief Minister, the Defendant No. 3 was notified as the next Vice Chancellor of JSMU. According to the plaintiff she filed High Court Appeal as well as Suit wherein she called in question the said Notification on the ground of misrepresentation.; that interim orders passed by this Court in Suit No. 772 of 2021 are still in the field, as such said Notification was unlawful, null, void and ab-initio. It is further submitted that plaintiff in Suit No. 1764 of 2021 also sought appointment on merits, based on the recommendations / markings of the Search Committee as depicted in the Summary; that appointment of Defendant No.3 was without assigning any reasons for overlooking the case of Plaintiff, who was on the top of the merit list; that in spite of clear directions of this Court to the Defendants vide Order dated 21.02.2022, to float the summery of shortlisted candidates recommended by the Search Committee to the Chief Minister Sindh for fresh interview and thereafter make appointment of new Vice Chancellor of JSMU strictly in accordance with dicta laid down by the Supreme Court of Pakistan in the case of Dr. Iqarar Ahmed Khan. However, it transpired to the plaintiff that Chief Minister, Sindh, has again issued a Notification dated 24.03.2022, wherein once again the Defendant No. 3 was notified as the next Vice Chancellor of JSMU and for such appointment no

cogent reasons whatsoever have been assigned. It is claimed that second Notification was issued sheer violation of the dicta laid down by the Apex Court in the case reported as 2021 SCMR 1509. Thereafter, the plaintiff written twice to Defendant No. 1, requesting for disclosing the reasons but no response has still been received by the Defendants. Hence the instant suit is filed by the plaintiff with the following prayers:

- I. To declare the Impugned Notification dated 24.03.2022 to be in violation of the dicta of the Supreme Court as laid down in 2021 SCMR 1509 and, therefore, is illegal, null and void; to suspend and set aside any and all actions taken as a result of the Notification dated 24.03.2022;
- II. To direct the Defendant No. 1 to notify the next Vice Chancellor of JSMU as per the rankings provided in Summary dated 25.05.2021, and, in light of the directions of this Hon'ble Court vide Order dated 21.02.2022 passed in Suit no. 772 & 1764 of 2021 as well as the dicta of the Supreme Court as laid down in 2021 SCMR 1509, To grant costs.

3. Notices were issued to the defendants. In response, the defendant No.2 filed written statement, wherein it is stated that in compliance of order passed on 09.03.2023, appointment process of Vice Chancellor of Jinnah Sindh Medical University Karachi was undertaken by the then Search Committee with approval of the Controlling Authority i.e. Chief Minister Sindh through Universities & Boards Departments, Government of Sindh, Karachi; that the matter of appointment of Dr. Lubana Ansari Baig (plaintiff) to the post of Vice Chancellor of Jinnah Sindh Medical University Karachi was exclusively related to the then Search Committee. However, a Summary was floated to the Chief Minister Sindh by the then Secretary Universities & Boards Departments, Government of Sindh, Karachi and after interviewing the panel of three candidates by the Chief Minister Sindh/Controlling Authority, he approved the appointment of Dr. Amjad Siraj Memon as Vice Chancellor of Jinnah Sindh Medical University Karachi.

4. Defendant No.4 (JSMU) also filed response wherein it was claimed that Notification dated 24.03.2022 was issued in light of consolidated order passed by this Court in Suit No. 772 of 2021 and Suit No. 1764 of 2021; that Chief

Minister recorded sound reasons on the basis of the interviews conducted by him after looking into the ground realities of the position of VC of the Defendant No, 4; that appointment of V.C squarely falls within the domain of Chief Minister, which has been delegated to him by statute; that courts often exercise restraint in interfering in such matters unless it is shown that a grave injustice or violation has been done. It is next contended that Plaintiff has failed to make out any case of any gross injustice being caused especially in view of her conduct over the years, in addition to the various orders passed by this Court and the Supreme Court against the plaintiff; that section 13 of the JSMU Act empowers the Chief Minister to make decision and to determine the suitability of the candidate. However, the Plaintiff has entirely failed in establishing that the reasons provided by the Chief Minister were not cogent; that Plaintiff has also failed to address the issue of her being well over the age limit for the post for which she is seeking injunction; that same issue was also discussed in CP No. 3006 of 2022 and was affirmed in CPLA No. 1328-K of 2022 before the Supreme Court of Pakistan. In the advisement dated 13.09.2020 which states the age limit of 65 years; that cogent reasons were assigned for the appointment of V.C; that in the plaint no prayer was made challenging the said reasons; that firstly Summary to the CM was moved in May 2021, the same was on the commitment given by the Plaintiff to the Defendant No. 1 on 06.05.2021 that she had withdrawn the previous Suit. Once the Summary was moved, she also participated in the process by attending interview on 18.06.2021 with the CM. However, when the plaintiff was not selected, she had moved an application for suspending the said Notification for the reason that she was not considered suitable; that undoubtedly, the Chief Minister being Authority had interviewed the top three candidates, while exercising his discretion and the appointment of the defendant No.4 was made by the Chief Minister after considering the recommendations from the Search Committee as well as conducting the interview; that present suit is also not maintainable under Section 56(d) of the Specific Relief Act 1877 which prohibits the grant of injunctions which interfere with the public duties of any department or institution of the government. Lastly, it is prayed that instant suit may be dismissed with costs as it is not maintainable.

5. Learned counsel for the plaintiff mainly contended that appointment of defendant No.3 as Vice-Chancellor, JSMU Karachi is based on mala fide intention, without considering merits of the candidates; that no plausible explanation or reasoning has been assigned for the exercising such discretion by the Chief Minister Sindh; that the Chief Minister acted beyond its mandate and power as provided under the law, by ignoring findings of the Search Committee and arbitrarily recommended defendant No. 3, who had obtained low grading in the merit list, which action is illegal, unlawful and in defiance of the dictum laid down by the Apex Court; that in the present matter, the merit has been bypassed and decision was taken which is in violation of principle of structured discretion. Learned counsel has further contended that the position of Vice-Chancellor is a public office and thereby appointing a person on such high post, who is not eligible to be considered for such position thereby caused grave loss to the public at large. Learned counsel for the plaintiff further stated that discretion is to be exercised according to rational reasons; that the action, which does not meet the threshold requirements is considered to be arbitrary and misuse of power; that the Search Committee recommended three candidates for the position of Vice-Chancellor and the plaintiff obtained grading more than the defendant No.3, therefore, plaintiff is entitled to be considered for the position of Vice-Chancellor.

6. In contra, counsel appearing for the defendants contended that Search Committee after interviewing the candidates recommended three suitable candidates and to that effect summary was floated to the Chief Minister Sindh to appoint one candidate to the position of Vice-Chancellor, JSMU; that Chief Minister after interviewing the candidates appointed defendant No.3 for the position of Vice-Chancellor, JSMU Karachi; that there appears no malafide intention as everything has been done in accordance with law and on merit. Lastly, it is argued that the discretionary power of appointing defendant No.3 by the Chief Minister, Sindh, were supported by the valid reasons as such the judgment relied upon by the learned counsel for the is distinguishable on the facts and circumstances of the present case, therefore, the plaint of the instant suit is liable to be rejected as well as learned AAG

has argued that plaintiff has failed to disclose that under what manner speaking order is illegal; that plaintiff was removed from service (the post of professor) even her appeal has been dismissed (by the apex Court), hence how she can be appointed as Vice Chancellor, which is domain of worthy Chief Minister.

7. Heard and perused the record.

8. It would be pertinent to mention here that Section 13(1) of the Jinnah Sindh Medical University Act 2013 speaks regarding powers for appointment of Vice-Chancellor by the Chief Minister as the Chief Minister may determine. It appears that an advertisement for appointment of Vice Chancellor of JMSU was published in the newspaper on 13.09.2020. Thereafter, a petition bearing No. 2209/2021 was filed by one Dr. Umar Farooq wherein an interim order was passed wherein it was inter-alia ordered that no final list in respect of selected candidates would be made. Plaintiff also filed Suit No. 772/2021 wherein similar interim order was passed. Record also reflects that faculty members and alumni of JSMU filed C.P.No.D-2501/2021 before this Court regarding composition of search committee. During pendency of such litigation, a Summary was floated by defendant No.1 to Chief Minister. However, vide Notification dated 22.06.2021 defendant No.3 was notified as V.C of JSMU. Such Notification was suspended in H.C.A.No.108/2021 filed by Plaintiff. However, plaintiff also filed another Suit No. 1764/2021, wherein plaintiff prayed for appointment on merits based on the recommendations/markings of search committee as disclosed in the Summary. Suits No. 772 and 1764 of 2021 were disposed of vide order dated 21.02.2022, wherein it previous Notification was suspended and defendant No.2 was directed to float Summary of short listed candidates to the Chief Minister for fresh interviews and for appointment of next Vice Chancellor strictly accordance with the dicta laid down in the case reported as 2021 SCMR 1509, which according to the counsel for the plaintiff bounds the Chief Minister is to apply judicious mind while deciding a candidate to hold office of Vice Chancellor, which decision shall be based on valid reasons. However, according to the plaintiff

again vide Notification 24.03.2022, the defendant No.3 was notified as Vice Chancellor of the JSMU without assigning any cogent reason. It is observed that the Search Committee recommended three candidates including defendant No.3, plaintiff to the Chief Minister Sindh for the appointment as Vice-Chancellor. Record further reflects that the Chief Minister Sindh after interviewing the above three candidates recommended to the Chancellor the name of defendant No.3 for appointment as Vice-Chancellor JSMU, whose grading was less than the plaintiff's grading. Section 13 (1) of the above referred Act gives discretionary powers to the Chief Minister to appoint Vice-Chancellor for a period of four years, which may be extended for one more term, on such terms and conditions, as the Chief Minister may determine. Search Committee was formed to recommend the candidates for the post of Vice Chancellor of JSMU. Said Search Committee recommended three names to the Chief Minister wherein grading was assigned to each candidate and on the basis of such grading the plaintiff is praying for appointment of Vice Chancellor of JSMU. It appears that as per law, the recommendations of Search Committee are not binding and as per JSMU Act, the discretion is assigned to the Chief Minister to appoint a qualified candidate for the position of Vice-Chancellor. In any event in the case reported as **Prof. Dr. Razia Sultana and others v. Prof. Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992)**, the apex Court has held as under:

"In the instant matter, absolute power of appointment was not given to authorities i.e. the Chancellor/Governor to appoint any person of their choice but the Search Committee consisting of eminent professionals was constituted who after detailed scrutiny of the credentials and lengthy interview of each candidate, recommended three names which as per para-wise comments, was not on the basis of any preference and the Chancellor/Governor, on the advice of the Chief Minister, appointed one candidate out of the three candidates in exercise of his powers, as mentioned above, Section 12(1) of the Khyber Pakhtunkhwa Universities Act, 2012 gives discretion to the Chancellor/ Governor to appoint anyone out of the candidates recommended by the Search Committee on the advice of C.M."

9. I have further noticed that the plaintiff's experience as professor has also been declared unlawful. Record reflects that plaintiff was appointed as

Professor in APPNA Institute of Public Health, which appointment was challenged by Jamal Nasir before this Court in C.P.No.D-3006 of 2022 and vide judgment dated 26.10.2022, the petition was allowed, consequently, appointment of the plaintiff as Professor in APPNA Institute of Public Health was declared to be unlawful, as such, she was removed from the post of Professor. The plaintiff challenged said judgment before Apex Court by preferring Civil Petition No. 1328-K of 2022, which was dismissed as such the plaintiff even does not have an experience of professor.

10. Learned counsel for the plaintiff then attempted to argue that no cogent reasons have been advanced by the Chief Minister for appointing defendant No.3 as Vice Chancellor of the JSMU and thus has wrongly exercised his discretionary powers. Record reflects that the Chief Minister after assigning detailed and cogent reasons appointed the defendant No.3 as Vice Chancellor of JSMU. It would not be out of place to mention here that Chief Minister during process of appointment of Vice-Chancellor may exercise his discretion, by picking any of the recommended candidates by the Search Committee, which cannot be interfered by this Court unless it is shown that such action is based on malafided and any right of the plaintiff has been infringed. There is no material has been placed on record to persuade me to conclude that discretion has been wrongly exercised by the Chief Minister, Sindh.

11. In these circumstances, CMA No. 11441/2022 (Order 7 Rule 11 CPC) is allowed; accordingly, plaint is hereby rejected, consequently, remaining CMAs are dismissed.

JUDGE