



*D. Direct Defendant No.2 to investigate into the journals submitted by the Defendant No.3 & 4 to the Defendant No.1 pursuant to the Advertisement and corrigendum(s).*

*E. To restrain the defendant No. 1 from forwarding / sending the dossiers to the foreign referees for the examination / review / assessment of the publications of the candidates for the post of Professor BPS-21 and Associate Professor BPS-20.*

*F. To direct the Defendant No. 2 (HEC) to verify the genuineness of the Defendant No.3 and 4 publications as per its own rules.*

*G. To direct the Defendant No. 5 to ensure / maintain the fair and impartial management of the Defendant No. 1 institution and to ensure that no illegal activities take place within the Defendant No.1 institution.*

*H. To direct the Defendant No. 6 to ensure the fair, impartial, honest, and un- biased working of the scrutiny committee and that the members of the scrutiny committee, give a fair and un-biased scrutiny report.*

*I. Direct the Defendants No. 1 & 2 to act in accordance with the HEC rules and the same should be upheld as being the valid in light of the above mentioned.*

*J. Suspend the eligibility letters issued to the Defendant No.3 and Defendant No.4 by the Defendant No.1 for the post of Professor and Assistant Professor.*

*K. Restrain the Defendant No.1, 2 & 5 from carrying out the syndicate meeting and finalizing the appointments and to restrain all persons involved in approving the appointments of the candidates for the post of professor BPS-21 and Assistant professor BPS-20 until the publications of Defendant No.3 and 4 are verified*

*L. Restrain the Defendant No.1 or their agents / nominees / employees from acting in pursuance to the impugned faculty positions advertisements and corrigendum dated: 13.02.2019, 22.03.2019, 22.04.2019 and 21.05.2019.*

*M. Grant Permanent injunction restraining the Defendant No.1 or their agents / nominees employees from taking any coercive action against the Plaintiff and Set-aside / Quash / Cancel the Impugned faculty positions advertisements and corrigendum dated: 13.02.2019, 22.03.2019, 22.04.2019 and 21.05.2019 and any other advertisement done by / through / Defendants.*

*N. To produce/give/submit the report of how such a botched up advertisements and corrigendum dated: 13.02.2019, 22.03.2019, 22.04.2019 and 21.05.2019 were advertised without getting approval from competent authority.*

*O. Grant Permanent injunction restraining the Defendant No.1 or their agents / nominees / employees from taking any coercive action against the Plaintiff.*

*P. Grant damages to the tune of Rs.40 Million (Forty Million) against the Defendant No.1, 3 & 4.*

*Q. Grant any other relief that this Honourable Court may be pleased to grant in the circumstances.*

*R. Grant Cost.*

2. Learned counsel for defendants while arguing application under order VII rule 11 CPC has emphasised over paragraph No.34 of plaint in which cause of action is mentioned, being relevant same is reproduced herewith :-

“34. The cause of action had accrued on 14.02.2019 when the faculty positions advertisement was published and it arose again on 24.03.2019 and then on 24.04.2019 and then on 21.05.2019 when the faculty positions were republished after the corrigendum(s). That the cause of action again arose in April 2021 when the scrutiny committee declared Moiz Khan and Hina Khan eligible despite their fake and doubtful publications. It arose again when on the basis of doubtful publications, Defendant No.3 and 4 are considered for the promotion. It arose again that despite several complaints in various forums the plaintiff is unheard and no actions are taken to redress the grievance. The cause of action continues till date.”

As well he has emphasized over the advertisement. According to counsel, plaintiff has only challenge her disqualification for the post of Professor; besides all prayers are general in nature falls within the writ of *quo warranto*, as well as in prayer clause she is asking the defendant to investigate the journals of private defendants, simultaneously she is challenging mandate of the dependents. He has further referred written statement file by HEC which speaks that University of Karachi was established pursuant to an enactment and that is an independent body having its Rules therefore HEC is not competent to interfere into internal issues of University of Karachi.

Further, counsel contends that HEC's representative is a member of the Education Board.

3. Learned counsel for defendants No.3 and 4 contend that at the time of advertisement plaintiff was lacking required qualification therefore this suit is filed with malafide intentions as she intends to delay the appointment process so that in fresh recruitment if any she may become eligible.

4. In rebuttal learned counsel for plaintiff while referring 2004 CLC 1029 contends that this court is competent to entertain the suit when fundamental right are infringed; that alleged embargo under section 42 of the Specific Relief Act 1877 will not come in the way of this Court in these proceedings. He has relied upon 2013 CD 1263 on the plea that when declaration is not prayed, injunction can be granted. He has also referred 2007 CLC 1757, 2004 PTD 1189 and 1993 CLC 2026 and Higher Education Commission Ordinance 2002 containing therein that HEC will provide college, university and higher education degrees. Further, he contends that plaintiff also prayed for damages as plaintiff was disqualified for the position of Professor.

5. It is pertinent to mention that while deciding application under order VII Rule 11 CPC, only the contents of the plaint and admitted documents are to be seen. Admittedly plaintiff applied for two posts, for the post of Professor she was qualified by the Recruitment Committee for participating in the process and for the post of Associate Professor she was qualified and that has not been challenged. Even in the plaint or in the prayer clauses that has not

been agitated therefore on this account at this juncture plaintiff has no cause of action to seek declaration that the recruitment process is illegal when admittedly she has participated/attempted in that recruitment process and when she was disqualified she came with the plea that the recruitment process is illegal; that type of plea cannot be allowed. So far as the relief of damages claimed by the Plaintiff is concerned, the claim of damages appears to be pre-mature in as-much-as the recruitment process is yet to be completed. It is worth-mentioning that Plaintiff has no vested right whatsoever for appointment to a particular post. It is the power of the competent authority to fix criteria and standards of eligibility and merit. It is trite law that the selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory law/rules do not restrain, is fully competent to prescribe the standard of efficiency and recruitment. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

6. In similar circumstances, in Case of ***Uzma Manzoor and others v. Vice-Chancellor Khushal Khan Khattak University, Karak and others (2022 SCMR 694)***, it was held by the Apex Court that: *“We are sanguine that mere submitting an application for joining recruitment process in response to an advertisement does not create any vested right to claim the job come what may. Obviously before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate shall be considered in accordance*

*with the prescribed benchmarks but in order to maintain level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should have been considered and adjudged in accordance with the qualification notified to apply in the advertisement and to extend any preference or favourable treatment, the settled terms and conditions cannot be disregarded. On the contrary, the selection process should be within the specified spectrum and attributes and due to breach of this protocol, the doctrine of legitimate expectation will come into sight for rescuing and ventilating the sufferings of the candidates who were under the bona fide belief that their applications for appointment will be considered without experience marks being not the precondition and if any additional marks are added or considered beyond the conditions to apply or contrary to the aforesaid Schedule that would be highly discriminatory to those candidates who applied as fresh candidates after completing their required education with the hope of securing jobs".* It is matter of record that in this matter of the criteria for selection was fixed before the commencement of the recruitment and the Plaintiff was disqualified at earlier stage of the recruitment process; therefore, no vested right is created in favour of the Plaintiff. In such circumstances, no cause of action accrued to the Plaintiff to institute the present Suit.

7. To maintain a Suit for Declaration under Section 42, of the Specific Relief Act, 1877, the Plaintiff must show that he/she is entitled to any legal character, or to any right as to any property, for which he/she may institute a suit against any person denying or interested to deny, his/her title to such character or right, and the Court may in its discretion make therein a declaration that he is so

entitled, and the plaintiff need not in such suit ask for any further relief. The Proviso to Section 42, contemplates that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. The essential requisites for the relief of declaration under Section 42 of the Specific Relief Act, 1877 are as follows:

***(1) That the plaintiff must, at the time of the suit, be entitled to a legal character or to any right as to any property;***

***(2) That the defendant has denied or is interested in denying that character or right of the plaintiff;***

***(3) That where the plaintiff is able to seek further relief than a mere declaration of title, he must seek such relief.***

The main objective of Section 42, of Specific Relief Act is to dispel a cloud cast upon the legal character or title of the plaintiff where the plaintiff seeks relief of declaration from the court so that he can peacefully enjoy the legal character or his right as to any property without any fear of disturbance. A declaratory decree provides a shield against the attacks on the Plaintiff's title or legal right, where a doubt is created on the same. It is matter of record that the essential requirements for seeking the relief of declaration have not been fulfilled in the present matter. In case of ***Khalid Mehmood and others v. The Administrator, Quetta Municipal Corporation, Quetta (1996 SCMR 1026)***, it was held by the Apex Court that: *“The learned High Court was, therefore, perfectly justified in holding that the petitioners had no cause of action for bringing the present suit. There is also no force in the contention of the learned counsel for the petitioners that in absence of any written statement filed by the respondent and providing opportunity to the petitioners for filing replication the learned trial Judge had acted illegally and with*

*material irregularity in dismissing/rejecting the plaint for absence of any cause of action. This question has been dealt with by the learned High Court in great detail and supported by authoritative pronouncement of the Superior Courts. The objection ' with regard to lack of cause of action, on facts and circumstances of the case, was raised in the application and both the learned counsel for the parties addressed arguments on the point in the light of the admitted documentary evidence, in the shape of lease agreements, available on the file. Hence no grievance could be raised on that score".*

8. For the foregoing reasons, the plaint of the present Suit is hereby rejected under Order VII Rule 11, C.P.C. Needless to mention here that the Plaintiff is at liberty to sue for damages on completion of the recruitment process, if so permissible under the law. The parties are left to bear their own costs.

**J U D G E**