

## IN THE HIGH COURT OF SINDH KARACHI

### Present:

Mr. Justice Zafar Ahmed Rajput  
Mr. Justice Adnan Iqbal Chaudhry

### High Court Appeal No. 505 of 2024

[Dr. Shahid Rasool versus Federation of Pakistan & others]

Appellant : Dr. Shahid Rasool through M/s. Ahmed Ali Hussain and Syed Zaeem Hyder, Advocates.

Respondent No.1 : Federation of Pakistan through Syed Riaz M. Shah, Deputy Attorney General for Pakistan.

Respondent No.2 : Province of Sindh through M/s. M. Hassan Akbar, Advocate General Sindh and Mr. Abdul Jalil Zubedi, Additional Advocate General, Sindh.

Respondents 3 & 4 : Jinnah Post-Graduate Medical Centre & another through Mr. Bhuromal, Director (Legal Affairs) and Mr. Deputy Director (Legal Affairs), JPMC, Karachi.

Respondent No.5 : Dr. Nazish Butt through Mr. Muhammad Ali Lakhani, Advocate.

Date of hearing : 09-01-2025

Date of decision : 09-01-2025

## J U D G M E N T

**Adnan Iqbal Chaudhry J.** - The Appellant is Professor of General Surgery in BPS-21. By notification dated 08.09.2021 he was posted by the Government of Sindh as Executive Director of Jinnah Post-Graduate Medical Centre [JPMC] for 3 years on deputation from Jinnah Sindh Medical University [University]. By notification dated 01.10.2024, the Government of Sindh extended the period of his deputation up till 24.06.2026 so as to retain him as Executive Director JPMC till his retirement. The Respondent No.5, an Associate Professor in BPS-19 appointed by the Federal Government

and posted at the JPMC, filed Suit No. 1336/2024 to challenge the competency of the Government of Sindh to appoint the Executive Director of JPMC, and consequently the notification dated 01.10.2024 extending the Appellant's deputation period for such post. It is pleaded by the Respondent No.5 in the suit that the JPMC had been declared a Federal institute by the Supreme Court of Pakistan in *Government of Sindh v. Dr. Nadeem Rizvi* (2020 SCMR 1), and therefore, the Government of Sindh was not competent to make appointments thereto. By an interim order dated 02.12.2024, the learned single Judge has suspended the Appellant's notification of extended deputation, hence this appeal.

2. Learned counsel for the Appellant submits that pursuant to the Jinnah Sindh Medical University (Amendment) Act, 2015, the JPMC is a 'constituent center' of the University, and therefore it is incorrect to suggest that the Appellant is an outsider at the JPMC. He further submits that the impugned order amounts to granting final relief at the interim stage. On the other hand, learned counsel for the Respondent No.5 submits that the rule that interim relief should be something less than the final relief, is not a rule of universal application. He further submits that the impugned order is only an interim order and Division Benches have consistently refrained from interfering with such orders, especially when the appellant has not invoked Order XXXIX Rule 4 CPC before the single Judge. The learned Advocate General Sindh however supports the appeal and submits that the impugned order has disrupted the day-to-day management of the JPMC and is causing public woes.

3. Heard learned counsel and perused the record.

4. The question before us is limited, *viz.* whether the interim order dated 02.12.2024 passed in Suit No. 1336/2024 calls for interference. It is correct that excepting a jurisdictional error, a Division Bench generally refrains from interfering with interim orders passed by a single Judge, however, there are exceptions to

that rule. Some of those exceptions are also discussed in the case relied upon by learned counsel for the Respondent No.5 - *Karachi Electric Supply Company v. Muhammad Shahnawaz* (2010 YLR 2426) - *i.e.* intervention may become inevitable to obviate a miscarriage of justice, or where the interim order is arbitrary, capricious or against settled principles of law.

5. The impugned order has been passed on the submission that the Government of Sindh is not competent to appoint the Executive Director of JPMC. However, the record before us reflects that after it was held in the case of *Dr. Nadeem Rizvi* that the JPMC was a Federal institute, there was an agreement between the Federation and the Province of Sindh, followed by a notification dated 08.08.2023 issued by the Ministry of National Health Services, to entrust the management, operational control and financial liabilities of JPMC to the Province of Sindh. It appears that ever since the Government of Sindh has been making appointments to the JPMC without objection from the Federal Government. It seems that these facts were not brought to the attention of the learned single Judge at the time of the impugned order.

6. Therefore, the argument that the Government of Sindh is not competent to appoint the Executive Director of the JPMC, will require some deliberation by the learned single Judge. Till such time, the effect of the impugned order is that while the Appellant is restrained from acting as Executive Director of JPMC, the question to the competence of the Government of Sindh also prevents it from appointing another in his place. We are inclined to agree with the learned Advocate General Sindh that the absence of an Executive Director at the JPMC jeopardizes the functions of an essential service to the public at large.

7. In the aforesaid circumstances, we are of the view that the impugned order requires intervention as an exception to the general rule of non-interference with interim orders. Therefore, we allow the appeal and set-aside the impugned order dated 02.12.2024 passed in

Suit No. 1336/2024 with the observation that the learned single Judge may decide the application for temporary injunction either way after hearing all parties. Appeal is disposed of.

Judge

**JUDGE**

Karachi:

Dated 09-01-2025