

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P.No.D-1298 of 2024

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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03.10.2024.

Mr. Riazat Ali Sahar, advocate for petitioner.
Mr. Hameedullah Dahri, advocate for respondent No.6
Mr. Muhammad Ismail Bhutto, Addl: Advocate General
Sindh along with Dr. Aftab Haider Deeshak, Assistant
Director General Health Sindh o/b Secretary Health.
Mr. Niaz Hussain Mirani, Special Prosecutor NAB.

Mr. Zarar Qadir Shoro, Advocate, files a counter-affidavit along with copies of certain documents on behalf of Respondent No. 7, which have been taken on record. He seeks time on the grounds that Mr. Sarmad Hani, Advocate, is occupied with family obligations.

2. We have heard the counsel for the parties at considerable length and observed that Respondent No. 7 was initially appointed as a Planning Officer (BPS-17) in the Health Department, Government of Sindh, in 1993. He somehow managed to progress to BPS-19 through promotions marred by disputes and discrepancies. During his service, he managed to place himself in the surplus pool, where he was absorbed into the Provincial Secretariat Service Cadre as an Additional Secretary via a notification dated January 10, 2013. However, after a judgment by the Honourable Supreme Court, he was relieved from this position. Despite this, he did not return to his parent department, i.e., the Health Department. As an influential person, he once again remained in the surplus pool of the Services, General Administration, and Coordination Department, Government of Sindh, while his other batch-mates remained with the Health Department. He subsequently submitted an application to the Chief Secretary, Government of Sindh, seeking accommodation in a non-cadre post at Liaquat University Hospital, Hyderabad/Jamshoro, through the re-designation of an existing BPS-19 post of Additional Medical Superintendent. At his request, the clinical post of Additional Medical Superintendent was re-designated as the post of **Director (Administration, Accounts, and Development) (BPS-19)**, a position that was specifically created for him. He was appointed as Director (Administration, Accounts, and Development) at Liaquat University Hospital, Hyderabad/Jamshoro. Thereafter, in 2017

Respondent No. 7 further succeeded in acquiring Drawing & Disbursing Officer (DDO) powers for LUMHS, one of the largest and most important public healthcare facilities in the area, through a notification dated May 30, 2017. This arrangement, tailored to accommodate Respondent No. 7, was made in gross violation of Rule 03(2) of the Sindh Delegation of Financial Powers and Financial Control Rules, 2019, as the Secretary of the Health Department was not competent to delegate DDO powers. Once again, solely to accommodate Respondent No. 7, a new post of Director (Administration, Accounts, and Development) was created, and he was promoted to BPS-20 on 01.06.2018. His promotion was subsequently challenged by one of his colleagues before the learned Sindh Service Tribunal in Karachi, and the appeal was accepted vide judgment dated September 22, 2020, which included several glaring observations. These will be discussed and elaborated upon in the later part of this order.

3. However, the said judgment of the learned Sindh Service Tribunal was assailed before the Hon'ble Supreme Court of Pakistan, and the findings of the learned Sindh Service Tribunal were upheld and maintained by the Hon'ble Apex Court, through its judgement, reported as **2022 SCMR 550, Abdul Sattar Jatoi vs Chief Minister Sindh through Principal Secretary, Chief Minister Secretariat Karachi, and others.**

4. On the last date of the hearing, the learned A.A.G. filed an inquiry report conducted by Mr. Muhammad Issa Memon, which, upon tentative perusal, reveals that it was not in accordance with the mandate given to him and was also contradictory to the facts and the statements of the individuals who were examined during the inquiry. Subsequently, a notification dated 7th December 2023 was issued by the Chief Secretary of Sindh, wherein, based on the inquiry conducted by Mr. Muhammad Issa Memon, Respondent No. 7 was exonerated from the charges. However, upon reviewing the order dated 7th December 2023, it becomes evident that Mr. Muhammad Issa Memon, during the inquiry, found Respondent No. 7 guilty. The relevant and specific paragraph from the said notification is reproduced below:-

*“AND WHEREAS, Mr. Muhammad Issa Memon, an officer of PSS (BS-20)/**Inquiry Officer submitted inquiry report with findings that in the preliminary enquiry Mr. Abdul Sattar Jatoi has been held responsible by virtue of the designation held by him.** Inquiry Officer further noted that Mr. Abdul Sattar Jatoi was not directly involved in the matter. The then Medical Superintendent Dr. Muhammad Siddique Pahore has taken the responsibility and admitted of having written the letter to the Secretary, Health Department for seeking permission for enhancing*

Local Purchase (L.P) service and that he received the approval through courier service without any sort of assistance from Mr. Jatoi. Moreover, Inquiry Officer concluded that Mr. Jatoi had not been doing work of accounts as far as the procurement of medicine is concerned."

5. We do not find any speaking order or cogent reason assigned for exonerating Respondent No. 7 in the aforementioned exoneration order issued in his favor. Be that as it may, the fate of the inquiry and the exoneration order will be decided on the next date of hearing after hearing the parties.

6. The record further demonstrates that a NAB inquiry is also pending against Respondent No. 7. However, a notification dated 20th September 2024, placed on record, shows that Respondent No. 7, serving as Director (Administration, Accounts & Development) in the Development Wing, Health Department, was transferred and posted as Director (BS-20), Liaquat University Hospital, Hyderabad, against an existing vacancy. This notification was issued during the pendency of this petition and while the NAB inquiry against Abdul Sattar Jatoi, for serious charges of corruption, was still pending. The charge sheet issued against Respondent No. 7 during the inquiry outlines the following allegations against him, for which he has been charged:

CHARGE SHEET

WHEREAS, the Health Department vide letter No.SO(PM-I) 10-5/92 dated 17.05.2022 has furnished the statement of allegations that you, Mr. Abdul Sattar Jatoi, Director (Admin, Accounts & Development) (BS-19), Liaquat University Hospital, Hyderabad, have committed the following acts of inefficiency and misconduct:

"The Health Department conducted an enquiry into the matter of fake release letter bearing No.SO(B)1-11/2021-22 dated 28.10.2021 pertaining to release of an amount Rs.350/- Million in favour of Liaquat University Hospital Hyderabad / Jamshoro. The Enquiry Committee found you responsible for the above referred fake / managed letter for clearance of dues during your posting as Director (Admin, Accounts & Development), Liaquat University Hospital, Hyderabad."

2. *AND WHEREAS, the aforesaid acts of omission and commission constitute inefficiency and misconduct on your part as laid down in Rule-3(a)&(b) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.*

3. *AND WHEREAS, it has been decided to hold enquiry into the said charges against you under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. These charges if established would call for any one of penalties as prescribed in Rule-4(1) of the said Rules.*

4. *In conformity with Rule-5 read with Rule-6 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, Mr. Muhammad Essa Memon, an Officer of Provincial Secretariat Service (PSS / BS-20), Chief Instructor, Training of Management & Research Wing, Services, General Administration & Coordination Department, has been appointed as Enquiry Officer to conduct enquiry into the aforesaid charges.*

5. *NOW THEREFORE, you, Mr. Abdul Sattar Jatoi are required under sub-rule 1(b) of Rule-6 of the aforesaid rules to put in your written defence to the Enquiry Officer within fourteen days of the receipt of this charge sheet and state at the*

same time, if you wish to be heard in person. In case you fail to put up your written defence within the stipulated period, it will be deemed that you have nothing to say in your defence and action against you shall be taken ex-parte.

-sd-

(DR. MUHAMMAD SOHAIL RAJPUT)
CHIEF SECRETARY SINDH AND
AUTHORIZED OFFICER

7. That, before proceeding, it is now essential to revert back and first dilate upon the chronic legal history and background of respondent No. 7, as at some point in time, while he was illegally holding charge of at least three important and distinct positions simultaneously, being Director, (Administration, Finance & Planning), whereafter his holding of such position was challenged by one of his colleagues who was inducted into health department initially and identically alongside the respondent No.7, as stated above such service appeal was allowed by the learned Sindh Service Tribunal, vide order dated 22-09-2020, in this connection it is pivotal to reproduce herewith the glaring findings of the learned Sindh Service Tribunal, against the respondent No.7, in its judgement dated 22-09-2020, being relevant paragraphs No. 12, 13, 14, 16 and 17, are reproduced herewith;

“12. Present is a unique case of favouritism and nepotism and that too in violation of the judgment of Hon’ble Supreme Court in Civil Review Petition No. 193/2013, For making everything clear Para No. 160 of that judgment is reproduced hereunder :-

We direct the Chief Secretary, Sindh, to create surplus pool within the parent department, of the officers/officials who have been de-notified and create vacancies to accommodate them, within a period of two months from the date of communication of this judgment. The officers/officials who have been repatriated to their parent departments shall be entitled to salaries and other benefits, from the date they were relieved to Join their parent departments. Their seniority shall be maintained in their parent departments with their batch-mates, as if they were never relieved from their parent departments. Expiry of period of lien shall not come in the way of the officers to deprive them from joining the parent department. In case, if the parent department has been abolished, the competent authority, shall appoint them by transfer in terms of Rule 9-A, subject to the restrictions contained therein, in line with the findings recorded by us in these proceedings. We make it clear to the Sindh Government that if any other officer, who was covered by the judgment under review or by this judgment, is still working in Sindh Government in willful defiance of the judgments, he shall be repatriated and or transferred to his parent department, post or cadre forthwith Pendency of proceedings filed by any such officers/ officials who have been ordered to join their parent department or otherwise continuing the defiance of the judgment of this Court by obtaining any restraining order from any forum including the High Court of Sindh shall not

come in the way of the Sindh Government in implementing this judgment. "

13. *The appellant and others including the respondent No.05 Abdul Sattar Jatoi were batch-mates. Their parent department was Health Department. They had to stay in that department. Even direction by the Hon'ble Supreme Court was to the Chief Secretary, Sindh to create surplus pool within the parent department and create vacancies for accommodating them. It was also the direction in the Judgment that their seniority shall be maintained in their parent department with their batch-mates, as if they were never relieved from their parent department. **They could report and become part of surplus pool in Services General Administration & Coordination Department only when their parent department was abolished.***

14. ***The Health Department was never abolished, therefore move and act of the respondent No.05 Abdul Sattar Jatoi to be part of a surplus pool in Services General Administration & Coordination Department and the act of that department to make him part of their surplus pool was in violation of the judgment of the Hon'ble Supreme Court. Then the series of acts in favor of Abdul Sattar Jatoi taking him out of the Health Department, re-designating clinical post of Liaquat University Hospital, Hyderabad/ Jamshoro and making him Director (Administration, Accounts & Development) were also illegal and in violation of the judgment. In a way he was placed in a non-cadre post in violation of the judgment. It was all done on the choice of respondent No.05 Abdul Sattar Jatoi. Creation of the same post in BS-20 was also for him alone as the rule framed in that respect made only Director (Administration, Accounts & Development) BS-19 eligible for the newly created post. His batch-mates had no right to be considered for the promotion. By this act another direction issued in the judgment by the Hon'ble Supreme Court was violated by disturbing the seniority among the batch-mates.***

16. *The respondents have **repeatedly referred to Rule 9-A for which the judgment has clearly mentioned that it shall be used only when the parent department has been abolished.** In case of the appellant and respondent No.05 that provision cannot help the respondents as the health department was not abolished. **The act of keeping the respondent No.05 in surplus pool of Services General Administration & Coordination Department and then accommodating him at different seats of his choice and lastly giving him promotion to BS-20 are all illegal in the light of the judgment of the Hon'ble Supreme Court. He has to repatriate to his parent department and take position where he was according to seniority with his batch-mates.***

17. ***It was told to us that currently the respondent No.5 has been relieved of the charge of the post of BS-20 Liaquat University Hospital, Hyderabad/Jamshoro and he has reported to Health Department. He is therefore to stay there and be treated and posted in BS-19 like his batch-mates obeying the judgment of the Hon'ble Supreme Court in letter and spirit. His promotion to BS-20 is set-aside.***

18. *With the above findings and directions, the appeal is disposed of."*

8. That, in the context of the present controversy, it is also essentially important to reproduce herewith, the Hon'ble Apex Court's judgement passed against the appeal preferred by the same respondent no.7 before

the Honourable Supreme Court, the relevant paragraphs Nos. 15, 16 and 17 of the judgement reported as **2022 SCMR 550, (Re- Abdul Sattar Jatoi vs Chief Minister Sindh through Principal Secretary, Chief Minister Secretariat Karachi, and others)**, passed on 10th January 2022 are also reproduced herewith for convenience;

- “15. The law does not permit to the competent authority to just pick one specific person and amend the rules for him and then create a post and oblige and grant promotion to that one person. The rule is that the competent authority is bound to consider all eligible candidates for promotion on merit.**
- 16. The respondent and the appellant were again promoted together as District Officers (Administration, Accounts and Development) (BPS-19) by the Provincial Selection Board No.II on 27.10.2010, wherein the name of the respondent was at Serial No.2, while the appellant was at Serial No.5. **They continued to remain in BPS-19 while through the impugned notification dated 01.06.2018, only the appellant was granted promotion to the post of BPS-20 and that too by making specific amendment in the rules and creating a post of Director (Administration, Accounts and Development) in BPS-20.****
- 17. *Right to promotion is not an illusionary nor a perfunctory right which could be ignored casually. Non-considering of an officer being equally eligible for promotion is a serious matter and not only undermines discipline but creates serious bad blood and heart burning among the rank and file of civil service. In the matter of civil service, there should not at all be any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion and availing of better service benefits leaving all other equals and even seniors abandoned.***

9. It is important to note here that, even after passing of clear and specific pronouncement/decisions regarding the unprecedented and unwarranted service projection of respondent No. 7, by both the Hon'ble Courts, the favoritism and nepotism of the delinquent authorities within the Sindh Government's Health Department and Services, General Administration & Coordination Department, who were in fact truly exposed, as despite of above reproduced judgements, the delinquent officials continued to illegally favor and benefit the respondent No.7, to the detriment of general public and the public exchequer, by advancing illegitimate favors to the respondent No.7, as even after lapse of about 14 months, since the passing of the above referred judgement (2022 SCMR 550) of the Hon'ble Apex Court, dated 10.01.2022, this blue-eyed and treasured civil servant of Health Department, was still continuing to hold the unlawful and person specific post, specially created for the cherished official of Health Department's Development wing, against the law and judgements pronounced in respect of respondent No.7, which is evident from the notification issued on 03-03-2023 issued in this regard, that too

after the cognizance taken by this court at Sukkur, removing the respondent No.7, and it was through such notification only, he was removed from the person specific post, vide order dated 03-03-2023, when it was transpired and unearthed before the Learned Divisional Bench of this Court, at Sukkur, while hearing two connected Constitution Petitions bearing C.P. No. D-114 of 2023, and C.P. No. D-1538 of 2021, relating to the health department and health facilities being provided to the general public of the vicinity.

10. Indubitably, despite the passing of the order of the Honourable Apex Court, way back on 10.01.2022, the respondent No.7 was still occupying the same position of Director (Administration, Finance & Planning), illegally and unlawfully in gross violation and in complete disregard to the Apex Court's judgement, however, on the same day, such notification was issued as per order dated 03-03-2023 of this Court at Sukkur, through Health Department's notification dated 03-03-2023, only then the respondent No.7 was removed and directed to report to development wing of Health Department, relevant paragraph of the order dated 03-03-2023, passed by the Learned Divisional Court is also reproduced.

*“At the outset, **Focal Person on behalf of Secretary (Health) present admits that in Larkana and Hyderabad yet Financial Advisors/ Directors have not been appointed.** He further contends that charge of Larkana is with Sukkur Director, whereas, **in Hyderabad charge is with Abdul Sattar Jatoi.** When confronted whether Jatoi has been given charge with recommendation of Board, he **admits that he has not been recommended by the board as well as Chief Minister has not appointed him,** besides it has come on record that **Mr. Jatoi was removed by the Service Tribunal and that judgment was maintained by Apex Court vide judgment dated (reserved on) 20.04.2021, passed in Civil Appeal No.1167 of 2020.** Accordingly, Secretary shall notify the committee, **who shall decide the fate of his cadre.** However, he shall not be appointed in university tertiary hospital. He has also submitted notification with regard to removal of Abdul Sattar Jatoi from the charge and a note has been floated for approval to Chief Secretary during course of proceedings whereby DDO powers will be shifted to Vice Chancellor SMMBBMU Larkana and Vice Chancellor, Hyderabad, who will be authorized to act as Drawing and Disbursing authorities until full-fledged Director Finance is posted through proper mechanism.”*

11. Unanticipatedly and to the surprise of the Learned Divisional Bench of this Court at Sukkur, when it transpired that even after passing of more than 14 months, he was illegally holding on to such person-specific post, despite clear findings of the learned Service Tribunal merging into the judgement of the Hon'ble Supreme Court, discussed supra, passed against the respondent No.7, and his holding of

such person specific post in complete defiance of Supreme Court judgement, speaks volumes about the influence the Respondent No.7 has over the provincial bureaucracy and the departmental hierarchy. The Learned Divisional Bench of this Court at Sukkur, on 03-03-2023, had very rightly intervened and upon such disclosure of respondent No.7 passed the order dated 03-03-2023 in its Constitutional mandate, command and fiduciary duty, apart from exercising its extraordinary vast discretionary constitutional jurisdiction under Article-199, but more particularly in exercise of powers conferred and enunciated under the provisions of Article 189 read with Article 190 of the Constitution, of 1973, which both are also reproduced for the purpose of understanding;

Article-189. *Decisions of Supreme Court binding on other courts: Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan;*

Article-190. *All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court.*

12. No wonder, the Health Department of the Government of Sindh, is in a state of crisis, crippled by corruption, mismanagement, and the creation of illegal, person-specific posts. These posts are created to benefit monetarily or politically connected individuals rather than filling up important and critical roles with qualified professionals. As a result, the health system has become ineffective, failing to deliver adequate services to the suffering masses. The illegal appointments as the present one, not only violate the law and Supreme Court rulings but also drain the public exchequer, causing a severe financial burden while depriving citizens of their constitutional right to quality healthcare.

13. At the heart of this issue is the practice of creating person-specific posts, which are designed to accommodate individuals based on their political affiliations, personal connections, or bureaucratic favouritism. These appointments bypass merit-based hiring procedures, allowing unqualified individuals to occupy senior key positions. This practice is illegal and goes against the principles of good governance, yet it continues unabated due to the influence of powerful people in bureaucracy and government.

14. The Honourable Supreme Court, has pronounced numerous rulings mandating merit-based appointments in the public sector. These rulings are intended to ensure transparency and accountability,

protecting the public interest by requiring that only those who are qualified and experienced are appointed to positions of responsibility. However, these legal mandates are routinely ignored by the provincial Health Department, where political considerations take precedence over legal requirements and the welfare of the people. This blatant disregard for the law has caused a systemic breakdown, with illegal appointments becoming the norm rather than the exception.

15. One of the most damaging consequences of this practice is in the shape of the enormous financial cost to the public exchequer. Apart from the salaries and benefits, perks and privileges of these politically appointed individuals, which otherwise costs significant drain to the public exchequer. These funds, which should be used to improve healthcare infrastructure, purchase essential medical supplies, or hire skilled medical professionals, are instead wasted on maintaining a bloated bureaucracy filled with unqualified individuals. This miscalculation of public funds and mismanagement of powers and has left hospitals severely underfunded, leading to chronic shortages of medicines, outdated medical equipment, and an overwhelming lack of trained medical personnel.

16. The impact of this mismanagement is felt most acutely by the public. Hospitals, especially in rural areas, are in deplorable condition, lacking even the most basic facilities. Patients are often forced to travel long distances or seek private treatment, which many cannot afford. Even in urban centres, the healthcare system is overwhelmed, with long waiting queues and lack of adequate care. The individuals unlawfully occupying these illegal posts are not only unqualified but also pose a significant threat and risk to the entire healthcare system. Their lack of expertise and understanding of healthcare management leads to poor decision-making, inefficient use of resources, and a failure to implement effective healthcare policies. This, in turn, contributes to the overall degradation of the health department, making it incapable of responding to the needs of the population.

17. The Supreme Court's rulings against these illegal appointments are clear, but without enforcement, they remain ineffective. The continued creation of person-specific posts, in defiance of the law, reflects a broader culture of impunity in the Sindh Government and bureaucracy. Political

elites, backed by bureaucratic allies, prioritize their interests over the public good, leaving the health department in a state of perpetual crisis.

18. The Sindh government must comply with the Supreme Court's rulings, dismantling all illegal posts and instituting a transparent, merit-based system for future appointments. There must also be accountability measures in place to prevent further abuse of power and ensure that public funds are directed toward improving healthcare services rather than benefiting politically connected individuals.

19. The Principal Seat of this Court at Karachi, while hearing **C.P. No.D- 1288 of 2022**, in the case of **Abdul Ghafoor Khan vs Province of Sindh & other**, while disposing of the referred constitution petition vide order dated **15-02-2022**, gave strict directions to the Chief Secretary Sindh, in matters relating postings of civil servants who are facing NAB references/proceedings based on moral turpitudes, have strictly restrained posting of such civil servants, that they shall not be allowed to carry out financial undertakings in any manner of whatsoever nature. Para-15 of the said judgement is reproduced in the context of present controversy;

“15. In view of the above, we find it necessary to clarify that the credibility of every single official (public /civil servant) is of equal importance regardless of his/her grade because every government department is like a ‘machine’ where every single part has to work honestly and diligently thereby making ‘smooth functioning of the machine’. Only this shall ensure ease and help in achieving the object of establishment of such department(s) which, normally, was/is believed for the public at large or a particular class of the public. We, in the circumstances of the case, direct the Government of Sindh to ensure that a civil/public servant who is facing NAB proceedings/reference based on moral turpitude before the learned Accountability Courts shall not be allowed to carry out financial undertakings in any manner of whatsoever nature.”

20. Despite the fact that this Court at Sukkur Bench passed a restraining order, as referred above, on 03-03-2023 by the learned Divisional Bench, specifically in respect of **Abdul Sattar Jatoi (Respondent No.7)**, that he **shall not be appointed in the university tertiary hospital**, a notification dated 20th September 2024 has been issued in gross violation of the said restraining order, as well as the order dated 15-02-2022 passed by the Principal Seat at Karachi. Through this

notification, Respondent No. 7 has once again been posted as Director (BS-20), Liaquat University Hospital, Hyderabad, despite the fact that the position has no job description and does not even exist within the tertiary hospital.

21. Be that as it may, in view of the restraining orders and the directions issued to the Chief Secretary Sindh, as well as the serious allegation of corruption amounting to Rs. 350 million currently under investigation by NAB, and considering the financial condition of the country where corrupt officials manage to secure postings to further promote their corrupt practices, causing losses to the national exchequer, we find it appropriate to suspend the notification dated 20th September 2024, whereby Respondent No. 7 is posted as Director (BS-20), Liaquat University Hospital, Hyderabad, until the next date of hearing.

To come up on **08.10.2024**, for further hearing.

JUDGE

JUDGE

Irfan