

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

HCA No.47 of 2024

Present:

Yousuf Ali Sayeed and
Arbab Ali Hakro, JJ

Engineer Anwer Aleem & others.....Appellants

Versus

Province of Sindh & others.....Respondents

Date of hearing : 10.10.2024

Syed Ali Ahmed Zaidi, Advocate, for the Appellants.
Zeeshan Adhi, Additional Advocate General Sindh, along with
Abbas Balouch, Secretary, University and Boards,
Government of Sindh.

ORDER

YOUSUF ALI SAYEED, J. - Albeit not being parties to Suit No. Nil of 2023 [Rafique Ahmed Palh vs. Province of Sindh & others] pending before this Court on the Original Side, the Appellants profess to be aggrieved by the Order made in that matter on 15.01.2024 by a learned Single Judge whilst seized of an Application under Order 39 Rules 1 & 2 CPC, hence have preferred this Appeal citing the principle laid down by the Supreme Court of Pakistan in the case reported as H. M. Saya & Co., Karachi v. Wazir Ali Industries Ltd., Karachi & Another PLD 1969 SC 65, but without having specifically sought leave in that regard.

2. The grievance of the Appellants is said to stem from an observation made by the learned Single Judge in Paragraph-05 of the impugned Order, where, whilst considering the contention of the Plaintiff that *“he has been assigned charge of Chairman, Board of Intermediate & Secondary Education, Sukkur which was ordered to continue after his attaining the age of superannuation and such appointment shall be treated on contract basis till completion of the assignment/arrangement, therefore, according to the Plaintiff such assignment cannot be withdrawn”*, it was opined that *“If for the sake of arguments, it is assumed that Plaintiff, who is holding the post of chairman is a tenure post even then, it does not mean that the appointing authority cannot determine or terminate his contract”*. It has been contended that such observation is prejudicial to the outcome of Suit No. Nil (-155)/2024 [Abdul Fateh Mahar and others v. Province of Sindh and others] filed by the Appellants, and confers a carte blanche for the official functionaries of the provincial government to take steps towards their dismissal from the posts held by them.

3. A perusal of the impugned Order reflects that the Suit was filed under circumstances where the plaintiff in the matter had been assigned the additional charge of Chairman, Board of Intermediate & Secondary Education Sukkur as a stopgap arrangement vide a Notification dated 28.09.2022 but vide another Notification 11.12.2023 issued by the then caretaker Chief Minister, such charge was assigned to the Commissioner Sukkur Division, with Suit having been instituted by the plaintiff to challenge that measure so as to preserve his position. It is in that context that while dismissing the interlocutory Application, the learned Single Judge went

on to direct the Secretary, Universities & Boards Department, Government of Sindh “to initiate process of appointment of posts of Chairman(s), BISE(s), which is/are lying vacant on urgent basis in terms of relevant Rules within shortest possible period after completing all codal formalities”.

4. Turning then to the plaint submitted by Appellants in their own Suit, a perusal thereof reflects the matter to have been instituted by them with the ultimate end being that of preserving their status in relation to the posts held by them, being that of Controller of Examinations of the Board of Intermediate and Secondary Education at Mirpurkhas (Appellant No.1), Deputy Controller of Examinations of the Board of Intermediate and Secondary Education at Larkana (Appellant No.2), Controller of Examinations of the Board of Intermediate and Secondary Education at Hyderabad (Appellant No.3), and Secrecy Officer in the Board of Intermediate Education at Sukkur (Appellant No.4), hence unaffected by the direction given in the impugned Order by the learned Single Judge. As for the particular observation that is said to otherwise be prejudicial, suffice it to say that the same do not relate to the Appellants *per se*, and are even otherwise not binding in matter of adjudication of their Suit. Hence, the principle laid down in the case of H. M. Saya (Supra) is of no avail in the matter at hand in as much as “the test applied in granting leave to appeal, in such cases, is that if the person who wants to prefer the appeal might properly have been a party in the suit or proceeding then he may obtain leave to appeal”, whereas the Appellants fall short of that standard.

5. It is for the aforementioned reasons that the Appeal was dismissed vide a short Order made in Court upon culmination of the hearing on 10.10.2024.

JUDGE

JUDGE