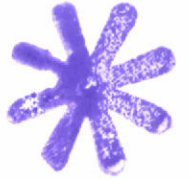


ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI



High Court Appeal No.312 of 2017
[Managing Director PIAC & others versus
Agha Iqbal Ahmed & another]

DATE	ORDER WITH SIGNATURE OF JUDGES
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Hearing (Priority) Case.

1. For orders as Office Objection as at "A".
2. For hearing of CMA No.2225 of 2017.
3. For hearing of Main Case.
4. For hearing of CMA No.2227 of 2017.

16-10-2019

Mr. Khalid Javed, Advocate for the Appellants alongwith
Mr. Munawar Juna, Advocate.
Mr. Abdul Salam Memon, Advocate for Respondent No.1.
Mr. Muhammad Nishat Warsi, DAG.

Respondent No.1 being aggrieved of a show cause notice in respect of his credentials filed a suit as Suit No.1610 of 2013 and was able to obtain an ad-interim order whereby no coercive action was ordered to be made against the respondent. The matter kept pending along with an application under Order VII Rule 11 CPC [being CMA No.13013 of 2014]. However, on 21-06-2017 the learned Single Judge on an application bearing CMA No.1240 of 2017 was pleased to pass an order directing the Appellants/Defendants to pay pensionary benefits of the period of suspension including entire length of service.

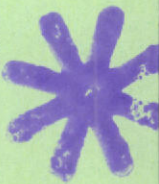
Mr. Khalid Javed, learned counsel for the Appellants submits that this was never a subject matter of the suit as the suit only concerns with the show cause notice that relates to the degrees/credentials of the concerned University. Though the reply to the show cause notice was made, however, further progress was not made on account of pendency of the suit. The application on which the impugned order was passed was moved independently

by the Respondent wherein he has prayed for the release of the pension, provident fund and other dues of the Respondent.

We have heard the learned counsel and perused the record available.

Apparently on the basis of this interlocutory application the scope of the suit cannot be enlarged to the extent of question of pension / provident fund and other dues as they were neither mature at the time the suit was filed nor was it cause for filing the suit. The subject of provident fund and pension was thus not arising out of the pleading and/or as ancillary relief, yet the learned Single Judge embarked upon such questions and ordered by giving direction to the Appellants to pay pensionary benefits of the Plaintiff/ Respondent No.1 inclusive of the period of suspension within seven days which is followed by an order whereby the suit was not pressed and was accordingly dismissed. However, we feel that such extension of the relief, as granted to the Respondent was beyond the jurisdiction and domain of the learned Single Judge as it was never pleaded in the suit. In all fairness the Respondent could have proceeded to establish his case that the degrees/credentials were genuine, if he so wished to. However, he [Respondent No.1] thus chose to withdraw the suit as being not pressed. The Court should have become *functus officio* the moment suit was not pressed and no further relief, which is beyond the frame of the pleading, could have been granted. However, it could have been a possibility that the counsel for the Respondent may have been influenced by an order for release of pension that he did not press the suit.

With this we feel that in all fairness an opportunity should have been given to the Respondent/Plaintiff to proceed with the matter in case he so desire to establish that the show cause was malafide and the alleged degrees/credentials were genuine or otherwise. The impugned order is therefore set aside and the case is remanded to the learned Single Judge to proceed in accordance with



law. The Respondent counsel is at liberty to move any such application including the application for amendment, in case it is so advised. The Respondent and the Appellants are at liberty to raise any objections and/or amend pleading by moving application as they deem fit during the trial of the suit, which will be dealt with in accordance with law.

JUDGE

fic
JUDGE

SHABAN/PA*

*order
entered
on 18/11/19.*

IN THE HIGH COURT OF SINDH AT KARACHI
H.C.A No. 312 of 2017

Managing Director PIAC & OthersAppellants
Versus
Agha Iqbal Ahmed & Others. Respondents

DATE

ORDER WITH SIGNATURE OF JUDGES

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by the Respondent wherein he has prayed for the release of the pension, provident fund and other dues of the Respondent.

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With this we feel that in all fairness an opportunity should have been given to the Respondent/Plaintiff to proceed with the matter in case he so desire to establish that the show cause was mala fide and the alleged degrees/credentials were genuine or otherwise. The impugned order is therefore set aside and the case is remanded to the learned Single Judge to proceed in accordance with



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Sd/-MOHAMMAD SHAFI SIDDIQUI
JUDGE
Sd/ ADNAN IQBAL CHAUDHRY
JUDGE

Certified to be true Copy

[Signature]
Assistant Registrar (Civil)
H.C.A No. 312 of 2017

Karachi dated 18.10.2019

Copy of order dated **16.10.2019**, forwarded to the Assistant Registrar, D-I / D-II Branch, for information and compliance in Suit No. 1610 of 2013.

[Signature]
ASSISTANT REGISTRAR
(CIVIL APPELLATE BRANCH)

[Signature]
21/10/19