

HCA: Isra School: Acting VC Grant
until appointment of new VC

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ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Karim Khan Agha, J

Mr. Amjad Ali Bohio, J.

HIGH COURT APPEAL NO.280 of 2023

HIGH COURT APPEAL NO.281 of 2023

HIGH COURT APPEAL NO.282 of 2023

HIGH COURT APPEAL NO.284 of 2023

HIGH COURT APPEAL NO.262 of 2023

HIGH COURT APPEAL NO.263 of 2023

M/s. Khalid Jawed Khan and Uzain Qadir Shoro, Advocates for Appellant in HCA No.280 of 2023.

M/s. Omer Memon and Aitzaz Manzoor Memon, Advocates for Appellant in HCA 281 of 2023.

Mr. Salahuddin Ahmed and Chaudhary Atif Rafique, Advocates for Appellant in HCA No.282 of 2023.

Mr. Muhammad Asad Ashfaq Tola, Advocate for Appellant in HCA No.284 of 2023.

M/s. Makhdoom Ali Khan, Ali Almani, Sami-ur-Rehman Khan, Sameen Hayat Advocates for Respondent No.2 in HCA 281 & 284 of 2023.

M/s. Rashid Anwer and Muhammad Habib Kazi, Advocates for Respondent No.4.

M/s. Abid S. Zuberi, Ayan Mustafa, Ali Abid, Menahil Malik for Respondent No.1 to 3 in HCA 280 & 284 of 2023.

Mr. Mamoon Chaudhary, Advocate for Respondent No.4. in HCA 284 of 2023.

Mr. Salahuddin Ahmed and Nadeem Ahmed, Advocates for Respondent No.5 in HCA No.280 of 2023.

Syed Ghulam Shabbir Shah and Itafa ur Rehman, Advocates for Respondent No.1 in HCA 282 of 2023.

M/s. Omer Memon and Aitzaz Manzoor Memon, Advocates for Respondent No.6 in HCA 280, 282 of 2023.

Mr. Zeeshan Abdullah, Advocate for Respondent No.9 in HCA 280, 281 of 2023.

Mr. Mushtaq Ahmed Jehangiri, Advocate for Respondent No.9.

Mr. Jan Muhammad Khoro, Addl. Advocate General Sindh.

Date of Hearing : 13.09.2023.

Date of Announcement : 15.09.2023

ORDER

Muhammad Karim Khan Agha, J. Learned counsel for the appellants have challenged the Impugned order dated 15.08.2023 which is set out below for ease of reference in so far as it prevents the appellant Prof. Dr. Nazeer Ashraf Laghari (the appellant) from continuing in his role as Vice Chancellor of Isra University;

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"15.08.2023.

Mr. Abid S. Zuberi, Advocate for the plaintiffs a/w M/s. Ayan Mustafa Memon and Ali S. Zuberi, Advocates.

1. Urgency granted.

2. It is stated that the instant Suit has been instituted by Isra University, its Acting Registrar, Chancellor and Vice Chancellor seeking a declaration that defendant No.1 has ceased to be the Vice Chancellor of Isra University with effect from 23.06.2023 when his three-year term for the said post expired. Consequential relief of injunction restraining defendant No.1 from performing the functions of Vice Chancellor of the Hyderabad Campus and restraining defendants 5 and 6 from acting upon the defendant No.1's requests, demands or communication has also been sought by the plaintiffs. At the outset, learned counsel submits that Isra University / plaintiff No.1 has instituted this Suit through its Acting Registrar who has the authority to do so by virtue of Section 8(2) of the Isra University Act, 1997, and the order passed by a learned Single Judge of this Court on 20.12.2022 in JCM No.29 of 2020.

It is contended, inter alia, that vide Notification dated 24.06.2020 (page 37), defendant No.1 was appointed by the competent authority as the Vice Chancellor of Isra University for a period of three (03) years, which period expired on 23.06.2023; after expiration of his said fixed tenure and in view of the aforesaid order passed in JCM No.29 of 2020, defendant No.1 is not legally competent to perform the functions of Vice Chancellor; Suit No.34 of 2023 has been instituted by defendant No.1 wherein he himself has admitted that he was appointed as Vice Chancellor only for a period of three (03) years; despite this position, the said defendant has initiated several proceedings before this Court wherein ex-parte interim orders have been obtained by him through concealment and misrepresentation; and, by taking undue advantage of the said proceedings and the orders passed therein, he is still holding the post of Vice Chancellor and is performing all functions in such capacity illegally and without any authority. Learned counsel submits that none of the said orders passed in the earlier proceedings allows defendant No.1 to continue to act as Vice Chancellor and/or to perform functions in such capacity, nor has any order extended his fixed tenure that stood expired on 23.06.2023; and, only the fresh appointment of Vice Chancellor has been restrained. He further submits that this does not imply that the fixed tenure of defendant No.1 has been extended or he has been allowed to continue performing the functions as Vice Chancellor. He further submits that under Section 8(2) ibid, the Chancellor of Isra University has the power to make such arrangements as he may deem fit for the performance of the duties of Vice Chancellor. It is urged that the impugned illegal action on the part of defendant No.1 in collusion with defendants 2, 3 and 4 and the unauthorized decisions taken by him have no legal basis and are prejudicial to the interest of Isra University, its faculty and staff members and students.

Issue notice to the defendants as well as to learned Advocate General Sindh for 31.08.2023. Counter affidavits and rejoinders to be filed and exchanged before the next date of hearing. Till then, defendant No.1 shall not perform the functions of Vice Chancellor of Isra University, Hyderabad Campus. (bold added)

Sd/-
Judge

2. Learned counsel for the appellant contended that although the tenure of the Vice Chancellor had expired under S.8 Isra Act 1997 (Isra Act) it was necessary that he remained in office to ensure that the University continued to run smoothly and to ensure that no vacuum was created in the absence of the appointment of a new Vice Chancellor as other stay orders had been passed by this court preventing the appointment of a new Vice Chancellor, for example, a Divisional Bench Order of this court dated 23.06.23 and as such it was important that the impugned order be set aside and the appellant continue to exercise the powers and functions of Vice Chancellor of the University.

3. On the other hand learned counsel for the respondents contended that it was not necessary for the appellant to continue as Vice Chancellor in the current situation where the position of Vice Chancellor was vacant as the Isra Act provided for such an eventuality expressly by virtue of S.8(2) Isra Act and that to hold otherwise would defeat the purpose/intention of the legislation.

4. We have heard the parties, reviewed the record and considered the relevant law.

5. We are cognizant that there is much litigation between the parties in respect of Isra University and a large amount of that is pending adjudication before a single bench of this court from which this appeal emanates and as such we have so far as possible confined ourselves to the above issue as to whether the appellant Prof. Dr. Nazeer Ashraf Laghari can continue to act as Vice Chancellor or continue to exercise the functions and powers of vice chancellor of Isra University so that aspects of the case yet to be decided are not unduly prejudiced.

6. It is not disputed that the appellant ceased to hold office as Vice Chancellor of Isra University on 23.06.2023 and a mechanism is laid down in the Isra Act for appointing a new Vice Chancellor.

7. It is noted that the Divisional Bench order referred to by learned counsel for the appellant was ex parte, which according to the Respondent, was also in the knowledge of the single judge who passed the impugned order, and in any event only prevented the appointment of a new Vice Chancellor.

8. In such a situation where the post of Vice Chancellor is vacant (as in this case) this is fully catered for in Section 8(2) of the Isra Act which is set out below for ease of reference;

"At any time when the office of the Vice Chancellor is vacant or the Vice Chancellor is absent or is unable to perform the functions of his office due to illness or other cause the Chancellor shall make such arrangements for the performance of the duties of Vice Chancellor as he may deem fit" (bold added)

9. As such, since the post of Vice Chancellor is vacant the Chancellor, as per S.8(2) Isra Act can/shall make such arrangements for the performance of the duties of Vice Chancellor as he may deem fit. This arrangement would last until such time as a new Vice Chancellor was appointed in accordance with the Isra Act.

10. We do not find that S.8(1) Isra Act has any bearing on section 8(2) as these are independent, though related, sub sections in that S.8(1) deals with the appointment of the Vice Chancellor whilst S.8(2) deals with the situation when the office of the Vice Chancellor falls vacant or the Vice Chancellor is absent or is unable to perform the functions of his office due to illness or other cause. Section 8(2) therefore will only come into play once the office of the Vice Chancellor is vacant (as in this case) or the Vice Chancellor is absent or is unable to perform the functions of his office due to illness or other cause and not otherwise.

11. We find that S.8(2) does not lead to an appointment of a new Chancellor but only provides a stop gap arrangement for the Chancellor to/shall make such arrangements for the performance of the duties of Vice Chancellor as he may deem fit until a new Vice Chancellor is appointed following the procedure in the Isra Act. This is simply a stop gap/interim arrangement to allow the affairs of the University to run smoothly until a new Vice Chancellor is appointed in accordance with the procedure under the Isra Act.

12. As such there is no necessity or reason for the appellant to continue in the office of Vice Chancellor or continue to fulfill the functions of that office which office he ceased to hold after the expiry of his 3 year tenure on 23.06.23 and to enable him to do so would defeat the purpose of the legislature whereby it was expressly provided in S.8(2) Isra Act what would happen in the event that the office of the Vice Chancellor became vacant.

13. This being the case the impugned Order is upheld and the Chancellor is at liberty to act in accordance with S.8(2) of the Isra Act as the post of Vice

Chancellor is admittedly vacant in order to run the affairs of Isra University until such time as a new Vice Chancellor is appointed in accordance with the law. We however expect that a new Vice Chancellor be appointed expeditiously and within 4 months of the date of this Order.

14. The appeals in so far as they relate to the impugned order are hereby dismissed.

Very truly yours,
[Signature]
Vice-Chancellor
of Isra

and the appeals in so far as they relate to the impugned order are hereby

[Signature]
JUDGE

RECEIVED
JULY 15 1971