

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. NO.448 OF 2023

[Dr. Asif Ahmed Qureshi & others v. Federation of Pakistan & others]
(Arising out of Suit No. 1513/2023)

H.C.A. NO.27 OF 2024

[Dr. Mohammad Naeem & others v. Federation of Pakistan & others]
(Arising out of Suit No.2916/2021)

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PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito

M/s. Abdullah Azzam Naqvi & Ali Zain Rajani, advocates for the appellants in HCA No. 448/2023.

M/s. Malik Naeem Iqbal & Talha Abbasi, advocates for the appellants in HCA No. 27/2024.

M/s. Muhammad Rahib Lakho, Syed Khurram and Abdul Samad Shaikh, advocates for the JPMC.

Ms. Zehra Sher Vayani, Assistant Attorney General Pakistan.

M/s. Jawad Dero, Advocate General Sindh, Zeeshan Ahdi, Additional Advocate General Sindh along with M.B. Ashar and Sandeep Malani, AAGs Sindh.

M/s. Dr. Khalid Sher, Executive Director, Dr. Muhammad Suleman, Joint Executive Director and Dr. Adeel Samo, Deputy Director, JPMC.

Date of hearing: **02.04.2026.**

Date of Judgment: **28.04.2026.**

JUDGMENT

ARSHAD HUSSAIN KHAN J.- The captioned High Court Appeals have been filed against the consolidated judgment dated 08.12.2023, passed by the learned Single Judge of this Court, whereby suit No.1513/2023 and suit No. 2916/2021 instituted by the Appellants were disposed of. Since both appeals arise from the same judgment and involve common questions of law and fact, they are being decided through this common judgment.

2. The brief facts of the case are that the appellants are permanent Federal Civil Servants, serving as medical professionals in BPS-18 and above, appointed at the Jinnah Postgraduate Medical Centre (JPMC), Karachi, through a competitive process conducted by the Federal Public Service Commission (FPSC). The controversy in the present

matter arises in the wake of the 18th Constitutional Amendment, pursuant to which administrative control of JPMC was purportedly devolved to the Province of Sindh. However, the issue stood conclusively settled by the Honourable Supreme Court of Pakistan in the judgment reported as 2020 SCMR 1 (affirming PLD 2017 Sindh 347), wherein JPMC was declared to be a Federal institution falling within the exclusive executive and legislative domain of the Federation. It is averred that despite the aforesaid authoritative pronouncement, the respondent [Province of Sindh] continued to exercise administrative control over JPMC, including initiating recruitment processes and transferring provincial medical personnel into the institution. Aggrieved thereby, the appellants in H.C.A. No.27 of 2024, instituted Suit No.2916/2021, inter alia, contending that such recruitments were without lawful authority, unconstitutional, and prejudicial to their seniority and promotional prospects under the Civil Servants Act, 1973. It is also averred that during the pendency of the suits, the Federation and the Province of Sindh entered into an Operating and Management (O&M) Agreement dated 08.08.2023, purportedly under Article 146(1) of the Constitution, whereby the management and human resource functions of JPMC were entrusted to the Province of Sindh for a period of twenty-five (25) years. In pursuance thereof, the respondents initiated recruitment of contractual employees, which process was assailed by the appellants in H.C.A. No.448 of 2023 through Suit No.1513/2023. Both suits were subsequently clubbed together. Vide consolidated judgment dated 08.12.2023, the learned Single Judge disposed of both suits by upholding the validity of the said O&M Agreement and permitting the Province of Sindh to proceed with contractual recruitments at JPMC. Being aggrieved by the said judgment, the appellants have preferred the present High Court Appeals.

3. Learned counsel for the appellants contended that the learned Single Judge failed to appreciate that the Honourable Supreme Court of Pakistan, in the judgment reported as 2020 SCMR 1, has already declared JPMC to be a Federal institution falling within the exclusive domain of the Federation. It was argued that, in disregard of the said

binding pronouncement, the respondents entered into the impugned O&M Agreement, which, in substance, seeks to transfer administrative control of JPMC to the Province of Sindh. The said agreement, being a sub-constitutional instrument, cannot override a judicial mandate or alter the constitutional status of the institution; its execution is therefore violative of Article 146 of the Constitution. Learned counsel further submitted that the appellants, being permanent Federal Civil Servants appointed through the FPSC, are being seriously prejudiced by the impugned actions, as contractual appointments are being made against posts to which they have a legitimate promotional entitlement. Such recruitments, it was urged, would adversely affect the availability of sanctioned posts and disturb the promotional hierarchy, thereby impairing their service prospects. It was next contended that the Executive Director, JPMC, is neither the appointing nor the competent authority under Section 5 of the Sindh Civil Servants Act, nor under Rule 6 of the Federal Civil Servants Rules, and that the impugned appointments are being made without lawful authority, due process, or recourse to the Public Service Commission. The justification advanced on the ground of “public welfare” or “welfare of the destitute masses” was termed as a mere pretext to cloak mala fide intent and to circumvent the governing legal framework, thereby prejudicing the vested rights of the appellants. Lastly, it was contended that the learned Single Judge disposed of the underlying suits without framing proper issues, thereby committing a material illegality and procedural irregularity. It was argued that the impugned judgment is liable to be set aside on this ground alone, as the learned Single Judge ought to have framed issues, inter alia, with regard to the legality of the O&M Agreement, the authority of JPMC to make contractual appointments, and the necessity of such appointments. Reliance in this regard is on A.I.R. (32) 1945 Allahabad 352.

4. Learned counsel appearing on behalf of JPMC submitted that the primary obligation of the institution is to provide uninterrupted medical care and to save human lives. It was contended that JPMC is presently facing an acute shortage of medical and supporting staff, and the impugned recruitments have been made on a purely temporary and

contractual basis to ensure the smooth functioning of the hospital. He further argued that such appointments are necessitated by considerations of public interest and are aimed at safeguarding the health and welfare of patients. It was emphasized that these contractual engagements do not prejudice the service rights or promotional prospects of the existing Federal employees. On these premises, it was prayed that the instant appeals, being devoid of merit, are liable to be dismissed.

5. Learned Advocate General Sindh submitted that the present litigation stems from the decision of the Provincial Government to recruit approximately 2,000 employees, including doctors and allied health professionals, to ensure the effective and uninterrupted functioning of the Jinnah Postgraduate Medical Centre (JPMC). It was contended that such appointments are necessitated by compelling public interest, as JPMC has evolved into one of the largest tertiary care hospitals in the country, with its bed capacity enhanced from 1,100 to 2,208 vide notification dated 02.06.2022. It was further argued that, within the constitutional framework, the administrative control of JPMC vests in the Province. It is further argued that, pursuant to the 18th Constitutional Amendment and subsequent judicial developments, the Federation and the Province entered into an Operating and Management (O&M) Agreement dated 08.08.2023 under Article 146(1) of the Constitution, whereby the Province has been entrusted with the responsibility to finance, administer, and manage the affairs of JPMC for a period of twenty-five (25) years. Referring to Clause 8 of the said Agreement, it was contended that the Provincial Government is duly authorized to make appointments in accordance with its requirements and applicable laws, with such appointees remaining provincial employees and reverting to the Province upon expiry of the arrangement. With regard to the grievance of the appellants, it was argued that no legal or vested right of the appellants has been infringed and that their claim is merely academic in nature; that the appellants, being Federal employees on deputation, continue to enjoy full protection of their service structure, and the impugned contractual appointments, made against newly created posts, do not adversely

affect their seniority or promotional prospects. The maintainability of the suits was also questioned on the ground that the same are hit by Section 56(d) of the Specific Relief Act, 1877, as the Court ought not to interfere in the discharge of public duties by the Government. Lastly, it was contended that the impugned arrangement lawfully strikes a balance between the rights of the employees and the fundamental right of the public to access healthcare; thus, the present appeals, being devoid of merit, are liable to be dismissed.

6. Learned Assistant Attorney General appearing for the Federation of Pakistan submitted that the present controversy is to be examined in the backdrop of the post-18th Constitutional Amendment framework, which envisages cooperative federalism rather than rigid compartmentalization. It was argued that, within this constitutional scheme, the Federation is competent to enter into administrative arrangements with the Provinces for effective governance and service delivery, particularly in matters pertaining to public welfare. While acknowledging that the Jinnah Postgraduate Medical Centre (JPMC) has been declared a Federal institution by the Honourable Supreme Court of Pakistan in 2020 SCMR 1, it was contended that the said judgment does not preclude the Federation from entering into lawful administrative arrangements for its management and operation in the public interest. It was further submitted that the Operating and Management (O&M) Agreement dated 08.08.2023 constitutes a valid delegation of functions under Article 146(1) of the Constitution, which empowers the Federation to entrust functions to a Province with its consent. It was clarified that the said arrangement does not amount to abdication of authority or transfer of ownership, but is a constitutionally sanctioned mechanism for efficient administration, with the Federation retaining ultimate control. It was further emphasized that there is no defiance of any binding judicial pronouncement, and that the contractual recruitment of medical staff by the Province has been necessitated by compelling public interest to ensure uninterrupted healthcare services at JPMC. Such appointments, it was maintained, are purely contractual in nature, made in emergent circumstances, do not confer any vested rights, and are consistent with

the applicable legal framework. While supporting the impugned judgment, learned law officer prayed that the present appeals, being devoid of merit, be dismissed.

7. We have heard learned counsel for the parties at considerable length and have carefully examined the pleadings as well as the material available on the record.

From the rival submissions, the following questions arise for determination:

- (i) Whether the constitutional and legal status of the Jinnah Postgraduate Medical Centre (JPMC), Karachi, as a Federal institution can be altered or impacted through any executive arrangement between the Federation and a Province;
- (ii) Whether the Operating and Management (O&M) Agreement dated 08.08.2023 is sustainable in law within the framework of Article 146(1) of the Constitution;
- (iii) Whether the contractual recruitments made pursuant thereto are in accordance with the applicable statutory regime;
- (iv) Whether any vested or enforceable rights of the appellants, being Federal Civil Servants, have been infringed thereby; and
- (v) Whether the learned Single Judge, in disposing of the underlying suits, fell into illegality or material irregularity by omitting to frame proper issues for determination.

8. Insofar as the first question is concerned, the status of the Jinnah Postgraduate Medical Centre (JPMC) stands conclusively settled by the Honourable Supreme Court of Pakistan in the judgment reported as 2020 SCMR 1, wherein it has been declared a Federal institution falling within the exclusive legislative and executive domain of the Federation. By virtue of Article 189 of the Constitution, the law so declared is binding on all courts and authorities, and cannot be diluted, modified, or circumvented through any executive action. It is a settled principle that executive instruments, including inter-governmental arrangements or agreements, remain subordinate to the Constitution and to the law declared by the superior courts. Such instruments cannot override, amend, or operate in derogation of a binding judicial pronouncement of the Honourable Supreme Court, nor can they be employed to alter the essential constitutional character of an institution. Accordingly, any arrangement which purports to affect or reconfigure the constitutional

status of JPMC must be viewed with utmost circumspection, and in no case can such status, as a Federal institution, be altered or affected through an executive arrangement.

9. Insofar as the second question is concerned, Article 146(1) of the Constitution empowers the Federation, with the consent of a Provincial Government, to entrust certain functions to the Province. Such entrustment, however, does not entail abdication of constitutional responsibility, transfer of ownership, or divestment of ultimate authority by the Federation. The doctrine of cooperative federalism permits administrative coordination between the Federation and the Provinces, but it does not sanction any alteration in the constitutionally defined status or domain of an institution. Viewed from this perspective, the Operating and Management (O&M) Agreement appears to be an arrangement designed to facilitate the operational management of JPMC in light of administrative exigencies and public healthcare requirements. There is nothing on record to suggest that the Federation has relinquished its ultimate control or constitutional competence over the institution. The arrangement, therefore, cannot be construed as a device to circumvent the judgment reported as 2020 SCMR 1, as it does not, in substance, alter the constitutional character of JPMC. In the circumstances, the O&M Agreement is sustainable under Article 146(1) of the Constitution, provided that all actions taken thereunder strictly conform to the applicable statutory and regulatory framework governing a Federal institution.

10. As regards the third question pertaining to contractual recruitments, it is a settled principle that appointments to civil posts are to be made strictly in accordance with the governing statutory rules and prescribed procedures, including, where applicable, recruitment through competitive processes. However, in exceptional circumstances involving essential public services, particularly in the healthcare sector, temporary contractual appointments may be resorted to in order to meet immediate operational exigencies. Such appointments, being stop-gap and emergent in nature, are permissible provided they do not confer any vested or enforceable rights upon the appointees, nor are they used as a substitute for the regular statutory regime of recruitment. Since

these engagements do not constitute regular appointments to civil posts, they do not, in the ordinary course, attract the requirement of recruitment through the Public Service Commission.

11. As regards the question of alleged infringement of vested or enforceable rights of the appellants, it is to be observed that the appellants, being Federal Civil Servants, have primarily expressed an apprehension that the impugned arrangement and the consequential contractual recruitments may adversely impact their seniority, promotional avenues, and overall service structure. However, such contention, at this stage, is not borne out by any concrete material placed on record. It is significant to note that the impugned judgment has categorically safeguarded the service rights of the appellants by observing that their promotions and seniority shall be protected in accordance with law. The contractual appointments impugned before this Court have been made against posts stated to be temporary in nature and do not form part of the regular cadre strength governed by the applicable statutory rules. As such, these engagements, being contractual and time-bound, do not, in law, create any right of continuity, regularization, or integration into the existing service structure, nor do they ipso facto encroach upon the cadre posts available for promotion of the appellants. It is a well-settled principle that a “vested right” in service jurisprudence is one which has accrued or crystallized under the law, such as a right to be considered for promotion in accordance with existing rules, and not a mere expectation or anticipation of future advancement. The appellants have not demonstrated that any specific promotional post has been diverted, abolished, or filled in a manner contrary to the governing statutory framework so as to directly prejudice their accrued rights. In the absence of such showing, the alleged prejudice remains in the realm of conjecture.

Furthermore, courts have consistently held that judicial interference is not warranted on the basis of speculative or hypothetical injury. Unless a clear, present, and enforceable legal right is shown to have been infringed, the exercise of constitutional or appellate jurisdiction would be unwarranted. Mere apprehension of possible

future disadvantage, without substantiation, does not furnish a valid ground for setting aside an otherwise lawful administrative or contractual arrangement, particularly where considerations of public interest and essential service delivery are involved.

Accordingly, in the absence of any demonstrated infringement of a vested or accrued right, the contention raised by the appellants in this regard does not merit acceptance.

12. Insofar as the last question is concerned, it emerges from the record that the appellants instituted civil suits for declaration and permanent injunction, inter alia, seeking restraint against appointments, transfers, and postings in JPMC. It is a settled principle that the parameters for instituting a civil suit are materially distinct from those governing a constitutional petition. A civil suit lies for enforcement of private rights and obligations under the Code of Civil Procedure, 1908, and ordinarily entails adjudication through framing of issues, recording of evidence, and determination of disputed questions of fact and law. In contrast, a constitutional petition under Article 199 of the Constitution invokes the extraordinary jurisdiction of the Court for enforcement of fundamental rights or correction of actions taken without lawful authority, and is discretionary, equitable, and summary in nature.

The appellants, though purporting to espouse the cause of all permanent employees of JPMC, admittedly filed the suits in their individual capacity, and not as representative suits nor in the nature of public interest litigation. A civil suit, however, must be founded upon a demonstrable infringement of a vested or enforceable legal right of the plaintiffs themselves. In the present case, the grievance articulated by the appellants is essentially apprehensive to the effect that their promotional prospects may be adversely affected and that their posts may, in future, be rendered redundant due to contractual recruitments. Such assertions, in the absence of any concrete instance of actual deprivation of a vested or accrued right, remain speculative and do not furnish a valid cause of action.

It is equally well-settled that where no real or substantial controversy exists between the parties, or where no triable issue of law

or fact arises, a civil suit may be disposed of summarily without framing issues or recording evidence. The insistence on formal procedural steps, in such circumstances, would amount to a mere ritual devoid of substance, and the Court is empowered to proceed with summary disposal in the interest of expeditious justice.

13. In the present case, a perusal of the impugned judgment reflects that the learned Single Judge, while upholding the administrative arrangement on the touchstone of public interest and the doctrine of welfare state, has expressly safeguarded the service rights of the appellants in the following terms:

“...However, all the rights and privileges of the Plaintiffs in respect of their services shall not be prejudiced on the reason of contractual recruitments of the employees as per MoU executed between the Federal and Provincial Governments and the rights of the Plaintiffs as to their due promotion shall not be taken away on the basis of impugned recruitments of the contract employees...”

In view of the above, it cannot be said that any material proposition of law or fact existed requiring framing of issues or recording of evidence. The learned Single Judge, therefore, committed no illegality or material irregularity in disposing of the suits in the manner impugned.

14. Moreover, the record demonstrates that the impugned measures were adopted in furtherance of public interest, with the objective of ensuring uninterrupted delivery of essential healthcare services. It is a well-recognized principle that courts ought to exercise restraint in matters relating to public welfare institutions, particularly where judicial interference may hinder the discharge of vital public functions. It may also be observed that the objection regarding maintainability, founded upon Section 56(d) of the Specific Relief Act, 1877, is not without substance, as injunctive relief interfering with the performance of public duties is to be granted sparingly and with due caution, especially where such interference may impede essential public services.

15. For the foregoing reasons, we hold that the Federal status of JPMC remains intact and inviolable, and the O&M Agreement dated 08.08.2023, to the extent it provides for administrative cooperation without divesting the Federation of its ultimate authority, is constitutionally sustainable. The impugned contractual recruitments, being temporary and necessitated by exigent circumstances, do not warrant interference in the absence of any demonstrated prejudice to vested rights. Consequently, both appeals are dismissed and the impugned judgment dated **08.12.2023** is maintained.

JUDGE

JUDGE

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