

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Constitution Petition No. D-57 of 2025

***Before:-
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'.***

Petitioner : Dr. Azhar Ali Shah son of Ahmed Ali Shah, *through* Mr. Asif Hussain M. Nawaz Chandio, Advocate.

Respondents : Province of Sindh and others, *through* Mr. Mohsin Ali Khan, Assistant Advocate General, Sindh.

Mr. Sarfraz Ali M. Abbasi, Advocate for Respondents No. 2 to 9, (University).
Mr. Jam Zuhaib Ahmed, Advocate for the Respondent No.10.

Date of Hearing : 17-09-2026

Date of order : 17-09-2026

ORDER

Ali Haider 'Ada'.J:- The petitioner has challenged the re-employment of respondent No.10 as Professor of Psychology on the ground that, after attaining the age of superannuation, he was re-appointed without obtaining the requisite approval of the Board and Syndicate. It is pertinent to mention that respondent No.10 was re-appointed as Professor of Psychology, respectively, in Shaheed Mohtarma Benazir Bhutto Medical University (SMBBMU)/Chandka Medical College, Larkana.

2. Learned counsel for the petitioner submits that respondent No.10 stood retired from service on 31.12.2024, but was re-appointed on 03.01.2025. According to learned counsel, such re-appointment is contrary to the law and the

provisions of the Shaheed Mohtarma Benazir Bhutto Medical University Larkana Act, 2008, as there is no provision permitting such re-appointment in the manner adopted by the University.

3. On the other hand, learned counsel appearing for the University submits that there is no absolute bar against re-employment of a retired teacher. He has drawn the attention of the Court to the Code-Book, 2024, particularly Section 4(ix), which provides for re-appointment of retired teachers subject to non-availability of a suitable faculty member. Learned counsel further submits that, in the relevant field, no other faculty member possesses the Ph.D. qualification and academic expertise of respondent No.10. It is, therefore, contended that, in order to avoid disruption of the academic process, the University re-employed respondent No.10 in accordance with the applicable mechanism.

4. Learned counsel for respondent No.10 has adopted the same stance and submits that respondent No.10 possesses the requisite qualification and expertise in the field of Psychology and that, owing to the non-availability of a suitably qualified faculty member, the University requested his re-employment.

5. Learned Assistant Advocate General has also adopted the stance taken by the University. However, upon a specific query from the Court as to whether, after the retirement of respondent No.10 from the very post against which he was subsequently re-employed, any advertisement was issued inviting applications from suitably qualified candidates, neither learned counsel for the University nor the learned Law Officer has been able to place any such advertisement on record.

6. Heard and perused.

7. At the outset, it is pertinent to observe that re-employment after retirement, whether as a matter of routine or otherwise, is governed by the applicable service rules. In this regard, the **ESTACODE, 2021 Edition, Chapter IX** specifically deals with re-employment after retirement. For ready reference, the relevant provision is reproduced hereunder:-

II. RE-EMPLOYMENT

4.1. **Employment after Retirement- Policy and Procedure - Re-employment after Superannuation**

It has been noticed that Ministries/Divisions initiate proposals for re-employment of government servants after superannuation as a routine measures. It is emphasized that re-employment beyond superannuation should be an exception and not the rule. It may be recommended only in cases where government considers that the experience gained by the retiring person is of vital importance and can be gainfully utilized, particularly in fields where suitably qualified and experienced persons are not available.

2. For achievement of the objective mentioned above, the government has framed a policy for re-employment of government servants and cases for re-employment would, in future, be considered in accordance with the following criteria:

- (i) non-availability of suitably qualified or experienced officers to replace the retiring officer,*
 - (ii) the officer is a highly competent person with distinction in his profession/field;*
 - (iii) the re-employment does not cause a promotion block; and*
 - (iv) retention of the retiring officer, for a specified period, is in the public interest.*
- This policy would also apply to government controlled corporations and other autonomous bodies.*

3. *Proposals for re-employment are required to be accompanied with the following documents /information:-*

(a) the proposal duly signed by Secretary or Additional Secretary Incharge of the Ministry concerned to be received in the Establishment Division 6 months before the officer is due to attain the age of superannuation and has the approval of the Minister Incharge;

(b) the steps taken to train the substitute, if any,

(c) PERs with photograph, ICP chart and bio-data on prescribed proforma; and

(d) certificate that the officer is medically fit.

4. *Re-employment beyond the age of superannuation in all cases requires the approval of the Prime Minister. While submitting summaries for re-employment /extension in re-employment on the prescribed proforma, as circulated vide Establishment Secretary D.O letter No. 4/1/84-R-I dated 08-08-1985 as Annex.*

5. *It is requested to instruct all concerned in Ministries/Divisions and Attached Departments /autonomous bodies to strictly follow the guidelines given above.*

8. Furthermore, the **Shaheed Mohtarma Benazir Bhutto Medical University, Larkana Code Book, 2024**, contains a specific provision under Section 4(ix) governing the re-appointment of retired teachers. For ready reference, the relevant provision is reproduced hereunder:-

2. ----

(ix) Reappointment of retired teacher (subject to non-availability of faculty members through Selection Board) and research faculty shall be made with the approval of Syndicate on case to case basis.

9. Even upon perusal of the University laws placed on record by learned counsel for the University, it is evident that a mechanism for re-employment/re-appointment of retired teachers has been provided, subject to the condition that no

suitably qualified candidate possessing the requisite skill is available.

10. Thus, on the face of the record, once the University has demonstrated that respondent No.10 was re-employed pursuant to the applicable codal provisions and under the authority of law, his re-employment cannot, at this stage, be declared void ab initio.

11. However, the condition attached to such re-employment is equally clear: re-employment of a retired teacher is not intended to be a routine measure, but is permissible only in exceptional circumstances, particularly where a suitably qualified person is not otherwise available. The University was, therefore, required to make an effort to ascertain the availability of suitable candidates by inviting applications through a proper advertisement. Such exercise, admittedly, was not undertaken. The purpose of inviting applications is to ensure that all suitably qualified and skilled candidates have an equal opportunity to apply and that the best available person may be considered for the post.

12. The failure to undertake such process, without any convincing justification, therefore, calls for corrective measures. Accordingly, instead of disturbing the existing arrangement at this stage, the following directions are issued:-

(A) Respondents No.2 and 3 are directed to initiate the process for filling the post of Professor of Psychology against which respondent No.10 has presently been re-employed. For this purpose, an advertisement shall be published inviting applications from suitably qualified candidates in at least three leading newspapers, namely, one each in English, Urdu and Sindhi, and shall also be uploaded on the official website of the University and through such other appropriate modes

as may be prescribed under the applicable rules. The entire process shall be completed within a period of sixty (60) days.

(B) Until completion of the aforesaid process, respondent No.10 may continue to discharge his duties in the said capacity, subject to the applicable rules and the outcome of the process directed herein. This arrangement shall not create any vested right in favour of respondent No.10 for continuation against the post beyond the period or process prescribed under the applicable law.

JUDGE

JUDGE