

IN THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D-587 of 2018

[Muneeb Ahmed v. Province of Sindh and others]

- Dates of hearing : 29-08-2018 & 28-09-2018
- Date of decision : 24-12-2018
- Petitioner : Muneeb Ahmed through Syed Ali Ahmed Tariq, Advocate.
- Respondent 1 : Province of Sindh through Mr. Ghulam Shabbir Shah, Additional Advocate General Sindh.
- Respondent 2 : The Vice Chancellor, DUHS through M/s Wasiq Mirza and Ghulam Nabi, Advocates.
- Respondent 3 : Maria Shahid through M/s Dostdar Ali and Abdul Basit Ghulam, Advocates.
- On Court notice : Dr. Tayyaba Aamir, Director Admissions, Dow University of Health & Sciences.

JUDGMENT

Adnan Iqbal Chaudhry J. - The Petitioner has challenged the refusal of his application for admission to the Dow University of Health & Sciences (DUHS) for the course of MBBS (2017-2018) on the seat reserved for a disabled candidate, and has consequently challenged the admission given to the Respondent No.3 on the said seat.

2. The eligibility for admission to the various Medical Universities and Colleges of the Province of Sindh for the courses of MBBS and BDS for the academic session of 2017-2018 was provided by a Prospectus published by the Health Department, Government

of Sindh. Regards the seat distribution for the MBBS Course at the DUHS, the Prospectus provided that one (01) seat was reserved for a disabled candidate; that such candidate would first be considered on general merit and then on the disabled quota; and that a Special Medical Board would determine the genuineness and severity of the disability of candidates applying for admission on the disabled quota.

3. For the academic session 2017-2018, the Petitioner applied for admission to MBBS and BDS, the former being his first choice. He applied for admission on open merit as well as on the disabled quota. His first choice was to be admitted to the DUHS. The nature of the Petitioner's disability as described in his application form and in the requisite Disability Certificate annexed thereto was "*weakness of right side body upper & lower limbs*".

4. On the entrance test the Petitioner secured 53.674 marks but could not get admission to the DUHS. But then the Petitioner learnt that the Respondent No.3, who had secured lesser marks (40.347 marks), had been granted admission to the DUHS for MBBS on the disabled quota. The Petitioner's father made a complaint/request dated 03-01-2018 to the Vice Chancellor, DUHS (Respondent No.2), to reconsider the Petitioner for admission instead of the Respondent No.3. However, by letter dated 15-01-2018 the Vice Chancellor, DUHS regretted that the Petitioner could not be granted admission for the following reason:

"All claims for specified seats on disabled quota were reviewed by Medical Board constituted for said purpose.

Board comprises Chairman Ophthalmology Department, Chairman Orthopedic Department & Chairman Medicine Department. All of them have enormous experience in their relevant fields.

Board examined/evaluated all candidates who submitted claim for seats specified on disabled quota. Criteria of evaluation was to judge ability of candidate to perform function of medical profession with their disability, which is also mentioned on Page No. 75 of the Prospectus of MBBS & BDS, Session-2017-18 for Medical Universities/Colleges of Sindh Province.

Your son's disability reflects that he cannot perform functions of medical profession. Board members found consensus in not qualifying him for said seat.

In the light of the above, your application is regretted.

*Prof. Mohammed Saeed Quraishy
Vice Chancellor, DUHS,
Chairman, Medical Board for Disabled Candidates"*

5. Learned counsel for the Petitioner submitted that since the Petitioner had secured more marks than the Respondent No.3 on the entrance test, the act of the Respondent No.2 in admitting the Respondent No.3 to the DUHS on the disabled quota instead, was a discrimination against the Petitioner, especially when the Respondent No.3 had not submitted the requisite disability certificate with her application. He submitted that there was a difference between physical impairment and physical disability, that the Respondent No.3 was the former not the latter, and therefore she did not qualify as a disabled candidate. He submitted that though the Petitioner suffered from spastic hemiplegia, that did not affect his mental faculties, and in support thereof learned counsel referred to a psycho-diagnostic report issued by a Neuro Psychologist at the DUHS stating that the Petitioner's intellectual capacity falls within "Average Intellectual Range"; and to a certificate from a Professor at the Institute of Physical Medicine & Rehabilitation, DUHS to state that though the Petitioner was hemiplegic cerebral palsy, his cognitive functions were normal. Therefore the Petitioner prayed for the following writs:

"a. To declare that letter of refusal dated 15th January 2018 of Vice Chancellor, DUHS, & Chairman Medical Board for Disabled Candidates, for claim of the petitioner for specified seats on disabled quota and decision of Review Medical Board constituted for said purpose and their findings are illegal, void ab-initio, without lawful authority, based on mala fide, in violation of law and constitution;

b. To restrain and prohibit the respondent No.1 & 2 from entitlement of the petitioner for admission for specified seats on disabled quota in Medical Colleges of Sindh Province, as per Prospectus MBBS & BDS (Session 2017-18), published by Health Department Government of Sindh/Respondent No.1, and also regularly attending classes of MBBS, in violation of law and constitution, permanently;

c. *Any other relief(s)*

d. *Cost of the petition."*

6. On the other hand, learned counsel for the Respondent No.2 (Vice Chancellor DUHS) submitted that as required by the prospectus, the DUHS had constituted a Special Medical Board to assess the eligibility of candidates who had applied for admission on the disabled seat; that the Petitioner, the Respondent No.3 and one other candidate were examined and evaluated by the Special Medical Board on 26-10-2017 as would be evident from the record; that the Special Medical Board opined that due to his physical disability, the Petitioner was not fit for the medical profession; and thus the Petitioner was informed of his ineligibility. Learned counsel submitted that though the Petitioner had secured more marks than the Respondent No.3 on the entrance test, but the eligibility of a disabled candidate had to be assessed also on the severity of his/her physical disability, and that it was the latter that made the Petitioner unfit for medical practice. Learned counsel submitted that the Respondent No.3 had subsequently submitted the requisite disability certificate and that there was no discrimination against the Petitioner.

7. Mr. Shabbir Shah, learned Assistant Advocate General submitted that the matter rested with the opinion of the Special Medical Board. He further submitted that since the greater part of the first year of the academic session has gone by, not only would it be unfair to de-seat the Respondent No.3, it would also be unfair to expect the Petitioner to catch up with the class of the first year.

8. Heard learned counsel and perused the record.

The eligibility of a candidate for admission to a Medical University/College on the seat for the disabled is set out in the prospectus as follows: -

“ELIGIBILITY OF DISABLED CANDIDATES:

Candidates for admission against the seats reserved for disabled persons after having failed to be selected against the district merit seats on the basis of their overall merit, after the Entry Test, will have to produce a certificate from the Department of Social Welfare, Government of Sindh, Karachi or Civil Services Hospital to the effect:

- 1. That he/she is a disabled candidate within the meaning of disability which defined "Disability" as that degree of physical disability which puts the candidate at disadvantage as compared to a normal person for acquiring education in medical institutions, but otherwise capable of performing his/her duties satisfactorily as a medical professional.*
- 2. That he/she is mentally fit and physically able to carry on studies and perform professional duties after qualifying MBBS.*
- 3. His /her disability should not be of such a severe degree that makes a candidate unable to acquire medical education or work as a doctor. Selection against the reserved seats will be made from the list of the disabled candidates strictly on combined merit basis after entry test”.*

The aforesaid eligibility clause is essentially that even though a disabled candidate may be mentally fit, but if his/her physically disability is such that it may prevent him/her from performing functions satisfactorily as a medical practitioner, then such candidate would not be eligible for admission.

9. After hearing learned counsel at some length on 29-08-2018, we had summoned Dr. Tayyaba Aamir, Director Admissions, DUHS, to explain to us the findings of the Special Medical Board which were on record with the comments of the Respondent No.2. We had also asked for the presence of both the Petitioner and Respondent No.3 in Court on that day. Dr. Tayyaba Aamir informed that the physical disability of the Petitioner was cerebral palsy caused by a brain injury which makes the limbs and muscles weak and makes difficult the initiation and controlling of muscular movement. She informed that the right side of the Petitioner’s body was severely affected by cerebral palsy and would prevent him from performing functions/duties as a doctor; and therefore it would also be in the best interest of the Petitioner that he pursued another career. As regards the Respondent No.3, Dr. Tayyaba informed that the disability of the Respondent No.3 was a

deformity in her left heel resulting from a spoke-wheel injury, and that such deformity would not come in her way of performing functions/duties as a doctor.

10. The record shows that following the criteria in the prospectus for determining eligibility of a disabled candidate for admission, a Special Medical Board at the DUHS had examined both the Petitioner and the Respondent No.3 and concluded as follows: -

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| <i>“Maria Shahid (Respondent No.3)</i> | <i>Permanent Disability</i> | <ul style="list-style-type: none"> -<i>Spoke Wheel injury in childhood</i> -<i>Left deformed</i> -<i>Can perform functions as Doctor</i> -<i>Required to furnish Disability Board Certificate of Sindh Government for further processing the application.</i> |
| <i>Muneeb Ahmed (Petitioner)</i> | <i>Permanent Disabilities</i> | <ul style="list-style-type: none"> -<i>Cerebral Palsy (Anoxic Brain Injury)</i> -<i>Speech affected, Gait affected.</i> -<i>All limbs are weak, more marked on right side, which is wasted and severely spastic also</i> -<i>Unable/unfit for medical profession in the light of these disabilities.”</i> |

11. The aforesaid findings of the Special Medical Board are by five (05) medical professionals whose credentials are as follows: Professor M. Saeed Quraishy, Vice Chancellor DUHS; Professor M. Muneer Quraishy, Chairperson Ophthalmology Department DMC; Professor Maratib Ali, Chairperson Orthopaedic Department DMC; Professor Abu Talib Chairperson Medicine Department DMC; and Dr. Tayyaba Aamir, Director Admissions, DUHS. On the other hand, learned counsel for the Petitioner had contended that the findings of the Special Medical Board are incorrect on facts and are contradicted by the psycho-diagnostic report issued by a Neuro Psychologist at the DUHS stating that cerebral palsy had not affected the Petitioner’s cognitive function and he was of average intelligence. Such report appears to have been issued by the Neuro Psychologist on an independent consultation by the Petitioner *albeit*

the Petitioner had obtained such consultation to strengthen his case. Be that as it may, the report of the Neuro Psychologist shows that it is at best an assessment of the Petitioner's mental faculties, and not an assessment of his physical ability to function as a doctor, the latter of which assessment was made by the Special Medical Board duly constituted for that very purpose. Therefore, the report of the Neuro Psychologist relied upon by learned counsel for the Petitioner does not in any way contradict the findings of the Special Medical Board and does not advance the case of the Petitioner.

Learned counsel for the Petitioner has not been able to demonstrate that the Special Medical Board held any ill will against the Petitioner, or that it acted to favor the Respondent No.3, or that it acted contrary to the eligibility clause provided in the prospectus. In short, we do not find any discrimination against the Petitioner. The case of *Amna Sarwar v. Province of Sindh* (2007 YLR 190) relied upon by the Petitioner's counsel is completely distinguishable, as in that case the candidate's disability by reason of polio in the lower limbs was not found by the Court to be severe; there was no opinion to the contrary by a medical board; and most importantly, the seat reserved for the disabled was lying vacant at the University.

12. While the determination of the Petitioner to pursue a career of his choice despite his disability is indeed commendable, learned counsel for the Petitioner has not been able to give us any reason to question the expert opinion of the aforesaid Medical Board which is to the effect that the Petitioner will not be capable physically to function as a doctor. For the foregoing reasons, the petition is dismissed along with pending applications.

JUDGE

JUDGE

Karachi
Dated: 24-12-2018