

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-3467 of 2017

Present: -
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Mr. Faizan H. Memon,
Advocate

Respondents No.3,4&5 : Through Ms. Amna Usman,
Advocate.

Respondents No.1&2 : Mr. Ali Safdar Deepar, State counsel
Mr Muhammad Saleem Khan, Law
Officer, CPSP.

Date of hearing : 17.10.2018
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JUDGMENT

ADNAN-UL-KARIM MEMON, J:- Through the captioned
Constitution Petition, Petitioner has sought the following reliefs:-

- (a) **Declare that the failure of Respondents to adhere to rules and guidelines vis-à-vis of trainees to supervisors as well as appointment of examiners is illegal, unlawful, unconstitutional, malafide, arbitrary, whimsical and violative of principles of natural justice, fairness and equity.**
- (b) **Declare that the Respondent No.5 or any other employee of PAF can neither be appointed as examiner for undergraduate or postgraduate exams nor be assigned/allocated trainees for supervision, and any such appointment and/or allocation is illegal, unlawful and violative of fundamental rights of the Petitioner, hence set aside the same forthwith.**
- (c) **Direct the Respondents to adhere to the rules and guidelines vis-a-viz appointment of examiners and/or allocation of trainees to supervisors and assign/allocate trainees to the Petitioner in accordance with the rules of guidelines issued by concerned authorities.**

2. The relevant facts as spelt out from the instant petition are that the Petitioner is rendering her services as Assistant Professor in Jinnah Postgraduate Medical Centre (hereinafter referred to as “**JPMC**”). Petitioner has averred that she received ‘Supervisory Certificate’ in the month of May 2016 issued by the Respondent No.3, which permits her to supervise trainees of Fellowship of the College of

Physicians and Surgeons (**"FCPS"**) but her services are not utilized by the Respondent the JPMC as per the guidelines issued by the Respondent No.3, that each approved Supervisor is allowed to conduct up to 06 trainees in each session. Petitioner has added that the Respondent No.2 has failed to allocate/assign any trainee to her and the trainees are being assigned to the Consultant, belonged to one Non-Governmental Organization (**NGO**) namely Patients Aid Foundation (**"PAF"**). Petitioner has submitted that aforesaid NGO cannot be allowed to work in JPMC and no assignment of training can be given to them. Petitioner has submitted that Respondent No.5 is not Assistant Professor and does not meet the requisite criteria to act as Supervisor in CPSP. Petitioner has averred that the Respondent No.5 is an outsider, who cannot be assigned trainees to act as Examiners in respect of FCPS and MCPS examinations in the capacity of an Assistant Professor/Supervisor, in view of regulations 3 and 4 issued by the Pakistan Medical and Dental Council in the year 2017. Petitioner has added that she, being an Associate Professor was awarded with Supervisory Certificate, has legitimate expectation of being governed under the relevant rules, regulations and guidelines vis-à-vis job duties, promotion, supervisory and examination duties. Basically, the Petitioner is aggrieved by and dissatisfied with the recommendation of the Respondent No.5 as an Examiner /Supervisor in CPSP by JPMC and thereafter has filed the instant petition.

3. Mr. Faizan H. Memon, learned counsel for the Petitioner has argued that the Respondents are bound to follow the rules and guidelines in respect of the assignment of trainees to supervisors and the allocation of trainees to the Respondent No.5 was illegal and

against the principles of natural justice and equity as he is not entitled to be appointed as Supervisor under the CPSP guidelines, therefore, assignment of any trainees to him is void-ab-initio. Learned counsel contended that the Petitioner being a qualified supervisor and an Assistant Professor with requisite experience, has a vested right to be treated in accordance with CPSP guidelines; that the Respondent No.5 is neither an Assistant Professor nor a member of the teaching faculty of the Respondent No.2 rather an outsider being an employee of NGO who is not eligible to be assigned any trainee or appointed as examiner in JPMC. During the course of arguments we asked from the learned counsel for the Petitioner to satisfy this Court about maintainability of the captioned petition against the Respondents. He in reply to the query raised by this Court has submitted that the basic recommendation of Respondent No.5 made by Respondent No.2 is called in question under Article 199 (1)(b)(ii) of the Constitution of Islamic Republic of Pakistan 1973, being a holder of Public Office without lawful authority. We have reservation with the aforesaid submission of the learned counsel for the Petitioner for the simple reason that the Respondent No.5 is not getting any salary from the Government Exchequer but his pay and benefits have been paid from the fund of public private partnership account. However, we intend to decide the issue with regard to recommendations made by the Respondent No.2 vide letter dated 17.11.2011 as available at page 167 of the counter affidavit filed on behalf of the Respondent No. 5.

4. Ms. Amna Usman learned counsel representing Respondents No 4 & 5 has submitted that the Respondent No.3 is an autonomous body and the Respondent No.5 is not a holder of public office,

therefore this petition is not maintainable under the law. She next argued that the Respondent No.5, possess National and International Recognized Qualification i.e. FCPS, FRCS and is working as a Consultant Radiology Department with the permission of Academic Council of JPMC duly approved by the then Chairman and Executive Director; that Respondent No.5 has 14 years post qualification experience and his pay & benefits have been paid from the fund of Public Private Partnership account; that Respondent No.5 does not affect the service rights of the Petitioner; that the Petitioner is not an aggrieved person to call in question the appointment of the Respondent No.5 as Consultant; that the Petitioner was appointed as a Medical Officer (BS-17) in year 2008 and later on was transferred to JPMC, Karachi on 21st April, 2018 by the Ministry of Health, Islamabad; that JPMC is neither the constituent part of the newly established Jinnah Sindh Medical University (JSMU) nor affiliated with them; JPMC is a separate entity and neither merged with the SMC; that the Petitioner is not eligible to hold the post of Supervisor in FCPS; that the Head of Radiology Department has been allowed by the CPSP to register a maximum number of 24 candidates and at-present 20 postgraduate trainees have been enrolled; that with the help of public private partnership more than 200 employees have been hired on private basis and there is no discrepancy, collusion in service matter i.e. pay and allowances, seniority, promotion etc. with regular employees; that the CPSP allows Supervisor for fellowship training who fulfill the requisite criteria and it is not the job of the Respondent No.3 to allocate trainees. She lastly prayed for dismissal of the instant petition.

5. Mr. Ali Safdar Deepar, learned AAG representing Respondents No.1&2 has adopted the arguments of Ms. Amna Usman.

6. We have heard the learned counsel for the parties and have perused the material available on record.

7. The only question involved in the present proceedings is whether PM&DC has prescribed qualification and experience required of examiners for professional examinations and the Respondent No.5 meets the criteria to hold the post of examiner/Supervisor?

8. To appreciate and dilate upon the forgoing question it is expedient to have a glance on the medical institution i.e. College of Physicians & Surgeons Pakistan (CPSP), which is a statutory autonomous body, established in 1962, by virtue of the Pakistan College of Physicians and Surgeons Ordinance, XX of 1962 to oversee the postgraduate medical education and professional development. CPSP offers certifications following postgraduate training in specialties of medicine, surgery and dentistry and awards the degrees of FCPS and MCPS. As per record, the aforesaid medical institution is recognized under Section 11 of Pakistan Medical and Dental Council Ordinance, 1962 as amended up to date.

9. Apparently, PM&DC has been given a mandate to establish uniform medical and dental practice across Pakistan by:-

i) Prescribing a uniform minimum standard of courses of training for obtaining graduate and post graduate medical and dental qualifications.

ii) Prescribing minimum requirements for the content and duration of graduate and post graduate medical and dental courses of study.

iii) Prescribing the conditions for admission of courses of training as aforesaid.

iv) Prescribing minimum qualification and experience required of teachers for appointment in medical and dental institutions.

v) Prescribing the standards of examinations, methods of conducting the examinations.

- vi) Prescribing the qualifications and experience required of examiners for professional examinations.
- vii) Registering faculty and students of all medical and dental institutions.
- viii) Maintaining the Register of Medical & Dental Practitioners.
- ix) Inspecting and formulate recommendations regarding recognition of medical and dental Institutions for training of undergraduate and postgraduate qualification.
- x) Inspecting undergraduate and postgraduate examination for standardization.
- xi) Deciding cases against registered practitioners for conduct and professional negligence.
- xii) Inspecting and approve hospitals for house job and training.
- xiii) Prescribing guidelines for medical and dental journals.
- xiv) Issuing experience certificates to faculty.
- xv) Setting up schemes of reciprocity with other countries and medical regulatory authorities.

10. It is vigorously agitated by the learned counsel for the Petitioner that for approval of Supervisor the following requirements must be fulfilled by the candidates:-

01. As per CPSP policy it is mandatory that applicant at least holds the position of Assistant Professor to be approved by CPSP as a supervisor for training of the post graduate candidates and to have 5 years Post Fellowship Experience after acquiring FCPS / FRC S/ FRCP / MRCP / MS / MD or equivalent qualifications recognized by CPSP to be approved as a supervisor.

02. As per CPSP policy it is mandatory to have 5 years Post Fellowship Experience after acquiring FCPS/FRCS/FRCP/MRCP/MS/MD or equivalent qualifications recognized by CPSP to be approved as a supervisor.

03 Form 'B' i.e. supervisor data duly filled form to be sent to RTMC.

04 The application has to be properly recommended and forwarded by the Principal/Head of the Institution.

05 Appointment letter for the present position in the institute / hospital. Also mention the unit of << SPECIALSUB >> you are working and how many previously approved supervisors are working in the same unit. Also provide the faculty details including number of beds and status of registered trainees under previously approved supervisors

06 Complete Curriculum Vitae.

07 Photocopy of valid P.M.D.C. registration certificate duly updated showing all your post graduate degree/qualifications.

08 Photocopies of Four mandatory workshops for supervisors i.e. Educational Planning & Evaluation. Assessment of Competence. Supervisory Skills. Research Methodology, Biostatistics & Medical Writing.

11. As per record the application of the Respondent No. 5 was recommended by the head of the institution i.e. JPMC, vide letter

dated 17.11.2011 and forwarded to Registrar College of CPSP for appointment for supervisor ship FCPS (Diagnostic Radiology).

12. The Respondent No. 5 in his counter affidavit at paragraph 7 has admitted the following factual position:-

“ That the contents of Para 6 of the Affidavit are denied as being false in fact and wrong in law. It is submitted that the Respondent No.5 was appointed as an Assistant Professor in the Radiology Department of Liaquat National Hospital in the year 2006 and joined the Radiology Department of the Respondent No.2 in the year 2010 under Public-Private Partnership of Respondent No.2 and patients Aid Foundation. Therefore Respondent No.5 being an Assistant Professor and a full time employee at Respondent No.2 is legally and lawfully eligible to be assigned trainees and to be appointed as an examiner. It is further submitted that the content of paragraph A to D restated as true and relevant.”

13. Respondent No.2 in comments has submitted that the Respondent No.5 is working as consultant Radiology department with the permission of academic council of JPMC, approved by the then Chairman and Executive Director. It is further noted that his pay and benefits have been paid from the fund of public private partnership account (PAF). It is further disclosed in the comments as under:-

“We have limited sanctioned posts of consultant and we have hired a number of renowned foreign qualified consultants from”

14. In the light of foregoing, prima facie the recommendation made by the Respondent No.2 vide letter dated 17.11.2011 cannot be endorsed.

15. Now an important point, which has emerged in the present proceeding is whether Regulations of PM&DC are applicable for appointment of examiners. We have noticed that PM&DC Regulations provides that a faculty member can only be appointed as examiner in the relevant subject / specialty; he must have the qualification and experience prescribed for such appointment by the universities/DAI for conducting examination on the relevant subjects for

undergraduate and postgraduate examinations. It is further provided that if there is no Professor available then an Associate or Assistant Professor working as Head of the Department and has a minimum five years' of Teaching Experience certified by PM&DC, who shall be eligible to be appointed as Examiner for undergraduate and Postgraduate Examinations. Prima facie the record reflects that the service of the Respondent No.5 was hired by the Respondent No.2 under Public Private Partnership Act, as discussed supra.

16. In the result of the above discussion that the Respondent No.5 was never hired as an employee of JPMC and under what authority or law he was performing his duty as an Assistant Professor or the JPMC was attaching trainees to him had not been explained satisfactorily. From the above record it is also clear that it is only an employee of JPMC who could be assigned trainees whereas it is noted that only on the recommendation of the Committee firstly the respondent No.5 was hired as a consultant and thereafter trainees were assigned to him. In our view the rationale behind assigning the trainees to the Respondent no.5 in being that the JPMC wanted to get benefit of the vast experience of the respondent No.5 in the field and by attaching the trainees with him these trainees could be benefited with his experience in the relevant field. Though the purported intention of the JPMC may be in good faith but following the law and the rules and regulations prescribed in this behalf are equally important. Since a number of trainees must be working in different hospitals/ fields hence if we draw any adverse inference so far as appointment of the Respondent no.5 is concerned, the same would seriously prejudice and jeopardize the future career of those trainees. We, therefore, under the circumstances and keeping in view the

interest of justice, which is of prime importance, direct the Respondent No. 2 (JPMC to strictly adhere to their own rules and regulations with regard to the allocation of trainees as a future guidance and refrain ourselves from making any other observation in this behalf, as we are mindful of the fact that any order about the appointment etc. of the Respondent No.5, at this stage, would create a chaotic situation, which has to be avoided under the circumstances prevalent in the instant petition.

So far as the claim of the Petitioner with regard to trainees is concerned, the Respondent No. 2 (JPMC) is directed to look into such claim and if the Petitioner qualifies the trainees be attached to her in accordance with law, a proper decision in this behalf be taken within one month's time from the date of receipt of this order. Apropos the allocation of trainees with the Respondent no.5 is concerned since we have observed that admittedly he not an employee of JPMC the same may also be looked into and a proper decision on both the above aspects be taken as per law.

15. In the result of above discussion, this petition is disposed of with direction to the Respondent No.2 to ensure recommendation of any candidate for appointment of Examiners for Professional Examinations strictly in accordance with law for future purposes.

16. This petition is disposed of in the above terms along with listed application(s).

JUDGE

JUDGE