

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4434 of 2020

Syed Manzoor Shah

Petitioner

Through : Mr. Malik Altaf Hussain, advocate.

Respondents No.1 &2

Through : Mr. Salman Talibuddin, A.G Sindh
along with Mr. Ali Safdar Debar, AAG,
Mr. Kazim Jatoy, Secretary Health and
Mr. Sikandar Ali Memon, Focal Peron,
Health Department, Government of
Sindh

Date of hearing : **07.10.2021**

Date of Order : **07.10.2021**

ORDER

This court vide order dated 1.9.2021 directed Secretary Health, Government of Sindh to remove all officers posted as on OPS basis on administrative posts and only seniors, as a stopgap arrangement of that grade, will be posted. A partial compliance report submitted by the Secretary Health is taken on record.

2. Today, learned Advocate General Sindh along with Secretary Health prayed for allowing the Government of Sindh to fill the administrative posts i.e. District Health officer, Medical Superintendent of Major Hospitals and Regional Director Health Services, amongst the most senior officers working in BS-19, on the premise that the subject administrative post is floating posts in BS-19/BS 20 (General Cadre) as per recruitment rules. In support of his contentions, he relied upon the notification dated 21.11.2016 issued by the respondent department. He further submitted that due to the heavy shortfall of the officers and cancellation of additional and look-after charges by this Court, a large number of important posts are lying vacant. In such a situation the

ultimate sufferer is the general public. Secretary Health who is present in the Court assures that there will be no violation of the dicta laid down by the Honorable Supreme Court on the subject issue. About direction that in Health department all OPS; allowed to work/ additional charge, he also prayed for allowing the respondent-department to assign work to the Doctors to look after the health issues of Prisoners incarcerated in different jails of Sindh till regular appointments are made by the Home Department Government of Sindh.

3. We have heard the learned AG Sindh on the subject issues, prima-facie the issue raised by the learned AG is serious, which needs urgent hearing of the matter, in this regard, we are conscious of the fact that the transfer and posting is the prerogative of the Government of Sindh as provided under Section 10 of the Sindh Civil Servants Act, 1973.

4. We are only concerned with the enforcement of the judgment of the Honourable Supreme Court under Article 187(2) of the Constitution on the issue of Own Pay Scale (OPS). In principle, the civil/public servant is not entitled to hold the higher post, on OPS, however, subject to all just exceptions as provided under the law. It is well-settled law that if the most senior Civil/public Servant eligible for promotion does not possess the specific length of service, he may be appointed on an acting charge basis, after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board, as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. The scope of OPS needs not to be dilated upon furthermore. It is well settled that the competent authority can always exercise discretion in appointing one against a post but such decision should always stand well with the object of term discretion which is to choose the best out of available lawful choices. On the aforesaid proposition we are guided by the decisions of the Honorable Supreme Court of Pakistan in the cases of Province of Sindh & others v. Ghulam Fareed & others, **2014 SCMR 1189**, and Khan Muhammad vs. Chief Secretary, Government of Baluchistan Quetta and others, **2018 SCMR 1411**.

5. We have noticed that the competent authority had approved the summary, allowing the respondent department to fill the administrative posts i.e. District Health officer, Medical Superintendent of Major Hospitals, and Regional Director Health Services, which are now floating posts in BS-19/BS 20 (General Cadre). Prima-facie the request so made by the learned AG is supported by the order dated 16.08.2017 passed by this Court in C.P. No.D-2259 of 2017 and C.P. No.D-2509 of 2017, which also appears to be reasonable and accordingly acceded to subject to all just exceptions as provided under the law. For convenience sake an excerpt of the order dated 16.08.2017 is reproduced as under:-

“With regard to the appointment of DHO Health, the Additional Secretary Health has referred page-6 of the book, which shows that competent authority has approved the posts of District Health Officers, Directors at the regional level and Medical Superintendents of major hospitals floating in BS-19/20. As per the approval, only the top 200 doctors in the seniority list of BS-19 would be considered against such floating posts. However, cognizance would be taken to appoint such doctors preferably having management experience and relevant degrees in health administration and management from recognized and reputed universities/institutes. He further contends that they are considering to create cadre posts for Management separately having the required skill of management in view of PMDC guidelines likewise in other Provinces the persons who are having degrees of administration are given preference to give responsibilities on the administration side. The proposal is worth appreciating and it is expected that same shall not remain the words alone but shall be shown to have been enforced because no institution could run unless the same is managed/controlled by a skilled person properly. We however reserve our findings on legal authenticity of the said Notification for the time being since earlier order is in the field, therefore, DHO Health shall be appointed having Grade-20 within ten days and report compliance.”

6. To address the health issues of Prisoners incarcerated in different jails of Sindh, we have noticed that several issues hinder the efficient functioning of the prisons department, first and foremost the regular appointments of Doctors and paramedical staff to look after the health issues of inmates, as per prison rules, which is extremely important, and at present non-existence of specialist/General Cadre Doctors; and, to visit them, some of them are reportedly bedridden in the hospital inside and outside the prison. During the hearing of the case, we have been informed that the look after charge and assign to work charge has been taken away from the concerned Doctors who were taking care of inmates, prima-facie this extreme step is not sustainable

under the law. At this juncture, Secretary Health is directed to assign work to the general/specialist cadre Doctors to look after the health issues of Prisoners accordingly.

7. It has come on record that in prison(s) Doctors' posts are lying vacant, though in many prisons, hospitals are established, and that is the domain of the home department. Accordingly Home Secretary shall submit a complete breakup of the existing post of medical staff in prison(s) and status of the vacant post(s) with a further direction that vacant post(s) shall be filled within two (2) months.

8. It is further revealed that the health department is regularly providing doctor visits in Special Child Institute and Autism Center(s), when Secretary Health was confronted whether the health department has any data and mechanism to address the issue of **down syndrome** in children, he is unaware, however, he undertakes that health department will examine this matter/health issue and will submit a report with regard to steps taken on this issue.

9. Secretary Health further contends that the department is in the process to amend the service structure while bifurcating the medicolegal cadre and management cadre. He shall submit a definite statement to complete this task within the stipulated period

10. The Chief Secretary and Home Secretary, Sindh are directed to take up the subject issue with the competent authority and ensure regular appointments of Doctors (specialist/general cadre) in the Prison Department as per recruitment rules. The aforesaid exercise shall be completed within 15 days.

For ancillary issues, the matter is already fixed on 14.10.2021. To come up on the same date.

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Shahzad Soomro