

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1538 of 2020

Dr. Haji Muhammad Soomro v. Province of Sindh & others

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **09-11-2021**

Date of decision: **09-11-2021**

Petitioner Dr. Haji Muhammad Soomro, present in person.
Mr. Pervaiz Ahmed Memon, Advocate for Respondents-PPHI.
Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following relief(s):

- I. *To direct the respondents to pay Rs 200425/ (In Words: Two Lac Four Hundred and Twenty Five Rupees) as pay for performance at the rate of Rs Fifteen Thousand/month.*
- II. *To direct the respondents to pay the arrear of hard area allowance at the rate of Rs: 9000/month which comes to Rs: 31500 (In Words: Thirty One Thousand Five Hundred Rupees Only)*
- III. *To direct the respondent to pay an amount of Rs: 83155. (Eighty Three Thousand One Hundred Fifty Five Rupees), in lieu of one month notice period.*
- IV. *Any other relief which this Honorable Court deems fit and proper as per the circumstances of the case.*

2. Petitioner has appeared in person and has argued that after retirement from Government service at the age of 60 years, he was appointed in Peoples Primary Healthcare Initiative (“PPHI”) as a Medical Officer, and now after attaining the age of 70 years, he stands retired. According to him, during his service period, he was entitled for performance pay which was never paid, whereas, various tests and interviews were conducted, and he had passed in all such tests, but still he was never paid this amount for which he has always been entitled. He has also argued that some other persons were also not paid the amount, whereas, some

ineligible persons have been paid the performance pay. He has prayed for grant of the relief so sought in this petition.

3. Notice was ordered and Counsel for PPHI has filed his comments and objections, wherein it has been stated that the Petitioner never qualified the tests so conducted, whereas, the allegations that some ineligible persons have been paid this allowance is incorrect and false. Learned Counsel has also objected as to maintainability of this Petition on the ground that PPHI is not a Government department but an NGO registered under Section 42 of the Companies Act, hence, no writ is maintainable.

4. We have heard the Petitioner in person as well as learned Counsel appearing on behalf of PPHI and perused the record.

5. As to the very maintainability of this Petition is concerned, though tentatively we are of the view that the objection can be maintained, as apparently, PPHI is an NGO registered under Section 42 of the Companies Act, whereas, the Petitioner himself admits that he was given employment after his retirement from Government service and worked till the age of 70 years, which also reflects that PPHI does not follow the Government Rules for employment; but since the Petitioner is an old aged person; appearing for his personal cause, and is seeking a relief after his retirement; therefore, we have left this question open to be decided in an appropriate case wherein proper assistance is provided to us. For the present purposes we have decided not to nonsuit the Petitioner on this objection and would treat this petition as maintainable and will decide the same on merits.

6. As to merits of the case, the comments of the Respondents reflect that the Petitioner appeared in a written test on 11-06-2019 and his result is as under:

DHIS	SAS	CK Test	MoM	Aggregate
53%	25%	40%	46%	41%

Whereas, the result of the qualified doctors, who were awarded performance award, has been tabulated as under:

S. No	Name	Desig:	Depart:	DHIS	SAS	CK Test	MoM	Aggregate
1	Dr. Kelash Patti	Medical Officer	Govt	93%	100%	48%	82%	81%
2	Dr. Sania Gul	FMO	PPHI	73%	78%	73%	88%	78%

3	Dr. Shafiat Rehman	FMO	PPHI	63%	78%	73%	89%	76%
4	Dr. Kiran	WMO	Govt	63%	89%	70%	82%	76%
5	Dr. Naila Mahjaben	FMO	PPHI	60%	93%	70%	73%	74%

It has been further stated that he again appeared in written test held on 10-10-2019 and the result of the Petitioner is as under:

DHIS	SAS	CK Test	MoM	Aggregate
40%	25%	30%	64%	40%

Whereas, the result of the qualified doctors, who were awarded the performance award, is as under:

S. No	Name	Desig:	Depart:	DHIS	SAS	CK Test	MoM	Aggregate
1	Dr. Kelash Patti	MO	Govt	100%	100%	60%	88%	87%
2	Dr. Waqar Ahmed	MO	Govt	100%	75%	75%	89%	85%
3	Dr. Kiran	WMO	Govt	70%	89%	85%	95%	85%
4	Dr. Naila Mahjaben	FMO	PPHI	60%	78%	95%	97%	82%
5	Dr. Samina	FMO	PPHI	73%	89%	62%	85%	77%

7. Perusal of the aforesaid statistics and figures given by the Respondents reflects that apparently the Petitioner never qualified for payment of such performance pay. Though an attempt has been made to deny all these results by way of a rejoinder; however, we in our Constitutional jurisdiction even otherwise cannot probe this factual aspect of the matter and decide as to who is correct or otherwise. Nonetheless, we may observe that the Petitioner has though filed a rejoinder, but has failed to annex any supporting documents which could assist us in any manner as to his claim regarding passing of various tests and interview. Further, it may also be noted that all along the Petitioner continued with his service with PPHI and during all this period he never agitated or came before the Court for redressal of his grievance, if any. It is only after he has retired that he has come up with this plea that he is entitled for payment of performance award. Be that as it may, we do not see any justifiable reason to interfere in such disputed facts as it would amount to entering into a factual inquiry, which we cannot do in this Constitutional jurisdiction.

8. As to the allegation that performance pay was paid to some ineligible persons, it would suffice to observe that without joining of such persons, we cannot look into such aspect of the matter as it would prejudice their valuable rights.

9. As to the claim of notice pay, it may be observed that petitioner was appointed on contract basis, whereas, the maximum age of employment is 70 years, and before attaining the same a notice was issued to him that no further extension in the contract would be given; hence, this argument is also not tenable.

10. Lastly, the issue as to what marks were or are to be awarded to a person while appearing in a test or interview, we may observe that it is purely a subjective issue which in this jurisdiction cannot be determined. Reliance in this regard may be placed on the case reported as *Muhammad Ashraf Sangri v. Federation of Pakistan (2014 SCMR 157)*, wherein the Hon'ble Supreme Court has been pleased to observe as under:-

“Essentially an interview is a subjective test and it is not possible for a Court of law to substitute its own opinion for that of the Interview Board in order to give the petitioner relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks in something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board. Obviously if any mala fides or bias or for that matter error of judgment were floating on the surface of the record we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post which as observed above is subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Public Service Commission. For this proposition the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani (2012 SCMR 1198) can be referred to.”

11. In view of such position and for the reasons so stated herein above, we are of the view that no case for indulgence to exercise any discretion in favour of the Petitioner is made out. Accordingly, Petition stands **dismissed** with pending application.

J U D G E

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Abdul Basit