

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D – 7700 of 2019

Husnain Ali and others

Versus

Province of Sindh and 02 others

Date of hearing & Order : 22.04.2021

Mr. Ghazanfar Ali Jatoi, advocate for the petitioners.

Mr. Ali Safdar Debar, Asst. Advocate General Sindh along with Dr. Kazim Hussain Jatoi, Secretary Health, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant petition, the petitioners are seeking the following relief(s): -

1. *The petitioners cannot be discriminated in the matter of permission / deputation for the purpose of FCPS-II post-graduation training.*

(A) By allowing deputation to some batch mates of the petitioners and denying the same to petitioners, which is against the spirit of Article 25 of the Constitution.

2. *Respondents cannot adopt the policy of pick and choose.*

3. *Order / Notification bearing dated 26.4.2019 is against the spirit of Article 4 read with Article 9, 18 and 25 of the Constitution, hence is ultra vires to constitution and is liable to be struck down.*

4. *Order / Notification dated 20.9.2019 being discriminatory is liable to be struck down and in alternate cannot take effect retrospectively.*

5. *Respondent No.02 & 03 are not acting in accordance with law while they are duty bound to act in accordance with the law.*

6. *Act of respondent No.03 in not issuing notifications allowing permission to petitioners for post-graduation training as in service candidates is discriminatory and tantamount to deprive petitioners from their lawful rights of higher education besides depriving public at large from services of highly qualified doctors.*

7. *Act of respondent No.02 & 03 violates the spirit of Article 4, 9, 18 and 25 of the Constitution.*

8. *Ad-interim relief directing respondent to allow petitioners to continue their place of training or in alternate petitioners be allowed provisionally to continue their training till final disposal of this petition.*

2. At the outset, learned AAG seeks disposal of this petition in terms of Policy Decision dated 05.3.2020 of the Health Department, Government of Sindh, whereby the petitioners may be allowed to pursue their academic medical career subject to extraordinary leave (without pay) for the required period. At this stage, learned counsel for the petitioners in substance has pleaded discrimination as they were not sent for training within time, however, he has seriously submitted that their other batch mates on the same consideration were considered and were sent for training and the petitioners were left out except petitioners No.6, 9, 10, and 14. He has referred to the few notifications and claims similar treatment as meted out with their other batch mates.

3. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

4. *Prima facie*, petitioners had accepted all terms and conditions of their Offer Orders and any request for their transfer before completion of three years (probationary period) tantamount to misconduct on their part, however, it has been made clear in their respective Offer Letters that during their initial three years of service, no leave or deputation (for study or service) would be allowed.

5. In pursuance of the direction of this Court vide order dated 07.4.2021, Dr. Kazim Hussain Jatoi, Secretary Health, Government of Sindh, is present in Court and agreed to grant the petitioners extraordinary leave (without pay) for the required period. Answering the objection raised by learned counsel for the petitioner, he submits that as regards the employees, whose papers/notification of deputation as in-service candidates are presented by the petitioners, the Health Department will review and decide on the case to case basis because under the Medical Education Policy some specialties are very rare and most of the doctors do not choose such minor/rare specialties as their academic and service career in such specialties there is the cushion for such employees. He referred to the policy as discussed supra and submitted that the respondent department is ready and willing to allow the petitioners to pursue their academic career without pay and their period of absence shall be treated as extraordinary

leave without pay. Learned counsel for the petitioners has a little bit of reservation so far as deputation allowance is concerned.

6. We, in the peculiar facts and circumstances of the case, allow this petition in the terms whereby the competent authority of the respondent Health Department is directed to allow the petitioners to pursue their medical career on deputation strictly in terms of the Office Order dated 05.3.2020 issued by the respondent Health Department, Government of Sindh. So far as their deputation allowance is concerned, the same shall be decided by the competent authority of the respondent Health Department, without discrimination, in accordance with law, within a reasonable time by providing meaningful hearing to the petitioners.

7. The petition stands disposed of along with the listed application in the above terms.

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