

IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D-7916 of 2019

Date Order with Signature(s) of Judge(s)

For Direction

For hearing of CMA No.7699/2021 (Contempt)

30.05.2022

Mr. Faizan Hussain Memon, advocate a/w petitioner Dr. Iram Bokhari
Mr. Muhammad Nishat Warsi, DAG
Mr. Ali Safdar Depar, AAG
Ms. Amina Saeed Ghani, advocate for respondent No.2 / JPMC a/w
Dr. Muhammad Suleman, Deputy Executive Director JPMC

ORDER

Primarily, this petition was disposed of vide order dated 08.12.2020 with directions to the respondent to finalize the case of petitioners for promotion within a reasonable time. However, it has been agitated that despite categorical directions contained in the above order, no promotion of the petitioners has taken place. Per learned counsel for petitioner No.2 she was appointed as Medical Officer (BS-17) in JPMC on the recommendations of Federal Public Service Commission vide notification dated 20.09.2003 and subsequently she earned promotion in BPS-18 vide notification dated 13.05.2009. Learned counsel referred to the recruitment rules notified on 26.02.1986 adopted by the Sindh Government vide notification dated 16.12.2021 and submitted that petitioner No.2 is eligible for promotion as Associate Professor (BS-19), however, the apathy is that though petitioner No.2 ought to have been promoted to the post of Associate Professor and again the official respondents have kept the petitioner on the post of Assistant Professor (BS-18) vide notification dated 07.12.2021. Learned counsel referred to the order dated 08.12.2021 passed by this Court and submitted that the reasons assigned by the Provincial Selection Board-II in its meeting held on 11.02.2022 by deferring the case of the petitioner for promotion on the plea that she has recently been promoted in BS-18 and did not earn ACR in her present grade with the further assertion that petitioner while working as Medical Officer (General Cadre) in JPMC Karachi she has been promoted as Assistant Professor of Neurosurgery BS-18 (Teaching Cadre) on 07.12.2021, as she is not entitled to further promotion in BPS-19 in terms of the notification dated 07.12.2021. Per learned counsel, the decision of the PSB-II is erroneous and thus liable to be discarded on the premise that the petitioner has been working in BS-18 since 2009 and has the requisite length of service, and is eligible and fit to be promoted to BS-19.

2. Learned AAG has reiterated the stance of Secretary Health, Government of Sindh, vide his statement dated 18.03.2022 and submitted that the petitioner was only placed in BPS-18 and the same was/is not a promotion and in compliance with the order dated 08.12.2020, the petitioner's case was placed before PSB-II and she was considered for promotion in BPS-19 and deferred on the premise that she has recently been promoted in BPS-18 on 07.12.2021 as she did not earn ACR in her present cadre. He prayed for dismissal of the contempt application.

3. During arguments, we have been informed by Dr. Muhammad Suleman, Executive Director, JPMC that the petitioner passed FCPS in Neurosurgery in 2019 and was promoted to Assistant Professor of Neurosurgery (BPS-18) through PSB-II on regular basis with effect from 07.12.2021 vide notification dated 07.12.2021, but she has not assumed the charge of the post so far; that posting of the petitioner as Senior Registrar is only internal arrangement in the same grade and not a promotion in higher grade; that in case of placement of Medical Officers in general cadre in BPS-18, BPS-19 & BPS-20 under the scheme of Improvement in Service Structure of Federal Government Health Services Personnel, there would be no change of their designation, duties, and responsibilities likewise in promotion cases and is only change of grade. Provided that all the Medical Officers are eligible for placement in a higher grade in BPS-18, 19, and 20 on length of service and seniority basis; that in case of promotion to the teaching cadre posts i.e. Assistant Professor (BPS-18), Associate Professor (BPS-19) and Professor (BPS-20), there would change of designation, grade as well as duties and responsibilities; that only those Medical Officers are eligible for promotion to the teaching cadre posts who have passed their postgraduate higher qualification i.e. FCPS, MS, MD or equivalent in their relevant specialty and having the number of research papers. However, Executive Director, JPMC has admitted that the petitioner is eligible and qualified for promotion in BS-19 based on length of service and experience for the subject post in terms of recruitment rules notified on 26.2.1986; and, expressed his inability to discard the point of view of the petitioner on the aforesaid reasons.

4. As per record, petitioner No.2 was appointed as Medical Officer (BPS-17) in JPMC vide notification dated 20.09.2003, and subsequently in the year 2009, her service was placed in BPS-18 under the Scheme of Improvement in Service Structure of Federal Government Health Services Personnel in terms of Finance Division's O.M dated 28.8.1991 read with another O.M dated 20.05.2003; and, subsequently she was entrusted current charge to the post of Associate Professor of Neurosurgery (BPS-18) for three months vide notification dated 12.10.2018. and As per recruitment rules, notified on 26.2.1986, the post of Assistant Professor BPS-18 could only be filled by the Medical Officer BPS-17 and BPS-18 including Lecturers,

Registrars, Senior Registrars, and Demonstrators, etc.; in the Medical Institution; in the Federal Government Medical Institutions having the degree of MBBS or an equivalent medical qualification recognized by Pakistan Medical and Dental Council and/or M.Sc. of recognized University; and, in case of Basic Science subjects in the relevant subjects (for non Medical graduates), Postgraduate higher diploma such as D.Sc. Ph.D., FCPS, MD, MS, M.Phil, etc., in the relevant subject or equivalent qualification recognized by PMDC. Five years of service in BPS-17 and above in the relevant specialty. First preference will be given to teaching experience. Second preference for practical experience after postgraduate qualification. Third preference before postgraduate qualification. Credit should be given to the original published research work in the standard Medical Journal. Whereas, the post of Associate Professor (BPS-19) is required to be filled amongst the Assistant Professors (BPS-18) in the relevant subject including Senior Registrar (BPS-18) in the relevant subject having the degree of MBBS or an equivalent medical qualification recognized by PMDC or M.Sc. of recognized University in case of Basic Science subject (for non Medical graduates). Postgraduate higher diploma e.g. D.Sc. Ph.D., FCPS, MD, MS, M.Phil, etc. in the relevant subject or equivalent qualification recognized by PMDC. 12 years service in BPS-17 and above (relaxable to seven years in case of direct recruits in BPS-18), including five years of teaching experience as Assistant Professor or 10 years Senior Registrar in the relevant subject in the Postgraduate Medical Institutions and/or 12 years service in BPS-17 and above (relaxable to seven years service in case of direct recruits in (BPS-18) including eight years teaching experience as Assistant Professor or 16 years as Senior Registrar in undergraduate Medical Institution in the relevant subject and must have produced at least three research papers or must have produced at least five research papers if teaching experience is in undergraduate Institution.

5. After hearing both the sides this court has concluded that the order dated 08.12.2020 passed by this Court has not been complied with in its letter and spirit, therefore we deem it appropriate to remand the case to the competent authority of PSB-II to reconsider the case of the petitioner for promotion to the post of Associate Professor BS-19 in terms of recruitment rules discussed supra coupled with qualification, eligibility and experience of the petitioner; as petitioner has been serving in BPS-18 since 2009 under the Scheme of Improvement in Service Structure of Federal Government Health Services Personnel in terms of Finance Division's O.M dated 28.8.1991 read with another O.M dated 20.05.2003; and, due to the exigency of service, petitioner was entrusted current charge to the post of Associate Professor of Neurosurgery (BPS-18), thus her case needs to be looked into on the above perspective, preferably within one month.

Let a copy of this order be transmitted to the Competent authority of the respondents for compliance.

Relist after one month.

JUDGE

JUDGE

Nadir*