

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

**CPNo.D-6766 of 2018**

Fazal-e-Rabbi

Petitioner:

Through Syed Shoa-un-Nabi, advocate

Respondent No.1:

Through Mr. Ali Safdar Deepar, AAG

Respondents No.2 and 3:

Through Ms. Farkhunda Shaheen, advocate

Date of hearing

& Decision:

18.01.2023.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this Constitutional Petition, the petitioner is seeking directions to the respondent NED University Karachi to upgrade the post of Compounder/Dresser in BPS-16, so also extend him benefits of Notification dated 13.05.2006 issued by Health Department, Government of Sindh, whereby the service structure of paramedical staff of the Health Department from Grade-1 to Grade-15 was allowed.

2. Syed Shoa-un-Nabi, learned counsel for the Petitioner, contended that the Petitioner is serving as Compounder/Dresser in the Medical Centre of the Respondent University for about 21 years and during his service tenure he acquired higher qualifications. Learned counsel submitted that the Provincial Government has upgraded the post of paramedical staff of the Health Department in various pay scales. He has further contended that the post of the Petitioner is isolated and there is no remote chance of his promotion in near future. The petitioner being aggrieved approached the competent authority for the upgradation of the post of Compounder/Dresser, however, the same request of the Petitioner was declined on 15.09.2017. Learned counsel emphasized that the matter of upgradation does not fall within the ambit of policy decision but it depends upon the upgradation of the service structure of the post, therefore this court has the jurisdiction to entertain the constitutional petition in the light of the

decision rendered by Hon'ble Supreme Court of Pakistan. He lastly prayed for allowing the instant petition.

3. We have heard the learned counsel for the parties and perused the record with their assistance.

4. The entire case of the petitioner rests on the policy decision of the Government of Sindh vide notification dated 13.05.2006 on the subject issue. At this juncture learned counsel for the respondents has emphasized that the Petitioner has claimed his alleged rights based on a policy decision of the Government of Sindh, which has nothing to do with the respondent university as instructions, Rules issued by the Respondent University, which have not been treated as Statutory Rules of the nature, which would bring the case of the University within the qualification that its employees in case of any grievance could maintain the action on the ground of breach of such instructions/rules of service under Article 199 of the Constitution 1973. She further argued that by non-statutory rules of the Respondent University employment of the Petitioner with the answering Respondent University was purely contractual; hence, the Petitioner was governed by the principle of "Master and Servant" and the Petitioner is not an aggrieved person to file Constitutional Petition. She further argued that up-gradation is a policy decision and the petitioner cannot ask for Government policy to be imposed upon the respondent university as such this petition is not maintainable.

5. Primarily up-gradation is distinct from the promotion; and, is restricted to the post and not to the person occupying it; the up-gradation cannot be made to benefit a particular individual in terms of promoting him to a higher post; and, to justify the up-gradation, the respondent university is required to establish that the concerned department needs restructuring, reform or to meet the exigency of service in the public interest; and, in the absence of these pre-conditions, up-gradation is not permissible.

6. Learned counsel for the petitioner submitted that this is a hardship case, as such direction may be issued to the respondents to formulate the service structure of the Medical Centre of the Respondent University. Petitioner referred to

various documents attached with the memo of the petition and extensively submitted that the instant petition may be allowed as prayed.

7. Essentially in service jurisprudence, up-gradation, and its ancillary parts are not part of the terms and conditions of service of a civil/government servant, however, the same could be treated as a policy decision of the respondents. On the subject, we are guided by the decisions of the Honorable Supreme Court rendered in the cases of the Government of Pakistan M/o. Railways v. Jamshed Hussain Cheema and others, **2016 SCMR 442**, Regional Commissioner Income Tax, Northern Region, Islamabad, and another Vs. Syed Munawar Ali and others, **2017 PLC (C.S.) 1030** and Federal Public Service Commission v. Anwar-ul-Haq, **2017 SCMR 890**. Therefore, in our view, the petitioner has been unable to make out a case for the up-gradation of his post and ancillary benefits with retrospective effect, until and unless the respondents start restructuring the service structure of the subject post, and/ or either adopt the policy decision of the Government of Sindh.

8. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed along with pending applications with no order as to costs.

**JUDGE**

**JUDGE**

Nadir\*