

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 3006 of 2022 : Jamal Nasir vs.
Province of Sindh & Others

For the Petitioner : Barrister Faizan H. Memon

For the Respondents : Mr. Shoaib Mohiuddin Ashraf, Advocate
Mr. Ameeruddin, Advocate
Mr. Abdul Waheed Siyal, Advocate
Mr. Bhuro Mal, Advocate
Mr. Ali Safdar Debar,
Assistant Advocate General Sindh

Date/s of hearing : 26.10.2022

Date of announcement : 26.10.2022

JUDGMENT

Agha Faisal, J. The crux of the present determination is whether the respondent number 4 (“Baig¹”) holds office at the respondent number 3 (“JSMU²”) lawfully, despite *admittedly* having been thirteen (13) years beyond the pale of the maximum age limit prescribed for appointment vide the advertisement for recruitment to such office.

2. Briefly stated, JSMU was established per the Jinnah Sindh Medical University Act 2013 (“Act”) and the Jinnah Sindh Medical University Employees (Conditions of Service) Statutes 2016 (“Rules”) govern its terms of employment. Per advertisement dated 23.07.2020 (“Advertisement”), JSMU advertised *inter alia* teaching positions for which applications were solicited. The *maximum age limit* for appointment as professor was defined to be fifty (50) years. Vide the appointment letter dated 18.12.2020, Baig was given appointment by JSMU notwithstanding the fact that Baig was sixty-three (63) years old at the time of her appointment. This *quo warranto* petition was filed in respect of such appointment per Article 199(1)(b)(ii) of the Constitution.

3. Per petitioner’s learned counsel, the appointment was *prima facie* unlawful as admittedly Baig was not even eligible to be considered for the relevant office, on account of her age. It was argued that no relaxation in the age limit was contemplated in the Advertisement, hence, none could have been / was granted.

¹ Dr. Lubna Baig.

² Jinnah Sindh Medical University.

4. Mr. Abdul Waheed Siyal Advocate, representing the respondent no 3 JSMU, unequivocally admitted that Baig was overage at the time of her appointment. It was further admitted that the criterion prescribed vide the Advertisement was not followed by JSMU, however, stated that the same was done in the best interests of the institution as better candidates were not available at the said point in time.

5. The respondent no 4-Baig's counsel assailed the maintainability of the petition and submitted that it was belatedly filed through some proxy, hence, ought to be dismissed outright. In so far as merit is concerned, it was insisted that any age limit, defined via the Act, Rules or Advertisement, was immaterial since the employment was contractual in nature, to be governed solely in terms of the relevant contract. It was added that any infringement of the age limit requirement was remedied by the syndicate of JSMU vide its meeting dated 28.11.2020.

6. Heard and perused. The admitted facts before us are that JSMU required the maximum age limit for the relevant appointment as fifty (50); there was no provision in the Advertisement for any relaxation of age; and Baig was sixty-three (63) years old when appointed to the relevant position.

7. The Advertisement solicited applications for appointment *inter alia* in teaching positions at JSMU and the maximum age limit expressly stated therein for the relevant appointment was fifty (50) years. There is no cavil to the factum that the Advertisement contained no stipulation for relaxation of age. *Admittedly*, Baig was beyond the threshold of eligibility by more than decade. The Supreme Court has maintained that whatever the terms of the advertisement were, the appointments must follow the criterion as disclosed therein without any departure so that no one could raise any objection regarding its transparency³. It was also observed that only those persons that fulfilled the criteria were eligible to be appointed. In the absence of any age relaxation having been contemplated vide the Advertisement, no case for considering such relaxation, if any at all, could be set forth before us.

8. The law makes it clear that candidates are required to meet the advertised criteria for appointment on the date of submission of their applications and any candidate devoid of the requisite eligibility would proffer

³ *Ghayasudin Shahani vs. Akhtar Hussain* reported as 2021 SCMR 1204; 2019 SCMR 1952;

no occasion to be considered for appointment⁴. No cogent rationale could be articulated by JSMU's counsel to justify Baig's application even having been entertained, in the manifest presence of her admitted ineligibility.

9. The objections regarding maintainability hereof cannot be sustained as the *bona fides* of the petitioner, merely placing information before the Court, could not be impeached by Baig's counsel. In so far as the allegation of delay is concerned, it is the petitioner's contention that the requisite information was placed before the Court soon upon receipt and no case is made out before us to consider otherwise.

10. There was never any argument before us that the office being held by Baig was not public in nature. While the appointment to the teaching positions was contemplated to be contractual, the law would squarely be applicable in such regard, inclusive of without limitation the Act and the Rules. The argument by Baig's counsel that the relationship ought only to be governed by a contract, unbridled by law, finds no sanction in law.

11. Reliance was placed on the minutes of a meeting of JSMU's syndicate dated 28.11.2020 to suggest that Baig's ineligibility was condoned / relaxed by JSMU. This argument was made solely by Baig's counsel and was not even seconded by JSMU's counsel. Perusal of the copy of the minutes available on file demonstrate that vide Resolution Syn/22-33/2020 the syndicate approved the selection of candidates, including Baig, to different positions, however, no relaxation of any age limit / eligibility requirement is discernible therefrom. Notwithstanding the Advertisement, even otherwise Rule 8 of the Rules contemplates relaxation of age to the extent of five years only. While there is no document to demonstrate any relaxation having been contemplated / granted, the relaxation of over thirteen (13) years is even otherwise impermissible within the confines of the pertinent rule.

12. In view hereof, we are constrained to observe that the holding of office by the respondent no 4 is found to be devoid of lawful sanction / authority, hence, this petition was allowed vide our short order announced in Court earlier today upon conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE

⁴ *Dr. Shamim Tariq vs. International Islamic University Islamabad* reported as 2020 SCMR 568.