

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-206 of 2023
(*Dr. Kalsoom Begum Lashari v. P.O Sindh & others*)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Mr. Nisar Ahmed Bhanbhro, Advocate along with petitioner.
Mr. Abdul Salam Memon, Advocate for respondent No.6.
Mr. Ali Raza Baloch, Assistant A.G-Sindh a/w Dr. Rukhsar Ahmed Shahani, Principal, Khairpur Medical College, Khairpur.

Date of Hearing(s) : **12-10-2023 & 23-11-2023**
Date of Decision : **23-11-2023**

O R D E R

MUHAMMAD IQBAL KALHORO, J:- Petitioner is a civil servant working as Professor (BS-21 currently) in Gynecology and Obstetrics Department, Khairpur Medical College, Khairpur (**‘the KMC’**), has challenged two notifications dated 22.12.2022 and 28.01.2023 in this petition. By means of former, KMC’s status as a constituent college of Peoples University of Medical & Health Sciences (**‘the PUMHS’**) for Women Shaheed Benazirabad has been recalled/ withdrawn with immediate effect. Whereas, vide latter notification, respondent No.6 has been posted with immediate effect and until further orders as Vice Principal, KMC, against an existing vacancy.

2. The relevant background precipitating her grievance is that when the KMC was not recognized by respondent No.7 (*The Pakistan Medical & Dental Council*) (**‘the PMDC’**) and which had stopped it from granting admission to the students; in order to resolve the issue, the KMC was notified on 19.08.2020 as a constituent college of the PUMHS. After the KMC acquired such status, the PMDC granted it due recognition and hence it started admitting students for MBBS programme. It is informed that currently 500 students are getting education in there. After the KMC became a constituent part of the PUMHS, vide office order dated 21.06.2022, issued by the Registrar, PUMHS, the petitioner was posted as Vice Principal, KMC, as per University Rules and Policy for the purpose of running academic and administrative matters smoothly. She

was continuously rendering services, when status of the KMC as a constituent college of the PUMHS was withdrawn vide notification dated 22.12.2022, impugned here. Since the KMC again become independent of the university, the office order dated 21.06.2022, whereby she was posted as Vice Principal, KMC, was rendered ineffective and inefficacious and she ceased to hold that post as a result thereof. Yet, as per her learned counsel, she continued to serve the KMC as she was. When impugned notification dated 28.01.2023 was issued posting respondent No.6 at her place, indeed there was no vacancy available to be filled. Being aggrieved by both these notifications in the above backdrop, she has challenged the same.

3. It has also been informed that during pendency of this petition, another notification dated 08.07.2023 directing/transferring her to report to the Head Office was issued, which she challenged before the Sindh Service Tribunal in Service Appeal No.649 of 2023, being a civil servant. But ultimately when on 10.01.2023, the petitioner was again posted as Professor in the KMC, the service appeal was withdrawn by her.

4. The petitioner is undisputedly a civil servant, and when was directed/transferred to report to the Head Office, she rushed to the Sindh Service Tribunal for getting relief. But, strangely, quite contrary, the notification, whereby respondent No.6 has been posted at her place as Vice Principal, KMC, she has challenged before this Court. We have asked this question from learned counsel specifically and told him to differentiate between these two different approaches pursued by her. In one case, she has challenged her transfer and posting before the Sindh Service Tribunal; and in another case: transfer and posting of respondent No.6 purportedly relieving her of her assignment, before this Court. In reply, he has drawn our attention to notification dated 22.12.2022, whereby the KMC has been de-constituted as a part of the PUMHS and has stated that it can only be challenged before this Court and not before the Sindh Service Tribunal.

5. In order to justify it further, he has given history of the KMC that it was established in 2015, but the PMDC was not granting it recognition. A campaign by the civil society was vigorously launched for this purpose and various petitions were filed. Ultimately, it was decided

by the government to make the KMC as a constituent of the PUMHS to resolve the issue. According to him, after its merger, the KMC was recognized by the PMDC and allowed to admit 100 students in the first batch. In five years, the number of students has risen to 500 and if the said notification is allowed to hold field, future of those students would come at stake and ruined. Despite lengthy arguments and so many case laws, listed herein below, relied in support thereof, he could not satisfy us why the petitioner opted to challenge the said notification only after she purportedly ceased to become Vice Principal, KMC and replaced by respondent No.6. We have reminded him that she has not challenged the notification dated 22.12.2022 independently, but only when she herself was effected by the subsequent notification, which will make her anxiety, triggered allegedly by her apprehension of the future of students, morphed into her personal interest. And therefore the every request made by her would be seen but from the prism of the notification dated 28.01.2023 affecting her posting as a Vice Principal, KMC. This impression despite his best efforts, learned counsel has not been able to dispel and furnish any aetiology reason behind her apprehension towards the future of students. Further, learned counsel has not succeeded to satisfy us either on the point as to why only the petitioner, out of 200 regular employees working in the KMC, has opted to challenge such action of the government, de-notifying merger of the KMC with the PUMHS; and why out of 500 students purportedly badly affected by such a notification placing them precariously, no one has come forward to challenge the same.

2018 SCMR 1411, 1996 SCMR 1185, 2013 PLD Supreme Court 195, 2021 PLD Supreme Court 745, 2009 PLD Supreme Court 879 and 2021 PLC (C.S.) Note 11.

6. In any case, when we have gone through the comments filed by the PMDC, have come to know of a letter dated 17.12.2020 addressed to the Principal, KMC, alluding to provisional permission, already granted, to admit 100 students for session 2020-21. It is pertinent to mention here that the KMC was made a constituent college of the PUMHS vide notification dated 19.08.2020, whereas, provisional recognition to the KMC was granted vide notification dated 21.01.2020 much prior to its merger with the PUMHS. This letter shows that upon deposit of requisite fee (one percent of tuition fee) for the first year of total seats,

allocated to the KMC, the case of the KMC was to be processed for permanent registration. These both letters show that before the KMC became a part of the PUMHS, it was already recognized provisionally by the PMDC and provisional recognition is, reportedly, still in field and not withdrawn. If this is the case, the ground i.e. future of 500 students at stake as a result of the impugned notification, is apparently not available to the petitioner. Minus such ground, the case of the petitioner to challenge notification dated 28.01.2023 at best is but a hollow attempt to avoid jurisdiction of the Sindh Service Tribunal.

7. Learned counsel for respondent No.6 and learned AAG while assisting the Court have drawn out attention to a notification dated 19.08.2020, declaring the KMC as a constituent college of the PUMHS. And have stated that this notification was not sustainable in law *ab initio* in that actualization of the KMC to be a part of the PUMHS through an executive instrument cannot be done. It can only be achieved through an Act of the Parliament (the Assembly) and therefore this very act of merging the KMC into the PUMHS was illegal and void *ab-initio* and not sustainable in the law. By subsequent notification dated 22.12.2022, such illegality has been rectified. It has not affected anyone including the students, who are getting education without any hindrance and the issue of its permanent recognition is already pending with the concerned quarter. What's more, it is not an issue before this Court. They have further referred to the relevant provisions of the Peoples University of Medical & Health Sciences for Women, Shaheed Benazirabad Act, 2009 to bring home their point of view.

8. Particularly, the provisions which were referred by them are sub-section (ii) of section 2 defining the affiliated college, sub-section (viii) of section 2 defining constituent college and section 3 of the said Act defining establishment and incorporation of the university. It has also been pointed out that as per provisions of this Act, the PUMHS is a body corporate, whereas, the KMC was an entity working under Government of Sindh. Its merger as a constituent college of the PUMHS requires legislation, which in this case was not thought out upfront. The petitioner is a civil servant and simply by an executive order, her status cannot be altered from a civil servant to a public servant, and

until and unless required legislation is carried out, the KMC cannot become a constituent college of the PUMHS.

9. All these arguments have gone un-rebutted *prima facie*. Barring the ground of precarious position of 500 students in case the notification dated 22.12.2022 is allowed to hold field etc., nothing substantive has been offered to convince us with the merits of the case to exercise our discretionary jurisdiction in favour of the petitioner. We cannot look at the said notification in isolation of the notification dated 28.01.2023 which has brought out in light a personal cause of action of the petitioner. Her appointment as a Vice Principal was made by the Registrar, PUMHS in terms of relevant rules governing running of the PUMHS, and not by the Sindh Government, after the KMC had become a constituent college of the PUMHS. However, at the time of its ceasure to be as such, and reversal to previous position, being an entity under the Sindh Government, the said notification lost its force and thus petitioner immediately ceased to be Vice Principal, KMC. The seat was vacant, and it was open to the Sindh Government to fill it accordingly. At the time of notification dated 28.01.2023, the petitioner, in essence, was not the Vice Principal, KMC and therefore had no cause of action to file this petition on.

10. Seeing through these facts, we have not been able to find any illegality in either of the notifications. The question of uncertain future of 500 students in the KMC, or its recognition by the PMDC in fact are not the issues before us and indeed have got nothing to do with official position of the petitioner, who, being a civil servant, cannot even bring lis on this question before this Court individually. Further, no substantial material, the petitioner has referred to in the grounds highlighting illegality in the notification dated 22.12.2022 except repeating her personal grievance in regard to her seniority and her right to hold on to the post of Vice Principal, KMC, her victimization and violation of her fundamental rights. Only in ground (H), vaguely it has been urged by her that the notification dated 22.12.2022 has been issued by the Government of Sindh to achieve unscrupulous goals and it has politicized the institute. These grounds, in essence, are completely different to the case argued by learned counsel before us,

and further are seemingly speculative at best, not likely to result into any authoritative decision.

11. A gist of above discussion is that the maintainability of the petition, in view of the fact that petitioner is a civil servant and she can approach the Sindh Service Tribunal to challenge notification dated 28.01.2023 is under serious question and cannot be lost sight of either. And apparently, in order to make this petition maintainable before this Court, she has challenged notification dated 22.12.2022. But this approach has failed to satisfy us either on merits of the case or maintainability of this petition before this Court.

12. Consequently, we find this petition not maintainable and devoid of merits and **dismiss** it accordingly.

JUDGE

JUDGE

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