

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Suit No. 2916/2021
Plaintiffs : Dr. Muhammad Naeem and others.
Defendants : Federation of Pakistan and others.

Suit No. 1513/2023
Plaintiffs : Dr. Asif Ahmed Qureshi and others.
Defendants : Federation of Pakistan and others.

Date of hearing : 14th & 17th November, 2023.
Date of announcement : 8th December, 2023.

APPEARANCE:

Mr. Waqar Ali Baloch advocate for plaintiff in Suit No.2916/2021.

M/s. Abdullah Azzam Naqvi and Waqar Ahmed advocates for plaintiff in Suit No.1513/2023.

Syed Muhammad Khurram and Muhammad Rahib Lakho advocates for defendant No.3/JPMC in both suits.

Mr. Zeeshan Adhi, Additional Advocate General Sindh and Mr. Ghulam Sarwar Baloch, Assistant Advocate General Sindh.

JUDGMENT

These suits are for declaration and permanent injunctions on the pleadings that following the 18th amendment to the Constitution of Pakistan 1973 a number of federal ministries and their attached department/institutions devolved to the Provinces however under the garb of that amendment Jinnah Post Graduate Medical Centre (JPMC/defendant No.3) was wrongly devolved/transferred to the Province of Sindh vide Federal Ministry of Health's notification dated 30.06.2011; that federal employees/doctors including plaintiffs working in JPMC were deputed to Province of Sindh under section 10 of the Civil Servants Act 1973 vide notification dated 30.06.2011, these employees filed CPs including CP No.D-1692/2011 challenging referred devolution of JPMC

to the Province and this Court vide order dated 04.07.2016 (PLD 2017 Sindh 347) declared the devolution as unconstitutional, without lawful authority and of no legal effect however with certain savings to ensure smooth working of JPMC till process of transfer back to federation is completed, resultantly JPMC and those federal employees always remained under federal control; that referred judgment was upheld by apex court vide order dated 17.01.2019 (2020 SCMR 1) however a review petition was pending however there is no restraining order; that the Province of Sindh is recruiting new employees and making transfer/posting/deputations of medical professionals etc. from institutions/hospitals under Government of Sindh to JPMC as well JPMC is also recruiting consultants/ specialists/post fellows in various specialties to fill up senior vacant posts for which it is the plaintiffs who are entitled to be considered; all these acts of the two defendants are against the spirit of referred judgment/order; latest in series of such illegal activities are impugned Special Daily Order dated 15.11.2021 by Executive Director, JPMC and Notification dated 09.12.2021 by Government of Sindh, first one is also in violation of prevailing services law; hence it was prayed to :-

- a. Declare impugned notice dated 15.11.2021 and letter dated 08.12.2021 illegal, unlawful and of no legal effect and void *ab initio*;
- b. Declare that all the transfers/postings made by defendant Nos.2 and 3 after 29.06.2011 from Province of Sindh to JPMC are illegal and void;
- c. Declare that the Federation Government is solely empowered to transfer/post and/or make new appointment (even on temporary/ad-hoc basis) after following the proper procedure as laid down in the Civil Servants Act, 1973 and the Rules made thereunder;
- d. Declare that Notification No.SO-IV/(T&P-JPMC)/2021 dated 09.12.2021 and all such notifications/office orders as being illegal, unlawful, of no legal effect and void *ab initio*;

- e. Declare that the Executive Director of JPMC cannot hire/depute/transfer anyone without following the due process of law and all such recruitments/transfers/postings are void *ab initio*;
- f. Permanently and pending disposal of the main suit, suspend the operation of the impugned notice dated 15.11.2021 and further restrain the defendant Nos.2 and 3 from intervening/recruiting anyone pursuant to the impugned notice;
- g. Permanently restrain the defendant Nos.2 and 3, their officers and agents from transferring /posting anyone from department/institutes working under the control of Province of Sindh to JPMC;
- h. Permanently restrain the defendant, their officers and agents from taking any coercive action whatsoever against the plaintiffs in consequence of filing this suit;
- i. Grant ad-interim relief;
- j. Award costs and special costs;
- k. Award any other relief deemed fit by this Court.

2. Subsequent Suit No.1513/2023 is on same pleadings with additions that inspite of injunction order dated 13.12.2021 passed in earlier Suit No.2916/2021 impugned Publication dated 07.08.2023 was made by the Executive Director, JPMC, calling for applications for appointment to new posts and/or vacancies, which is in violation of the Judgment/order of this Court, apex Court and against the injunction order, so are subsequent constitution of Selection Committee vide Notification dated 11.09.2023 and undated Notice for scheduling interviews for 13.09.2023. It is emphatically pleaded that to circumvent the Judgments of the two courts, Federation of Pakistan and Government of Sindh entered into impugned Operating and Management Agreement (O&M Agreement) signed on 08.08.2023 having come to an effect through Notification dated 08.08.2023 (Annexure G), by such O&M Agreement, Federation of Pakistan has attempted to hand over JPMC to Government of Sindh however details of that Agreement are yet uncertain; plaintiffs prayed to:-

- a. Declare that the impugned notice dated 11.09.2023 detailed in para-2 supra are illegal, unlawful, of no legal effect and void *ab initio*,
- b. Declare that the impugned publication dated 07.08.2023 detailed in para-2 supra are illegal, unlawful and of no legal effect and void *ab initio*,
- c. Declare all or any actions of the defendants, pursuant to the impugned publication as well as impugned notices detailed in para-2 supra including but not limited to appointments made in the defendant No.3, are illegal and void,
- d. Declare that the impugned notification dated 08.08.2023 as well as impugned settlement agreement detailed in para 19 supra are illegal and unlawful,
- e. Declare that the defendant No.1 is solely empowered to transfer/post and/or make new appointments (whether permanently or on temporary/ad hoc basis) after following the proper procedure as laid down in the Civil Servant Act 1973 and the Rules made thereunder,
- f. Declare that the Executive Director of JPMC cannot hire, depute, transfer and/or post anyone without following the due process of law and all such recruitments/transfers/postings is (are) void *ab initio*,
- g. Permanently restrain the defendants from interviewing/recruitment and/or appointment pursuant to the impugned publication dated 07.08.2023, the impugned notices dated 11.09.2023 as well as the impugned notification dated 08.08.2023 detailed in para 2 and 19 supra,
- h. Permanently restrain the defendant, their officers and agents from transferring, posting and /or appointment anyone from departments and/or institutions working under the controller of defendant No.2 to defendant No.3,
- i. Permanently restrain the defendant, their officers and agents from taking any coercive action whatsoever against the plaintiffs in consequence of filing of this suit,
- j. Award costs and special costs;
- k. Award any other relief deemed fit by this Court.

3. Written statement was filed by JPMC through its Executive Director contending that present suit are not maintainable as subject matter is *sub judice* before this Court in CP No.D-5958/2020. It was pleaded that hiring of post fellow doctors and transfer of medical officers

does not affect the plaintiffs, hiring of post fellow is not a contract, ad-hoc or regular appointment but only stipendiary type hiring to serve patient care and is purely in public interest; that JPMC is a big institution treating more than 4500 patients medically and to meet the growing needs of population, they are expanding its size on public and private partnership basis with aim of improvement in health services and that requires human resources; that after devolution of JPMC to Government of Sindh and subsequently its devolution remain *sub-judice* before this Court and apex Court, a large number of employees, doctors, nurses, paramedical and ancillary staff retired through the passage of time resultantly there were/are a large number of vacancies that are to be filled up immediately for smooth working of the institution; that after getting approval of Government of Sindh, process of hiring was initiated vide order dated 15.11.2021 in best interest of public at large and a committee was formed vide order dated 06.12.2021; that after the devolution matter remains *sub-judice*, Government of Sindh is spending millions of rupees for running the institution and on other hand Federal Government is not spending a single penny even after judgment of the apex court hence there was no option but to shut down some wards or to make arrangements for smooth functioning of JPMC and to provide patient care and continue teaching and training at institution. It was highlighted that an MoU was executed by virtue of article 146 of the Constitution which empowers the Federation Government to do so, and pursuant to settlement agreement process of appointment/recruitment was initiated which is illegally challenged here, hence they prayed for dismissal of suits, permission to hire stipendiary slots of post fellows to meet acute shortage of doctors, allow transfer of medical officers from Government of Sindh to JPMC, permission to recruit against all vacant

posts of doctors, nurses, paramedical and ancillary staff meant for direct recruitment for smooth functioning of JPMC.

4. I have heard learned counsel for plaintiffs and learned Additional and Assistant Advocate General Sindh, perused the record.

5. The learned counsel for the Plaintiffs has argued that the Plaintiffs are Federal Employees in BPS 18, having been appointed after following the due process of law and having taken the exam and interview conducted by the Federal Public Service Commission. It is further argued that JPMC has been declared as a Federal Institution falling under the domain of the Defendant No.1 ("Federal Government") vide Supreme Court of Pakistan's Full Bench's Judgment dated 17.01.2019, reported as 2020 SCMR 1. The Supreme Court upheld the Full Bench's Judgment of this Court reported as PLD 2017 Sindh 347 which had also declared JPMC to be a federal body. It is further argued that in complete derogation of and in utter disregard of the Judgment of the honorable Supreme Court, the Executive Director of JPMC made advertisement and started an exercise of calling for applications for fresh appointments to the JPMC. It is further contended that a similar attempt to induct and appoint doctors and employees was made by the same Executive Director of JPMC which was challenged in Suit No.2916 of 2021. It is also submitted that this Court passed an interim injunction restraining any appointments by JPMC. It is further argued that in addition to the above and to further prejudice the Plaintiffs, Defendant No.2 ("Government of Sindh") and JPMC have also abolished the existing posts and instead have created new posts to which the new appointees shall be posted on pay scales much higher than those of the existing employees. It is further contended that this act besides being illegal and

unlawful, also amounts to prejudicing the rights of current employees including the Plaintiffs who shall be deprived of getting a promotion as either the posts on which they can be promoted to, would have been abolished or occupied by the new contractual appointees. It is further contended that as and when the Plaintiffs will be entitled to a promotion, they would be refused such promotion in view of no existing vacant positions as all such positions would have been filled with contractual appointments that are being made illegally, unlawfully and in utter disregard of the legal framework or the positions on which they would be promoted to would no longer be available since the same would have been converted illegally. It is further contended that if in case the Defendants are allowed to appoint contractual employees on the vacant seats of the civil servants, the same will ultimately render the civil servants without any future promotion prospects as the posts they shall be entitled for will either have been abolished or occupied by contractual employees. One of such example of nefarious agenda of the Defendants is that an Associate Professor of Neurosurgery applied to take charge of the vacant position of Professor of Neurosurgery since she was eligible for the same, however it was denied as it was claimed that the said post has been abolished and no post of Professor Neurosurgery is available in the budget anymore. This shall also be the fate of the Plaintiffs and all like civil servants in case the Defendants are allowed to carry on with their ulterior motives. Lastly, the learned counsel has prayed that the appointments and inductions in the JPMC may be restrained.

6. In contra, the learned counsel for the defendant No.3/JPMC as well as the learned Additional Advocate General Sindh have argued that the provincial and federal governments have entered into MoU in respect of contractual recruitments in accordance with Article 146 of the

Constitution of Pakistan, 1973. It is further argued there is emergent need of the employees in order to fulfill the needs of the hospital to provide better treatment to the citizens; that there is acute shortage of the staff in the JPMC; therefore, subject appointments are necessary; that the Government of Sindh attended all the due promotions and did not defer any promotion and they are still ready to award due promotions to the permanent employees on per their turn; that all the recruitments are being made in the public interest. Lastly, the learned counsel for defendant No.3 and the learned AAG prayed for rejection of the plaints.

7. Perusal of record reveals that this Court passed Order dated 14.11.2023 in the following manner:-

“Partly heard counsel for the respective parties. Since the issue is appointment of contractual employees to cope up the burden of patients on JPMC. The Plaintiffs are permanent employees and their claim is that on the pretext of contractual employees, their right will be disturbed in the way that they will not be considered for promotion on college side and Hospital side. This Court has controverted the proposition to respective counsel that let the Respondents may higher the doctors and other paramedical staff on an emergent/contract basis purely and shall having no effect in any way upon the rights of the Plaintiffs. In case plaintiffs are being considered for promotion in the DPC, their case shall not be deferred/dismissed on account that their seats are already occupied by the contractual employees and whatsoever posts available in JMPC shall not be abolished or posts available prior to the summary dated 26.04.2023. To come up on 17.11.2023 at 09.30 a.m. Interim order passed earlier to continue till the next date”.

8. The proposal was given to the Plaintiffs on the last date of hearing i.e. 14.11.2023 but the Plaintiffs did not agree to such proposal. It is matter of record that as per statement of defendant No.2 (Secretary, Health Department, Government of Sindh), there is shortage of doctors, nurses and paramedics for smooth running of the hospital and in the public interest appointments are to be made. As per Settlement

Agreement between Federal and Provincial Governments, the Government of Sindh was authorized for Operating and Management of Jinnah Postgraduate Medical Centre for a period of 25 years in the light of Article 146 of the Constitution of Islamic Republic of Pakistan, 1973, which provides that: *“Notwithstanding anything contained in the Constitution, the Federal Government may, with the consent of the Government of a Province, entrust either conditionally or unconditionally to that Government, or to its officers functions in relation to any matter to which the executive authority of the Federation extends”*.

9. Pursuant to the Settlement Agreement between Federal Provincial Governments, the Government of Sindh created the positions to further assure 24/7 quality patient care. Consequently, the Government of Sindh invited applications from eligible Pakistani Nationals having domicile of Sindh who fulfill the requisite criteria to fill up the posts as mentioned against each post in impugned Publication, for a period of one year purely on contractual basis if agreeable to serve in shift wise duty.

10. The action of defendant No.3 in appointing the contractual employees for a period of one year is in the public interest and to cater the emergent need of hospital to provide treatment to citizens round the clock. The Government of Sindh has stated that all the due promotions of the employees of JPMC have already been attended to and Government of Sindh also undertook and assured that in future the contractual recruitments shall not affect the promotions of the Plaintiffs and other permanent employees.

11. A welfare state must serve larger public interest. “*Salus populi suprema lex esto*” means “let the welfare of the people be the supreme law” and “*Salus populi suprema lex*”, translated to “the health of the people is the supreme law”. A state instrumentality must serve the society as a whole and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own resources, as it cannot serve such higher purpose while in deficit.

12. A welfare state denotes a concept of government in which the State plays a key role in the protection and promotion of the economic and social wellbeing of all of its citizens, which may include equitable distribution of wealth, equal opportunities and public responsibilities for all those who are unable to avail for themselves, minimal provisions for a decent life. It refers to “Greatest good of greatest number and the benefit of all and the happiness of all”. It is important that public wealth will be the commitment of the State, where the state is a welfare state. A welfare state is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a Welfare State is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a Welfare State. A Welfare State provides State sponsored aid for individuals from the cradle to the grave. However, a welfare state faces basic problems as regards what should be the desirable level of provision of such welfare services by the state, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare state is one, which seeks to ensure maximum happiness of

maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 37 & 38 of the Constitution of Pakistan *inter alia* provide that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and political rights. These rights may cover, means of livelihood, healthcare and the general well-being of all sections of people in society, especially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives to achieve the same.

13. In such circumstances, the Plaintiffs cannot be allowed to take advantage of the federal issue in order to hamper and frustrate the main aim and object of the MoU entered into between the Federal and Provincial Governments in accordance with the provisions of Article 146(1) of the Constitution of Pakistan, 1973 in order to cater with the emergent needs of the hospital to provide treatment to the people round the clock. Thus, the Plaintiffs do not have prima facie case in their favour, nor the balance of convenience lies in their favour. If the recruitments purely on contract basis are not made, the public at large shall suffer irreparable loss rather than the Plaintiffs. However, there are no material propositions of law and fact in these suits on which the issues could be framed and evidence of the parties could be recorded.

14. For the foregoing reasons, both the Suits of the Plaintiffs are hereby disposed of in terms of Order XV Rule 1 C.P.C. Accordingly

the Government of Sindh shall be at liberty to make recruitments purely on contract basis in accordance with MoU entered into between the Provincial and Federal Governments. However, all the rights and privileges of the Plaintiffs in respect of their services shall not be prejudiced on the reason of contractual recruitments of the employees as per MoU executed between the federal and provincial governments and the rights of the Plaintiffs as to their due promotion shall not be taken away on the basis of impugned recruitments of the contract employees. The parties to the lis are left to bear their own costs.

IK

J U D G E