

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1134 of 2022

(Dr. Shahzad Tarique & another versus PO Sindh & others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.
Mr. Arbab Ali Hakro, J.

Dates of hearing : **21.11.2023, 18.01.2024**
& **22.02.2024**

Date of announcement : **06.03.2024**

Mr. Sarfraz A. Akhund, Advocate for petitioners.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh along with
Dr. Sikandar Memon, Focal Person of Health Department.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioners claim to be Assistant Professors / Demonstrators in Khairpur Medical College, Khairpur. Their case is that in order to improve health facilities and structure in the Province of Sindh, the Government had separated the Management Cadre from general cadre of doctors, and in this regard, rules called as the Sindh Health Management Service Rules, 2022, were framed. In view of Rule 18 thereof, the doctors of all cadres were given one time option/ exercise to opt for permanent transfer from their own cadre to Management Cadre, but subject to requisite qualification. Petitioners, duly qualified, also submitted their option forms to the Health Department, but the same have not been considered mainly on the ground that since they belong to teaching cadre, they do not have the option to exercise one time choice / exercise and seek permanent transfer to the Management Cadre.

2. We have heard learned Counsel for the petitioners and learned AAG Sindh along with Focal Person present. The relevant Rule 18 reads as under:

“18. One-time Exercise: (1) Notwithstanding anything contained in the provision of these rules the Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of the permanent transfer from amongst the officers of General Cadre Doctors / Specialist Cadre Doctors / Dental Surgeons of health Department, Government of Sindh, in equivalent basic pay scale who have the qualifications of Master in Public Health / M.S.P.H. / M.Sc. Health Policy and Management / M.Sc. Hospital Management / MBA in Health Management or Hospital Management / M.Sc. Epidemiology. All Masters Degrees must be recognized and verified from Higher Education Commission in addition to the mandatory MBBS / BDS and opt for absorption.”

3. This rule shows that all the Doctors belonging to General Cadre, Specialist Cadre or Dental Surgeons of Health Department have been conferred with one time option to seek permanent transfer to Management Cadre, subject to having required qualification in Master in Public Health / M.S.P.H. etc. It is not disputed that petitioners have the requisite qualification and therefore entitled to have the benefit of above rule. The only ground to deny them such benefit is that they belong to teaching cadre, which is not incorporated in the said rule. But learned AAG has not succeeded in establishing a reason as to why this cadre has been left out, and what is the reasonable classification behind such exclusion. The Focal Person appearing for the Health Department had submitted that since in entire Sindh, except petitioners, two other Assistant Professors are teaching in Medical Colleges working under the Sindh Government, they have not been considered eligible for this benefit. But he had agreed that were there more than four doctors like petitioners, they would be given the option of one time exercise in terms of Rule 18 of the Sindh Health Management Service Rules, 2022.

4. It is apparent that the reason behind not giving the petitioners benefit of the ibid rule is not based on any reasonable classification. It is founded mainly on quantity of petitioners being the only two out of four in the entire Sindh. This reason is basically rooted in apprehension that in case they are transferred to Management Cadre, no one would be left to teach the students in the relevant medical colleges. Such ill based speculative apprehension cannot be allowed to run over the scheme under Article 25 and 27 of the Constitution, which declares that all citizens are equal and entitled to equal protection of law, in addition to safeguards against discrimination in service. Finding a qualified suitable candidate for a vacant seat is the responsibility of the government, which it has to fulfill according to law. Denying an opportunity to the petitioners to join Management Cadre on the ground of seats falling vacant in the event of their transfer is discriminatory and shows only the weakness of the government to deal with the aftermaths.

5. The other argument of learned AAG that the cadre of petitioners viz. Assistant Professors/Demonstrators in Medical College, Khairpur is not incorporated in Rule 18 of Rules 2022, and hence, they are not entitled to it, is not founded on any logical proposition. In the said rule all the cadres, regulating services of doctors, have been addressed implying that all the doctors with requisite qualification, irrespective of nature of their job, are competent to exercise one time option in terms of the said rule for transfer

to the Management Cadre. Absence of mention of a particular denomination, the petitioners are serving in being doctors, in the rule does not seem to be intentional but an inadvertent omission seemingly based on lack of assistance in providing knowhow about petitioners' service. That glitch, in the event of it being adjudicated to spur discrimination against equally placed people, can be obliterated in view of the principle of equality of all citizens before the law. The petitioners are doctors, have requisite qualification, and equally placed with those who have been conferred with such option, entitling them equally to avail benefit of transfer to the Management Cadre in terms of Rule 18.

6. Learned AAG, while arguing the case, had raised the point that since petitioners are civil servants, and the relief being sought by them is directly related to the terms and conditions of their service, the petition is not maintainable. We do not however agree with him, due to a simple analogy that exercising option/one time exercise in the light of Rule 18 of Rules 2022 is not concerned with the terms and conditions of service of the petitioners. The option to avail such exercise has been provided by law to all the doctors of varied cadres working in the Health Department, who are also civil servants like the petitioners with same qualification i.e. Master in Public Health etc. Therefore, denying the same benefit to the petitioners on the ground that it is going to change the terms and conditions of their service is neither valid nor sustainable.

7. In view of above discussion, the petition is **allowed**. The case of the petitioners would be considered by the respondents in terms of Rule 18 of the Sindh Health Management Service Rules, 2022, and decided in accordance with law.

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Abdul Basit