

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Constitutional Petition No. D-201 of 2022  
(Dr. Muhammad Abrar & others v Federation of Pakistan & others )

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and order:- 07.10.2025**

Mr. Faizan Hussain Memo, advocate for the petitioners.  
Ms. Wajiha Maryam Mehdi, Assistant Attorney General  
Mr. Ali Safdar Depar, AAG  
Ms. Saima Imdad, AAG  
Mr. Rahib Ali Lakho, advocate for respondent No.4  
M/s Ali Abid Zuberi & Imran Ali Mahar, advocates for interveners  
Syed Nadir Ali Rashdi, advocate, holds brief for Mr. Abdul Waheed Siyal,  
advocate for respondent No.5-JSMU  
Dr. Adeel, Deputy Director JPMC Karachi

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**ORDER**

**Muhammad Karim Khan Agha, J:**                      The Petitioners Pray for this  
Court to:

1. *Direct the immediate and full implementation of the Supreme Court's judgment reported in 2019 SCMR 556 and 2020 SCMR 1.*
2. *Declare that the Provincial Government has no lawful authority to make appointments, transfers, postings, or deputations of its employees to JPMC.*
3. *Set aside the impugned Notification dated December 9, 2021, concerning the transfer of Sindh Government employees to JPMC.*
4. *Restrain all respondents from making any new appointments in JPMC by direct recruitment until the matter is resolved in accordance with the judgment.*

2.        This petition is filed by Medical Officers of Jinnah Post-Graduate Medical Centre (JPMC), a federal institution, challenging the actions of the provincial government (Respondents No. 2 & 3) following a Supreme Court judgment. The central grievance is the failure of the Provincial Government of Sindh and the Federal Government to implement the Supreme Court's decision in the case of Government of Sindh vs Dr Nadeem Rizvi, **2019 SCMR 556**. It is submitted by the petitioners that the Supreme Court had declared the transfer of JPMC (and its employees) from the Federal Government to the Provincial Government, following the 18th Constitutional Amendment, as unconstitutional and of no legal effect. The Court directed that JPMC, including all employees, must be returned to the Federal Government within 90 days.

3.        The petitioners, who are employees of the Federal Government and subject to the Civil Servants Act, 1973, claim their fundamental rights are

being violated due to the non-compliance. Specifically, they allege that their career progression and eligibility for promotion (e.g., to BS-18, 19, 20) are being prejudiced and delayed due to the ongoing litigation and the provincial government's actions. They submitted that the Provincial Health Department (Respondent No. 3) issued a notification on December 9, 2021, unlawfully transferring and posting Sindh Government employees to posts within JPMC, which is a federal institution. They further submitted that employees of the Jinnah Sindh Medical University (JSMU), an autonomous body under the provincial government, are being illegally deputed to and given control as Executive Director, Dean, etc., over JPMC departments, which is a federal entity. They submitted that the provincial respondents continue to exercise control over JPMC's affairs, appointments, and employee matters, unilaterally and unlawfully, despite the Supreme Court's order divesting them of authority.

4. The petitioners' counsel argued that the actions of the provincial respondents are illegal, arbitrary, mala fide, and in direct contravention of the Civil Servants Act, 1973, and the Supreme Court's binding judgment. He further submitted that the impugned Notification dated December 9, 2021, concerning the transfer of Sindh Government employees to JPMC is illegal and in violation of the law laid down by the Supreme Court. He prayed to allow this petition by enforcing the judgment of the Supreme Court in the case of Dr Nadeem Rizvi, **2019 SCMR 556**, under Article 187, Clause (2) of the Constitution.

5. learned Assistant Attorney General and Advocate General, and counsel for the respondent JSMU argue that the final decision on the institution's fate is still sub judice before the Supreme Court due to the review petition, and even the Federal Government has shown an intention to leave the concerned hospital/institutions under provincial control. Both AAGs submitted that the Supreme Court directed that until the handover exercise is completed, all matters about JPMC, including financial and salary disbursements, must continue on the same basis as on the date of the judgment. Therefore, the petition is premature till the review application is decided, and should be dismissed.

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

7. The operative part of the Supreme Court's judgment in the case of Governemnt of Sindh Vs Dr Nadeem Rizvi supra is clear in terms that till the exercise contemplated is not completed, all matters about the Institutions shall continue on the same basis as on the date of the judgment including but not limited to financial and budgetary matters, disbursement, outlays and expenditures including disbursement relating to the payment

of salaries, pensions and suchlike matters" the supreme court directed as supra. An excerpt of the judgment is reproduced as under:-

“7. While upholding and reiterating the declarations and orders passed in the impugned judgment, we declare as follows:-

- i. Transfer/devolution of SZMC, JPMC, NICVD, NICH, and NMP is declared to be unconstitutional, without lawful authority, and of no legal effect;
- ii. All acts done or orders, directions, notifications, and directives issued or made pursuant to the purported transfer/devolution or to give effect to the same in any manner whatsoever, which are inconsistent with or in derogation of the tenor of this order to the extent of inconsistency are declared to be without lawful authority and of no legal effect;
- iii. Within 90 days of this judgment, the Federal and Provincial Governments and all related Departments shall take all necessary steps relating to return of the aforementioned Institutions from the Provinces to the Federation. The position of these Institutions shall, as far as possible, be restored to the position as on the date when they were transferred to the Provinces. It is, however, clarified that the restoration and return as aforesaid shall include resumption of the employees by the Federation in relation to the Institutions and all serving or retired officers, employees or servants thereof. In case, the aforesaid exercise cannot be completed within the aforementioned period of 90 days and an extension is required, any of the Governments can move appropriate application before this Court seeking extension for reasons spelt out in the application;
- iv. Till such time as the aforesaid exercise is completed, all matters relating to the Institutions shall continue on the same basis as on the date of this judgment, including but not limited to financial and budgetary matters, disbursement, outlays, and expenditures, including disbursement relating to payment of salaries, pensions, and related matters;
- v. All ongoing projects/contracts in which partial payments have been made shall be taken over by the Federation, and balance payments shall be made by it. However, all contracts completed within the past one year and equipment supplied in the same period, which had actually arrived at the Institutions or in the process of being supplied or has already been installed, shall be paid for/reimbursed to the Provinces by the Federation;
- vi. In case the Federation and any of the Provinces are unable to resolve any matter, with regard to compensation or payments to be made, the same shall be deemed to be a dispute between the Provinces and the Federation. In that case, the aggrieved party shall be entitled to seek its remedy in accordance with the Constitution and the law;
- vii. All statutory instruments, including Acts and Ordinances passed or issued in relation to the aforementioned Institutions shall stand suspended. Nothing in the Provincial Laws shall in any manner hinder, restrict, or impede or otherwise affect the return of any of the aforementioned Institutions to the Federation;

- viii. A committee shall immediately be constituted for working out the modalities for smooth, trouble free and seamless transition and transfer of the aforementioned Institutions from the Provinces to the Federation and to deal with and make recommendations regarding all aspects of such transfer including terms and conditions of employment, seniority, assimilation, etc. in the service of the Federation and all other matters directly, indirectly or incidentally relating to the same. In case a need arises, the Federal Government shall initiate such legislation as may be necessary for the effective completion and operation of the aforementioned Institutions; and
- ix. The Federal Government shall also allocate and disburse such funds as may be necessary to maintain the level of services being provided in the aforementioned Institutions presently and to progressively improve the environment and running of all Institutions in a more efficient, effective, and patient-friendly manner.”

8. We have been informed that the Supreme Court judgment dated 17 January 2019 has not been implemented by the Federal or Provincial Governments, resulting in administrative and financial paralysis at the following institutions:

*Sheikh Zayed Postgraduate Medical Institute, Lahore*

*Jinnah Postgraduate Medical Centre, Karachi*

*National Institute of Cardiovascular Diseases, Karachi*

*National Institute of Child Health, Karachi*

9. However, the same stance was also taken up by the employees before the Supreme court in Criminal Petitions No.110,111,115 and 116 of 2019 in Civil Appeal No.125-K of 2026 and the supreme court vide order dated 4.11.2019 observed that due to lack of funding and indecision between federal and provincial authorities, staff were denied salaries, promotions, and benefits, and hospital operations were suffering. The Additional Attorney General stated that although the Federal Cabinet had, on 2 July 2019, decided “in principle” to hand over these institutions to the provinces, this decision had not been implemented and was being reconsidered. The Supreme Court expressed serious concern over the non-compliance with its earlier judgment and directed the Federal Minister and Secretary, Ministry of Health, to appear personally and explain the steps taken. The Provincial Governments of Punjab and Sindh were also ordered to submit reports. The Supreme Court emphasized that the service rights of doctors and staff are protected by law, and the provincial governments must ensure these institutions operate efficiently to uphold citizens’ fundamental right to healthcare. The matter was ordered to be re-listed in the week commencing 18 November 2019. Now it is stated that the same issue is pending adjudication before the Supreme Court.

10. This is a well-established rule of judicial propriety and hierarchy that once the Supreme Court has taken cognizance of a matter, whether in

appeal, review, or original jurisdiction, no High Court can assume jurisdiction over the same matter. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Federation of Pakistan v. Aitzaz Ahsan and others (PLD 1989 SC 61), Government of Sindh v. Sharaf Faridi (PLD 1994 SC 105).

11. The Supreme Court in the case of Ardeshir Cowasjee v. Karachi Building Control Authority (PLD 1999 SC 288) held that the High Court has wide powers under Article 199, but these powers are not unfettered. The High Court cannot exercise jurisdiction in a manner that collides with or undermines Supreme Court proceedings.

12. The Supreme Court in the case of Haji Saifullah Khan v. Federation of Pakistan (PLD 1989 SC 166) held that the filing of a review application before the Supreme Court suspends the finality of the judgment to the extent of the review. During this pendency, no subordinate court (including the High Court) may act in a way that could affect the outcome of the review.

13. The Supreme Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483) held that when the Supreme Court is seized of a matter, the High Court has no jurisdiction to entertain a petition involving the same subject matter. Judicial propriety demands that lower courts refrain from parallel proceedings.

14. Primarily, Article 187 Clause (2) of the Constitution imposes a constitutional obligation on all executive and judicial authorities (including High Courts) to act in aid of the Supreme Court. This means that no authority can obstruct, impede, or interfere with proceedings or orders of the Supreme Court. All institutions, including High Courts, must facilitate the enforcement or implementation of Supreme Court decisions and processes. It also extends to pending cases, including review proceedings under Article 188 of the Constitution. The Supreme Court in the case of Sharaf Faridi supra held that Article 187(2) requires that all judicial and executive authorities must act in aid of the Supreme Court. Any act by a High Court that interferes with a matter pending before the Supreme Court would be inconsistent with this constitutional duty. As such, when a review application is pending before the Supreme Court, the matter is deemed to be “pending before the Supreme Court” within the meaning of Article 187(1) of the Constitution. Therefore, Article 187(2) obliges the High Court and all other authorities to act in aid of, not in contradiction to, the Supreme Court.

15. In the matter, judicial propriety demands that when a Review Application is pending before the Supreme Court, on the subject issue

filed by a Provincial Government, this Court cannot pass any order that directly or indirectly relates to the issues under review; as the supreme court has held that “Till such time as the aforesaid exercise is completed, all matters relating to the Institutions shall continue on the same basis as on the date of this judgment, including but not limited to financial and budgetary matters, disbursement, outlays, and expenditures, including disbursement relating to payment of salaries, pensions, and related matters.” In such circumstances, any such interference would amount to judicial impropriety and jurisdictional overreach. Only the Supreme Court can pass interim orders, stay proceedings, or modify the effect of its earlier judgment pending review.

16. We refrain from interfering in the subject matter and dispose of this petition along with pending application(s), observing that the petitioners, if aggrieved by the decisions of both governments, may seek an appropriate remedy before the Supreme Court.

Head of the Constitution Benches

JUDGE