

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-5165 of 2026
(*Dr. Memoona Rehman versus Province of Sindh and others*)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing & order: 17.8.2026

Mr. Malik Naeem Iqbal, advocate for the petitioner

ORDER

Adnan-ul-Karim Memon, J. The Petitioner prays that this Court declare the Provincial Cabinet decision dated 05.08.2026, Agenda Item No.16, and the Universities & Boards Department letter dated 10.08.2026, insofar as they provide for the re-employment/contractual appointment of Respondent No.6 as Professor at Jinnah Sindh Medical University for three years, to be without lawful authority and of no legal effect, and to set aside the same. The Respondents may further be restrained from implementing the impugned decision, issuing any appointment order in favour of Respondent No.6, or permitting her to join or continue as Professor thereunder. It is further prayed that any vacancy of Professor in Gynecology & Obstetrics at JSMU be filled strictly in accordance with the applicable statutes and regulations, based on seniority-cum-merit and through the transparent selection process already initiated by advertisement and open to all eligible faculty members, including the Petitioner. The Petitioner also seeks costs and any other relief deemed just and proper in the circumstances.

2. At the very outset, we asked the counsel for the Petitioner to satisfy this Court about the maintainability of the petition.

3. The learned counsel for the Petitioner submitted that the petition is maintainable under Article 199 of the Constitution as the impugned Cabinet decision and consequential departmental action for recommendation of private respondent are without lawful authority, contrary to the JSMU Act, applicable Statutes and the PM&DC Notification, and involve violation of the Petitioner's legal and constitutional rights. He contended that the Petitioner, being a regularly appointed Associate Professor in the same specialty, is directly aggrieved by the proposed re-employment of Respondent No.6, as it affects her legitimate expectation and prospects of promotion to the post of Professor. It was further argued that no adequate or efficacious alternate remedy is available to the Petitioner and that the matter involves questions of legality and lawful exercise of public authority, thereby attracting the constitutional jurisdiction of this Court in

the nature of mandamus. He contends that the re-employment/contractual appointment of Respondent No.6 as Professor for three years, made through a person-specific Cabinet decision just two days before her superannuation, is illegal, without lawful authority and void ab initio, being contrary to the JSMU Act, 2013, the Statutes framed thereunder, the PM&DC Notification dated 19.05.2026 and the binding principles laid down by the Supreme Court. He submitted that since the post was already advertised and a competitive selection process was underway, there was neither any exigency nor exceptional circumstance justifying such re-employment of private respondent, rendering the impugned action colourable and discriminatory. He argued that the absence of advertisement, transparent selection, comparative merit assessment and recorded reasons of indispensability further vitiates her proposed appointment. He added that the Petitioner, a regularly appointed Associate Professor in the same specialty, asserts a legitimate expectation of consideration for the higher post and contends that the impugned action adversely affects the career progression of serving faculty, contrary even to the PM&DC Notification relied upon by the Respondents. Accordingly, the impugned departmental letter and consequential proposed appointment are without lawful authority, violative of Articles 4, 9, 14 and 25 of the Constitution and principles of natural justice and equality. He prayed to allow the petition.

4. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance.

5. The Constitution, through Article 175(2), confines the jurisdiction of this Court to that under any law. Under Article 199 of the Constitution, the jurisdiction of this Court is subject to the condition that no other adequate remedy is provided by law and that the petition is brought by an aggrieved party. Thus, the petitioner must cross two jurisdictional hurdles: first, establish the absence of an adequate alternate remedy; and second, demonstrate the requisite status of an aggrieved party as recognized by superior Courts, besides, challenging the decision of Cabinet being a policy matter. Where neither condition is satisfied, this Court lacks jurisdiction to entertain the petition, unless the impugned order is shown to be mala fide, which is not the case in the present matter as the decision has been made by the Cabinet.

6. In the present case, we have been informed that the direction has been issued pursuant to a policy decision of the Provincial Cabinet. The Provincial Cabinet, after considering the matter in the larger public interest and with a view to ensuring continuity of specialized healthcare services, academic leadership, postgraduate medical education, research and institutional excellence, directed the Vice-Chancellor, Jinnah Sindh Medical University (JSMU), to consider the

appointment of Prof. Dr. Nighat Shah as Professor for a period of three years, in accordance with the prescribed procedure under the PM&DC Notification dated 19th May 2026. Pursuant thereto, the Universities & Boards Department directed the Vice-Chancellor to take necessary action for her appointment strictly in accordance with the prescribed procedure and applicable provisions of the said PM&DC Notification. An excerpt of the Cabinet decision is reproduced as under:-

"The Provincial Cabinet directed that the Vice-Chancellor, Jinnah Sindh Medical University (JSMU), in the larger public interest and with a view to ensuring continuity of specialized healthcare services, academic leadership, postgraduate medical education, research, innovation and institutional excellence, should consider the appointment of Dr. Nighat Shah as Professor of Jinnah Sindh Medical University (JSMU) for a period of 03 (three) years as per the prescribed procedures laid down in Pakistan Medical & Dental Council (PM&DC) Notification dated 19th May, 2026."

7. In exercise of the constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the High Court does not sit as an appellate forum over the decisions of the Cabinet, particularly where such decisions fall within the administrative or executive domain and are taken in accordance with the procedure prescribed by law and pursuant thereto, the Universities & Boards Department directed the Vice-Chancellor to take necessary action for her appointment strictly in accordance with the prescribed procedure and applicable provisions of the said PM&DC Notification, which decision prima facie has not been made.

8. Prima facie, the said Cabinet decision suffers from no jurisdictional defect, nor has any mala fide been established on the part of the executive as portrayed to warrant interference under Article 199 of the Constitution.

9. Besides, Regulation 36 of the PM&DC Regulations, 2025 does confer a right upon faculty of public-sector institutions to remain in service beyond the prescribed retirement age as per the applicable Government policy.

10. Similarly, the PM&DC Notification dated 19.05.2026 is enabling in nature and permits contractual engagement of retired faculty member subject to institutional requirements, applicable laws and rules, the decision on which is yet to be made as per law. However, it is made clear that the seniority of proposed promotion of employee of the respondent-University shall not impede based on the contractual proposed appointment of respondent No.6 for the reason that there is distinction between retention and re-employment which is material. Upon superannuation, the existing service relationship comes to an end and any subsequent engagement constitutes a fresh contractual appointment requiring an independent lawful basis and compliance with the applicable statutory and selection procedure, which is the domain of the respondent university and at this

stage interference under Article 199 of the Constitution is not called for in the policy decision, safeguarding the rights of serving officers.

12. The Cabinet decision dated 05.08.2026, although founded upon stated considerations of public interest and institutional continuity, did not itself appoint Respondent No.6 but directed consideration of her appointment in accordance with the prescribed procedure. It consequently could not dispense with the requirements of the JSMU Act, 2013, the Statutes or the applicable recruitment framework. This assumes greater significance because the post of Professor in Gynecology & Obstetrics and re-employment immediately upon superannuation, for a further period of three years, requires consideration by the respondent university under the law.

13. It is a settled principle of constitutional jurisprudence that policy decisions or appointments made by the competent authority, especially where the statutory framework requires such exercise cannot be interfered with unless the same are shown to be patently illegal, *coram non judice*, *mala fide*, or in violation of any mandatory provision of law.

14. The PM&DC Notification itself requires that contractual engagement of retired faculty should not adversely affect the promotion prospects or career progression of serving faculty. Accordingly, the proposed re-employment need not to effect the promotion of the deserving candidate; it must independently conform to the JSMU Act, the Statutes, applicable Government policy and the prescribed appointment procedure, for that this Court under Article 199 of the Constitution cannot substitute our own point of view at this stage; therefore, this petition is found to be not maintainable under Article 199 of the Constitution, which accordingly dismissed in *limine*. Listed applications also stand disposed of.

JUDGE

JUDGE

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