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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE

(JUDICIAL DEPARTMENT)

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W.P. No. 82061/2022.

Dr. Ummara Munir.

Versus

Federation of Pakistan through Secretary Ministry of National Health Services, Regulation & Coordination (NHRSC), Government of Pakistan, Islamabad & others.

JUDGMENT

Date of hearing	06.04.2023
For petitioners	Mr. Muhammad Nadeem Iqbal Zahid, Advocate.
For the Respondents	Mr. Waseem Majeed Malik, Addl. A.G. Mr. Sheraz Zaka, Assistant Attorney General. M/s Mudassar Naveed Chattha and Javed Gill, Advocates for respondents No.2 and 3. Hafiz Muhammad Asad Muneer representative of PM&DC / Respondent No.6 along with Dr. Habib Ullah, AR PM&DC Regional Officer, Lahore.

ASIM HAFEEZ, J. This and connected constitutional petitions, bearing W.P. No. 82054/2022 and W.P. No. 82066/2022 raise common questions of law, and are decided collectively through this single decision.

Controversy in nutshell:

2. Grievance summed up is that petitioners, who claimed to have had acquired the qualification of MCPS, seek exemption from requirements of FCPS Part-1 ('exemption claimed'), claiming that upon lapse of 5 years, after having the qualification of MCPS, petitioners become eligible for exemption. Petitioners claimed that Pakistan Medical and Dental Commission (PM&DC) considers and

acknowledges the qualification(s) of MCPS, being equivalent to M.Phil., therefore, in acknowledgment of such equivalence, College of Physicians and Surgeons of Pakistan (CPSP) shall also consider and acknowledge the equivalence of MCPS as M.Phil., for the purposes of allowing the exemption claimed by petitioners, in the discipline of '*Forensic Medicine*'. Petitioners had requested for grant of exemption from the requirements of FCPS Part-I but declined, thorough intimation dated, 31.05.2021, by CPSP in wake of change in the exemption rules, notified through *Notification No. Ref # CPSP/Sect/202/70 dated 26th February 2020 ('Impugned Notification')*. Petitioners seek judicial review of the decision(s) of CPSP under the doctrine(s) of '*legitimate expectation / promissory estoppel*'.

Respective Submissions by learned counsels:

3. Primarily, petitioners claimed that respective qualification(s) achieved entitle them for grant of exemption from the requirements of FCPS Part-I, *claiming that qualification of MCPS be treated as equivalent to M.Phil., being recognized by PM&DC, and after lapse of five years petitioners be declared eligible for grant of the exemption claimed.*

Learned counsels refer to documents showing acknowledgement on the part of PM&DC, affirming date(s) of achievement of qualification(s) of MCPS by each of the petitioners, including certificate(s) of experience issued to each of the petitioners. Adds that requisite fee was deposited with CPSP, hence, enforceable rights accrued in favour of the petitioners, which rights are enforceable in law under the doctrine of legitimate expectation, and same cannot otherwise be rendered ineffective upon claiming change in the policy regarding the exemption rules. Learned counsels refer to the decisions in the cases of "*PAKISTAN THROUGH SECRETARY MINISTRY OF COMMERCE and 2 others. Vs. SALAHUDDIN and 3 others.*" (**PLD 1991**

SC 546), “HASHWANI HOTELS LIMITED. VS. FEDERATION OF PAKISTAN and others.” (PLD 1997

SC 315), “MST. FATIMA FARYAD and others. Vs. GOVERNMENT OF PUNJAB and others.” (2020

CLC 836) and “DEWAN SALMAN FIBRE LTD. And others. Vs. FEDERATION OF PAKISTAN, through Secretary, M/O Finance and others.” (2015 PTD 2304).

On the issue of equivalence, petitioners relied upon and referred to the '*Regulations for the Appointment / Promotion of Faculty / Teaching Staff / Examiners / Principals / Deans/Vise Chancellors in Undergraduate & Postgraduate Medical & Dental Institutions / medical Universities of Pakistan 2018 (Section – II thereof)*' (the '**Regulations 2018**'). And plead continuity of policy qua the exemption allowable under the erstwhile exemption rules / policy, with respect to the requirements from FCPS Part-1.

4. Report and para-wise comments on behalf of respondents No.2, 3, 6 and 7 are available on record, and comments submitted by CPSP, and PM&DC are relevant for the purposes of present controversy.

5. In nutshell, it is the case of CPSP – [which authority, besides performing other functions, is exclusively entrusted with the powers to prescribe and regulate qualification(s) and requirements for the purposes of grant of Membership of College of Physicians and Surgeons (MCPS) and Fellowship of College of Physicians and Surgeons (FCPS)] – advocated by learned counsel that no right had arisen, nor could any right be claimed in the absence of any specific representation(s) made, promise(s) undertaken or assurance(s) provided to the petitioners, individually. Adds that exemption rules vary from time to time and no permanence, in respect thereof, could be claimed. Adds that petitioners are eligible to seek qualification of FCPS Part-I upon fulfilling revised requirements. It is reiterated that no direct or specific representation was addressed that terms of

exemption rules would not alter / change, which variation was a routine matter, hence, no prejudice could be alleged upon change in criterion / policy, enforced through Notification of 26.02.2020. Adds that change in the policy was guided by overriding public interest and intended to forestall depreciating academic standards, to make specialist studies competitive and achieve academic excellence. Learned counsel for CPSP submits that no violation of doctrine of legitimate expectation / promissory estoppel was committed, which doctrine(s) are not attracted to the cases of the petitioners.

6. The nub of the case, on behalf of PM&DC, is that qualification(s) and equivalence claimed by the petitioners in terms of Regulations 2018 are not relevant for the purposes of claiming exemption from the requirements of FCPS Part-I. It is categorically asserted in the report / para-wise comments, submitted on behalf of PM&DC, that no equivalence certificate was ever issued / granted to the petitioners for the purposes of exemption from the requirements of FCPS Part-I.

Determination:

7. At the outset, authority / domain of the CPSP to frame, introduce and amend exemption rules is not disputed under the purview of Pakistan College of Physicians and Surgeons Ordinance 1962. Policy / exemption rules were not impugned, nor any jurisdictional error pointed in respect thereof. No document is available on record to demonstrate specific representation made or assurance extended to the petitioners by CPSP or to establish that exemption was ever granted and withdrawn thereafter. Nothing is available on record to demonstrate that petitioners had, forthwith upon acquiring the qualification of MCPS, ever sought assurance or conveyed their willingness to seek exemption from the

requirements of FCPS Part-I. Petitioners approached CPSP few months before change was affected in the exemption rules. Mere filing of application would not *per se* entitle petitioners to claim exemption from the requirements of FCPS Part-I. It is inferred from the record that petitioners approached CPSP, which directed them to produce documents, including equivalence certificate(s) issued by PM&DC.

When asked, learned counsel for the petitioners referred to certificate(s) of Recognition of Experience allegedly issued by PM&DC, and addressed to concerned institutions / hospital(s), where petitioners were serving / employed. It is notable that such certificates were issued after change in the exemption rules – Notification was dated 26th February 2020.

8. Certificates of recognition of experience are examined. Petitioners have misconstrued contents of those certificates, which cannot be construed as equivalence certificate(s) – otherwise being deficient in material details and contained no reference to the factum of the equivalence claimed. Certificates procured cater for the requirement of certain appointment(s). Petitioners' counsel emphasized that qualification(s) of MCPS be treated equivalent to M.Phil., based on Regulations 2018, which assertion made ignores the scope and context of the Regulations 2018. I am afraid that argument must fail, being misconceived. It is not for this court to ascertain and determine the equivalence of qualifications claimed upon construing the Regulations 2018, when PM&DC itself had categorically denied status of said certificates as equivalence certificates. It is expedient to reproduce relevant paragraph of the report / para-wise comments, which reads as,

"6. That the contents of paragraph No.6 are incorrect hence vehemently denied. Petitioner is trying to mislead this honourable Court. PM&DC never issued equivalence to the petitioner regarding his qualification i.e. MCPS (Forensic Medicine and Toxicology) with M.Phil (Forensic Medicine & Toxicology). The referred letter in this paragraph in this para only petitioner's experience certificate not equivalence certificate."

[Emphasis supplied]

9. There is another aspect of the matter. Certificates were issued after revision in the exemption rules – details are provided hereinbelow.

Sr. No.	Petition.	Recognition of experience (date of certificate and length of experience)
1.	W.P. No. 82061 / 2022	10.06.2020 (showing experience of 05 years and 04 days)
2.	W.P. No. 82066 / 2022	08.09.2020 (showing experience of 04 Years 4 Months 28 days)
3.	W.P. No. 82054 / 2022	15.07.2020 (showing experience of 05 Years 01 Month and 13 days)

10. Notification was issued on 26th February 2020. In these circumstances, no vested right could be claimed to have been accrued in favour of the petitioners. Even the requirement of experience of five years was not achieved by the date of the notification of change in the exemption rules.

11. Petitioners claim immunity from application of revised exemption rules based on doctrine of legitimate expectation, both procedural and substantive legitimate expectation. Applicability of doctrine of legitimate expectation is subject to the fulfilment of certain conditions, exceptions and relevant qualifications. Requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction, are summed up as; making of specific representation, likely recipient of the representation made, either an individual or group of persons, detriment caused in wake of reliance on the representation, circumstances / factors for change / withdrawal of representation, if so made and acted upon, overriding public interest in case promise is reneged, case of apparent unfairness,

unreasonableness and misuse of power. In the case of R v North and East Devon Health Authority, ex parte Coughlan ([2001 QB 213; [2000] 2 WLR 622) three probable scenarios were discussed in the context of plea of legitimacy of expectation, relevant paragraph is reproduced hereunder, (para 57),

There are at least three possible outcomes. (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representations, giving it the weight it thinks right, but no more, before deciding whether to change course. Here, the court is confined to reviewing the decision on Wednesbury grounds (Associated Provincial Picture Houses Ltd. v Wednesbury Corp [1948] 1 KB 223). This has been held to be the effect of changes of policy in cases involving the early release of prisoners; see In re Findlay [1985] AC 318; R v Secretary of State for the Home Department, Ex p Hargreaves [1997] 1 WLR 906. (b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontroversial that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see Attorney General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reasons advanced for the change of policy, taking into account what fairness requires. (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether the frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."

12. *Lis* at hand is examined in the context of the requisite conditions / situations narrated in the case of 'Coughlan' (supra) – situation depicted in first category is attracted as legitimacy of expectation is not established. Question of

applicability of legitimate expectation is considered in the proximity of the facts involved.

I find specific representation, promise or assurance conspicuous by its absence. Exemption rules were changed, and such change was not directed towards the petitioners specifically, but the policy was revised in general, applicable to a class / category of persons – aspirants for achieving FCPS Part-I. No individual prejudice is caused or convincingly pleaded. It is for the petitioners to prove entitlement before seeking benefit of doctrine of legitimate expectation. Petitioners failed to establish such entitlement. Certificate(s) of recognition of experience are found deficient, even if representation or assurance, was presumed to have had been conveyed in terms of erstwhile exemption rules. Petitioners claimed that vested rights accrued were frustrated by the change in policy, relating to the exemption rules, which claim in the wake of non-fulfilment of relevant qualifications does not attract doctrine of legitimate expectation / promissory estoppel. The claim of vested rights is erroneous. It is not the case of the petitioners that exemption rules were changed after the grant of exemption from FCPS Part-I or after registering the petitioners for FCPS Part-II. CPSP considered the request of the petitioners and declined to entertain request in wake of absence of any existing rights qua revised exemption rules. Merely seeking of requisite documents by CPSP for considering eligibility for exemption claimed does not give rise to any alleged vested or enforceable right. None of the petitioners had any existing right to seek enforcement of erstwhile exemption rules, in absence of specific representation / assurance extended.

13. Learned counsel insisted that change in the policy was petitioners specific and same had prejudiced their careers. It is appropriate to discuss the rational

pledged for change in policy, though neither any specific representation was found, nor presence of requisite conditions are present, attracting doctrine of legitimate expectation. Representatives of CPSP were present and pleaded that change in the exemption rules was made based on and guided by public interest considerations, i.e., to elevate and improve the standards of specialized studies by introducing undertaking of examination. Whether requisite conditions for meeting public interest were sufficiently met before changing exemption rules? Rationality and legality qua claimed public interest need to be examined in the context of denial on the part of PM&DC. When confronted, learned counsel for the petitioners failed to establish relevance and applicability of Regulations 2018 for the purposes of present controversy, which regulations cater for appointment / promotion in Medical and Dental Institutions – PM&DC otherwise disowned granting of equivalence certificate.

14. The scope of judicial review jurisdiction can certainly be extended to adjudicate factum of allegations of unreasonableness – comparatively in the context of principles of *Wednesbury reasonableness test*, articulated in the case of Associated Picture Houses Ltd. v Wednesbury Corp. [1948] 1 K.B.223] – or abuse of authority and unfairness in the purported exercise of authority by the public body, affecting alleged private rights, but not otherwise. And unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion, which encroachment is deprecated. Elements of unreasonableness, abuse of authority, act of discrimination and instances of arbitrary change in the exemption rules are conspicuously missing – change in exemption rules was not directed towards the petitioners but a consequence of change in the policy and thinking, influenced by

public interest – betterment of academic excellence and raise in standard of specialist studies. If argument of the petitioners is accepted it would imply that every medical graduate, having acquired qualification of MCPS, even a day before the issuance of Notification regarding revision of exemption rules, would continue to claim exemption from FCPS Part-I exams, under the doctrine of legitimate expectation, for next five years. This is absurd. This position, if acknowledged, would place unnecessary and unreasonable restraint / fetter on the power of the CPSP to modify / change the policies, claimed to be guided by overriding public interest. No such constraints / restrictions could be imposed to circumvent the discretion extended to CPSP through statutory sanction. In the cases at hand absence of specific representation / assurance is lacking, hence, petitioners are required to fulfil requirement of detrimental reliance – instance of purported detriment caused due to reliance upon alleged representation. To elaborate the necessity of detrimental reliance, in the context of the present controversy, reference is made to the views expressed by Prof. Paul Craig in the Textbook, Administrative Law (Sweet & Maxwell) Seventh Edition 2012 at page 688, and cited in the case of R. (Bibi) v. Newham London Borough Council [2002] 1 WLR 237] Para 30 thereof, reproduced hereunder as,

But he gives the following instance of a case where reliance is not essential.

"Where an agency seeks to depart from an established policy in relation to a particular person detrimental reliance should not be required. Consistency of treatment and equality are at stake in such cases, and these values should be protected irrespective of whether there has been any reliance as such."

15. I do not find the necessity to reconcile contrast in the pleas respectively raised by CPSP and PM&DC. PM&DC took the position that no equivalence certificate was issued to the petitioners, and reliance on the certificate of

recognition of experience was misplaced. CPSP dismissed request in wake of change in the exemption rules - CPSP applied criterion prescribed in terms of revised rules and did not consider the eligibility claimed as relevant factor, based on recognition of experience certificate(s) otherwise issued, after revision in the exemption rules. On shaper focus, pleas raised are not found mutually destructive. Petitioners made twofold submissions. Firstly, they claimed eligibility based on certificate(s) of recognition of experience, and secondly, sought protection against change in the exemption rules on the premise of doctrine of legitimate expectation. Petitioners failed on both counts. Claim of eligibility was knocked down by PM&DC, which disowned issuance of equivalence certificate(s) and claim of legitime expectation fails on merits, in wake of the circumstances / facts narrated and discussed. Hence, no vested right could be claimed to displace the effect of revised exemption rules. In view of the facts of the instant case, neither the doctrine of procedural legitimate expectation nor substantive legitimate expectation is attracted. No purpose would be achieved by referring the matter to PM&DC or CPSP, in absence of fulfilment of relevant qualifications and changed circumstances – whereby the exemption rules were revised / changed. Petitioners are still capable of acquiring fellowship qualification(s) upon fulfilling requirements / qualifications for FCPS Part-1, as prescribed in the impugned Notification and notifications issued subsequently. Allowing exemption / walk-over to the petitioners from the requirements of FCPS Part-1 examination would otherwise tantamount to discriminatory dispensation, putting other Medical graduates, who have or likely to appear in FCPS Part-1 examination, in disadvantageous / unequal position – upon extending unwarranted preference to the petitioners in the absence of any enforceable right. Petitioners are required to

prove legitimacy of expectation, purportedly resulting in frustration of the doctrine of legitimate expectation, but same are unsuccessful. The case-laws referred by the counsel for petitioners is examined and found inapplicable to the facts of the case, when relevant qualification(s), as claimed by the petitioners, are lacking and additionally the legitimacy of expectation is conspicuously wanting.

16. While looking for the case law on the subject, I lay hands on judgment reported as "**Regina (Patel) v General Medical Council**" ([2013] 1 WLR 2801); [2013] EWCA Civ 327), wherein claim of legitimate expectation was allowed. It is apt to discuss the circumstances in which the claim was allowed, and how instant petitions are distinguishable on facts. Claimant sought enforcement of assurance, extended by General Medical Council (GMC), body responsible for registering and regulating the doctors in United Kingdom, with respect to provisional registration of the claimant, based on the qualifications achieved upon seeking assurance from the Council. Facts are that claimant approached GMC and asked specifically, whether if the claimant completes the pre-clinical course by distance learning from foreign university, would he be provisionally registered. GMC responded in writing – through email - and assured the claimant that the Council accepts the primary medical degree from the University in question for the purpose of provisional registration. This assurance was specifically addressed to the claimant, which assurance was materially relied upon. And in these circumstances, claim based on doctrine of legitimate expectation was allowed. Comparison of the facts of said case with the facts of the cases at hand establish that no specific, clear and unambiguous assurance / representation was made by CPSP to the petitioners, nor any such assurance was pleaded. Hence, legitimacy of expectation is not established, and consequently the doctrine is not available. No support could be

drawn from the ratio of decision in the case of '*Regina (Patel) v General Medical Council*' (supra).

17. In view of the reasoning narrated hereinabove, I am not persuaded to invoke judicial review jurisdiction and proceed to review the legality of decision of the CPSP. All these petitions fail on merits and same are, hereby, dismissed. No order as to the costs.

(Asim Hafeez)
Judge

Announced in Open Court on 28.04.2023.

Judge.

*z Nasir**

Approved for reporting.