

(Appellate Jurisdiction)

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ

MR. JUSTICE SH. AZMAT SAEED

(On appeal from judgment dated 11.11.2015, passed by the Peshawar High Court, Peshawar, in W.Ps. No.2926-P, 3000-P, 2926-P and 3000-P/2012, respectively)

CA.1528/2016	Chief Executive, Lady Reading Hospital, Peshawar and another Vs. Dr. Hikmat Ullah Jan and others
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For the Appellants : Mr. Abdul Latif Afridi, ASC
Mr. Khalid Anwar Afridi, ASC
(in CAs.1525 and 1526/2016)

Mr. Shakeel Ahmed, ASC
Mr. M. Amjad Khan, AOR (absent)
(in CAs.1527 and 1528/2016)

For Respondent No.1 : Mr. Ghulam Nabi Khan, ASC
(in CAs.1525 and 1526/2016)

Nemo
(in CAs.1527 and 1528/2016)

Date of Hearing : 24.10.2016

SH. AZMAT SAEED, J.- Through this

judgment, it is proposed to adjudicate upon Civil

Appeals Nos.1525 to 1528 of 2016, which are directed against a consolidated judgment dated 11.11.2015 of the learned Peshawar High Court, Peshawar.

2. The brief facts necessary for adjudication of the *lis* at hand are that vide Office Order dated 26.9.2012, Dr. Farhat Abbas (Appellant in Civil Appeals Nos.1525 and 1526 of 2016) was promoted as Associate Professor of Cardiology (BPS-19). The private Respondent namely, Dr. Mehmood-ul-Hassan challenged the same before the learned Peshawar High Court, Peshawar through Writ Petition No.2926-P of 2012, while the private Respondent namely Dr. Hikmat Ullah Jan also challenged the said Office Order through Writ Petition No.3000-P of 2012. In the aforesaid Constitutional Petitions besides calling into question the aforesaid Office Order dated 26.9.2012, the *vires* of the Regulations for the Appointment of Faculty Professorial Staff/ Examiners/Principals/Deans/Administrative Staff in Undergraduate & Postgraduate Medical & Dental Institutions of Pakistan, 2011, hereinafter referred to as "the Regulations of 2011", were also challenged. Both the Constitutional Petitions were heard together

and allowed vide impugned Judgment dated 11.11.2015, whereby the office Order dated 26.9.2012 promoting the Appellant Dr. Farhat Abbas as Associate Professor of Cardiology (BPS-19) was set aside and a direction was issued for reconsideration of the appointment of an Associate Professor of Cardiology from among the candidates having the basic qualification and experience in the relevant speciality i.e. Cardiology.

3. Appellant Dr. Farhat Abbas challenged the impugned Judgment through Civil Petitions Nos.3548 & 3649/2015, while the Chief Executive, Lady Reading Hospital, Peshawar and Dean PGMI, Peshawar, who had been impleaded as Respondents before the learned High Court challenged the impugned Judgment before this Court through Civil Petitions Nos.52-P & 53-P of 2016. All the aforesaid Civil Petitions were heard together and leave was granted by this Court vide Order dated 26.5.2016. Hence, these Civil Appeals.

4. We have heard the learned counsel for the parties and have perused the available record.

5. Appellant Dr. Farhat Abbas had the qualification of FCPS in Medicine, while the private

Respondents/Writ Petitioners namely, Dr. Mehmood-ul-Hassan and Dr Hikmat Ullah Jan qualified FCPS in Cardiology. All the aforesaid Doctors were serving as Assistant Professors. However, Dr. Farhat Abbas had been appointed earlier as an Assistant Professor. In pith and substance, it was the case of the Writ Petitioners/private Respondents that under the law only, the Assistant Professor, *inter alia*, having FCPS in Cardiology could be considered for the appointment as an Associate Professor of Cardiology, which qualification was not possessed by Appellant Dr. Farhat Abbas. It was also the case of the private Respondents that Regulation 19 of the Regulations 2011 scribing to the contrary was illegal and invalid.

6. It is a common ground between the parties that the qualification for appointment of teaching staff in Medical Institutions is governed by the Regulations framed by the PMDC. The current Regulations, invoked and applicable to the facts of this matter, are the Regulations of 2011, referred to above. With regard to the additional qualification and experience relevant for appointment as an Associate Professor of Cardiology is prescribed as follows:-

"Required postgraduate (additional) qualification.

PM&DC level III qualification in respective subject or general FCPS / M.S/M.D OR other equivalent level III qualification in the speciality approved by SRC and recognized / registered by PM&DC.

Required experience.

Five years teaching experience as an Assistant Professor in the relevant subject"

7. Furthermore, the said Regulations of 2011 are also contained Regulation 19, which reads as follows:-

Regulation-19

"Eligibility for appointment in the sub-specialities like cardiology, Psychiatry, Cardiac Surgery, Orthopedic Surgery etc shall be as per a level III qualification in the sub-specialities. However, a candidate who possess postgraduate qualifications like FCPS, MD, MS in General Medicine or General Surgery etc is also eligible for appointment as Assistant Professor in the sub-specialities if he has at least three years teaching experience in a recognized institute in the relevant sub-speciality and then shall be promoted in the same sub-specialities as Associate Professor and Professor with the requisite teaching experience as prescribed in these Regulations under the respective speciality. However for appointment as senior registrar in the sub-speciality, there shall be no prerequisite of experience in that sub-speciality only if the candidate already holds and qualifies for a position of senior registrar in General Medicine or General surgery as the case may be. Once a holder of qualifications like FCPS MD, MS in General Medicine or General Surgery etc; attains the post of Assistant Professor in a sub-speciality than there shall be no preference given to specific sub-speciality degree holder for subsequent posts."

8. An accumulative reading of the two provisions in *juxtaposition* leaves no manner of doubt that the academic qualification, include the Level III qualification in the sub-specialities or General FCPS. Furthermore, Regulation 19 clearly provides that if a candidate is qualified for the position of Senior Registrar in General Medicine or General Surgery etc and is a holder of FCPS, MD, MS in General Medicine or General Surgery etc and attains the post of Assistant Professor in a sub-speciality then no preference will be given to a person, who is holding the FCPS in the requisite field, for the purpose of the appointment to further post including that of Associate Professor. It is a common ground between the parties that Appellant Dr. Farhat Abbas in terms of Regulation 19, reproduced hereinabove, holds the requisite qualification, as an Assistant Professor of Cardiology with the requisite experience, hence was entitled to be considered for the appointment and was appointed as an Associate Professor of Cardiology. It is also a matter on record that Appellant Dr. Farhat Abbas is senior to the private Respondents namely, Dr. Mehmood-ul-Hassan and Dr. Hikmat Ullah Jan.

9. It is perhaps in view of the clear and obvious interpretation of Regulations, 2011 that the private Respondents challenged the *vires* of Regulation 19 of Regulations, 2011, which have been framed in exercise of the powers conferred under Section 33(2) of the Pakistan Medical & Dental Council Ordinance, 1962. The learned counsel for the private Respondents at the bar could not identify how the said Regulations, 2011 particularly, Rule 19 is *ultra vires* to the PM&DC Ordinance, 1962. In fact, it has not been so held by way of the impugned Judgment nor the Regulation 19 has been struck down. Furthermore, none of the grounds available in law for striking down the said subordinate legislation were pleaded or established on record either before the learned High Court or before this Court. In this view of the matter, we are not persuaded to hold that the Regulation 19 of the Regulations of 2011 is *ultra vires* or invalid.

10. As a consequence whereof, in view of the clear and obvious import of the Regulations of 2011 more particularly Regulation 19, Dr. Farhat Abbas was duly qualified to be promoted as an Associate Professor of Cardiology and the Office Order of his

appointment as an Associate Professor of Cardiology was valid in law and could not be set aside by the learned High Court.

11. Consequently, in the above circumstances, these Civil Appeals are liable to be allowed and the impugned judgment dated 11.11.2015 is also liable to be set aside and the Writ Petitions Nos.2926-P of 2012 and 3000-P of 2012 filed by the private Respondents merit dismissal.

12. The aforesaid are the reasons of our short order of even date, which are reproduced herein below:-

"We have heard arguments of learned ASCs for the parties and perused the case record. For the reasons to be recorded separately, these appeals are allowed. The impugned judgment is set aside and Writ Petitions, filed by Respondent No.1 in these cases, before the Peshawar High Court are dismissed."

Chief Justice

Judge

Islamabad, the
24th October, 2016

Judge

'APPROVED FOR REPORTING'

Safdar/*