

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1284-2020

Dr. Akhtar Ali

Versus

Federation of Pakistan and others.

Petitioner by:	Mr. Ahsan Hameed Dogar and Mirza Waqas Qayyum, Advocates
Respondents by:	Barrister Muhammad Mumtaz Ali, AAG. Mr. Zulfiqar Khalid Maluka, Advocate for respondent No.6. Muhammad Arfan, S.O (Lit-V), Establishment Division. Majid Khan, Assistant Director (Legal), M/o NHR&C. Syed Jamil Hussain Sheerazi, Asst: Registrar (FMTI/PIMS).

Date of Decision: 17.09.2021.

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MOHSIN AKHTAR KAYANI J. Through the instant writ petition, the petitioner Dr. Akhtar Ali has prayed for issuance of directions to respondents No. 1 to 5 for repatriation of respondent No.6, Dr. Muhammad Shafique Arshad to his parent department i.e. Jinnah Postgraduate Medical Center (JPMC), Karachi or the Federal Government Services Hospital (Poly Clinic) with immediate effect. Petitioner has further assailed the appointment of respondent No.6 being Professor of Cardiology (BPS-20) and claims that he be appointed as Professor of Cardiology (BPS-20) with all consequential back benefits.

2. Brief facts referred in the instant writ petition are that petitioner is working as Cardiologist at Cardiac Centre in PIMS on a project post, which is meant for establishment of the Cardiac Centre at PIMS after approval in the year 2007-08 by the ECNEC and

petitioner was selected as Cardiologist (BPS-18) on contract basis. The case of the petitioner was placed before Cabinet Sub-Committee for regularization in terms of Regularization Policy, 2011 on 14.12.2011 and on 24.09.2012 and same was deferred being project employee on 11.03.2013. However, other similarly placed employees have been recommended by the Cabinet Sub-Committee, as a result of the same, petitioner had filed W.P No.1433/2013, whereupon the matter was referred back to Cabinet Sub-Committee vide order dated 11.09.2014. In the meanwhile Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013 was promulgated and the PIMS has been taken over by the said university under the law and all rights and interests available to PIMS with liabilities were transmitted to Shaheed Zulfiqar Ali Bhutto Medical University. Ministry of Finance has granted the approval for creations of regular posts from non development side vide office letter dated 09.09.2015 and the Ministry of Finance also vested all the powers to the Ministry of CADD for initiation of recruitment process. However, project was completed and a committee of the university has given approval to advertise the post of Professor of Cardiology (BPS-20) in daily Express newspaper dated 01.09.2016 and petitioner being eligible and qualified person applied for the same and has got recommended by the Central Selection Board dated 13.07.2017, but the appointment has not been notified and respondent No.6 has been promoted vide notification dated 20.03.2020 as Professor of Cardiology (BPS-20) without deciding the fate of the petitioner, which was only pending for issuance of notification.

3. Learned counsel for the petitioner contends that respondent No.6 was appointed through FPSC on 02.11.1993 as Medical Officer (BPS-17) in Jinnah Postgraduate Medical Centre (JPMC) at Karachi and transferred to Federal Government Services Hospital, Islamabad

with immediate effect, who later on was transferred to PIMS, although he is not regular employee and he cannot be retained forever on the said position in the PIMS hospital. He further contends that respondent No.6 lacks qualification and he has been promoted by superseding Dr. Muhammad Naeem, Associate Professor, who fulfills the eligibility criteria for the said position. He further contends that respondent No.6 is not entitled to retain said position as he is a regular employee of Jinnah Postgraduate Medical Center (JPMC), Karachi or the Federal Government Services Hospital or as the case may be and he should be repatriated to the parent department without giving any benefit in the PIMS.

4. Conversely, learned AAG alongwith officials of Ministry of National Health Services Regulations & Coordination, Islamabad contend that petitioner is not an aggrieved person in terms of law from the promotion of Dr. Muhammad Shafique Arshad as Professor of Cardiology (BPS-20) of PIMS, as petitioner was working as Assistant Professor Cardiology (BPS-18) on contract basis and his contract has already been expired on 31.12.2019. It has further been contended that petitioner has not filed any departmental appeal against respondent No.6 in terms of Civil Servants (Appeal) Rules, 1977 and as such, petitioner has earlier filed W.P No. 1088/2020 before this Court seeking similar relief pursuant to recommendation of Selection Board of Shaheed Zulfiqar Ali Bhutto Medical University dated 13.07.2017, as such he is precluded from agitating the matter again. He further contends that the petitioner was recommended for appointment for the post of Professor of Cardiology (BPS-20) as a stop gap arrangement, though the petitioner has never been notified on the said position. He further contends that respondent No.6 was a regular employee of Federal Government Services Hospital, who was selected through FPSC and was posted at Jinnah Postgraduate

Medical Center (JPMC), Karachi for the first time and later on transferred to Federal Government Services Hospital and then to Pakistan Institute of Medical Sciences (PIMS), therefore, his appointment as well as his promotion could not be challenged by the petitioner in any manner under the law.

5. Learned counsel for respondent No.6 contends that petitioner has no right to challenge the very appointment of respondent No.6, who being nominee of FPSC and a civil servant was selected through FPSC in the year 1993 and remained as a civil servant during his entire service in Federal Government Services Hospital as well as in PIMS. He further contends that his promotion could not be challenged by a third person, especially when the due process has already been adopted by the Central Selection Board and the appointment has been confirmed by the Prime Minister of Pakistan vide notification dated 20.03.2020, issued by Ministry of National Health Services Regulations and Coordination, Government of Pakistan.

6. Arguments heard and record perused.

7. Perusal of record reveals that petitioner was appointed as Assistant Professor (BPS-18) on contract basis in PSDP project of Cardiac Centre of Pakistan Institute of Medical Sciences (PIMS), Islamabad dated 21.11.2007 for a period of two years till the availability of regular/FPSC's nominee, whichever is earlier. The last contract of the petitioner was extended upto 31.12.2019 and the FPSC's nominee has joined the post of Assistant Professor of Cardiology (BPS-18), PIMS on 07.05.2020 vide notification dated 30.06.2020 by the NHSR&C. The case of the petitioner for regularization of his service was forwarded to the Cabinet Sub-Committee on two occasions, but the committee has not approved the regularization of contract of employees of PSDP project of PIMS,

which is reflected from the correspondence available on record. However, the petitioner filed W.P No. 1433/2013 and matter was again referred to Cabinet Sub Committee and same was concluded on 30.06.2015, but the committee has not regularized the services of the petitioner. In the meanwhile, status of Pakistan Institute of Medical Sciences (PIMS) was shifted due to promulgation of Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013 and the administrative control of Cardiac Centre, previously belonging to PIMS, was taken over by the University in terms of Section 3(5) of the Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013. After considerable period, Shaheed Zulfiqar Ali Bhutto Medical University (Amendment) Act, 2018 has been enacted, as a result of the same, Pakistan Institute of Medical Sciences (PIMS) has been again declared as attached department of the Ministry of National Health Services Regulations and Coordination on 06.02.2018, therefore, all the posts of PIMS including Cardiac Surgery Unit, became civil posts of the Federation of Pakistan, when the PIMS was under the administrative control of University under the Act. The post of Professor of Cardiology (BPS-20) was advertised in newspaper, whereby the petitioner has applied for the same and case has been processed by the Selection Board and recommendation was given, which is considered to be a stopgap arrangement, but after the amended Act, the situation again changed in Cardiac Surgery Unit and Pakistan Institute of Medical Sciences (PIMS) was again declared as the attached department of the Ministry of Health, as a result of the same, the recruitment process initiated by Shaheed Zulfiqar Ali Bhutto Medical University, was not further acted upon, rather became past and closed chapter.

8. The comments filed by the Ministry reveals that the process of recruitment by Shaheed Zulfiqar Ali Bhutto Medical University for the post of Professor of Cardiology (BPS-20) has been considered illegal

by the Ministry of National Health Services Regulations and Coordination, Government of Pakistan. However, this Court will not indulge into such intricacy. The petitioner has been confronted regarding his status, who is aggrieved with the notification dated 20.03.2020, whereby respondent No.6 has been appointed as Professor of Cardiology (BPS-20) by the Central Selection Board after approval by the Prime Minister of Pakistan, whereby it has been contended that the respondent No.6 is ineligible, who does not fulfill the eligibility criteria provided under the law for the promotion in (BPS-20), though all these aspects have thoroughly been taken into consideration by the Central Selection Board.

9. There is no cavil to the proposition that working paper placed before the Central Selection Board spells out that respondent No.6 was appointed on the recommendation of Federal Public Service Commission (FPSC) as Medical Officer on 02.11.1993 and posted to Jinnah Postgraduate Medical Center (JPMC), Karachi, who was transferred to Federal Government Services Hospital on 24.04.1996 by the Ministry of National Health Services Regulations and Coordination and then transferred to PIMS on 22.03.2005, later on, he was promoted as Senior Registrar (BPS-18) on 18.11.2006 then as Assistant Professor (BPS-18) on 09.06.2014 and Associate Professor (BPS-19) on 05.10.2017. Respondent No.6 was further promoted as Associate Professor by the Departmental Selection Board on 17.01.2017, he was further promoted to Professor Cardiology (BPS-20) in PIMS on the recommendation of Central Selection Board vide notification dated 20.03.2020, issued by Ministry of National Health Services Regulations and Coordination.

10. The above referred details clearly demonstrate that respondent No.6 is a civil servant from inception of his service as evident from the record and there is no bar on Ministry of National Health Services

Regulations and Coordination, Government of Pakistan to appoint any of his employee to any station in Pakistan or transfer the same while considering exigency of service or requirement in different hospitals. However, the petitioner is not aggrieved person in terms of law to challenge the promotion of respondent No.6 in any manner, especially when the rival competitor of the petitioner namely Dr. Muhammad Naeem, Associate Professor of Cardiology has not assailed the promotion of respondent No.6 in any manner.

11. There is another important aspect of this case i.e. the status of petitioner, who himself is neither a civil servant nor has any right to claim the post of Professor of Cardiology and it is not right of the petitioner under any law to claim appointment against the post of Professor of Cardiology, whose process of selection during the regime of Shaheed Zulfiqar Ali Bhutto Medical University has already been scrapped, which fact has not been denied by the petitioner himself. The case of the petitioner is altogether different on multiple grounds, whereby he is seeking his own rights *viz-a-viz* challenging the rights of respondent No.6, although this Court in **W.P No.2465/2017 (Dr. Muhammad Shafique Arshad and another Vs. Vice Chancellor, Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad etc.)** has decided the question of civil post for conversion in Cardiac Centre, claimed by Shaheed Zulfiqar Ali Bhutto Medical University, whereby it was held that the civil servants and the employees of Shahid Zulfiqar Ali Bhutto Medical University are two different sets of employees and their terms and conditions are different to each others, even their positions, quota and other related matters are governed under different sets of rules and regulations as they are working in their relevant channels under different legislation.

12. This Court is also mindful of the fact that Dr. Muhammad Shafique Arshad respondent No. 6 has also been considered by the

apex Court vide judgment dated 18.10.2018 in Crl. O.P. No.18/2015, H.R.C No. 25394/2014 alongwith other cases in Category-I while observing:-

After having considered the report of the Committee headed by the Joint Secretary, CADD, constituted pursuant to the order of this Court dated 07.11.2016, we find that the issue of service structure of Pakistan Institute of Medical Sciences, Islamabad (PIMS) and others hospitals has not been attended to in its true perspective in light of the earlier judgments/orders passed by this Court. Thus in order to re-examine the entire service structure of PIMS as well as other hospitals functioning in Islamabad, namely, Capital Hospital, Islamabad; Federal Government Services Hospital, Islamabad (Poly Clinic); National Institute of Rehabilitation Medicine, Islamabad, Federal Medical and Dental College, Islamabad; and Federal General Hospital, Islamabad, we discard the report noted above and constitute a new Committee comprising the following:-

1. Additional Secretary, Health.
2. Additional Secretary, Establishment.
3. Joint Secretary, Law.

13. The apex Court in their final order dated 13.02.2019, passed in Crl. Review Petition No. 94 of 2016 and others has disposed of the same with the following observations:-

In such view of the matter, let the Ministry of Health, Government of Pakistan, Islamabad consider the report of the committee and finalize the service structure of the employees of all hospitals existing in the ICT. Such exercise will be completed by the Ministry of Health, Government of Pakistan, Islamabad, preferably within a period of three months. While doing so, the Government of Pakistan, Ministry of Health will ensure that no nepotism or favoritism is at all made and no special provision is introduced for accommodating and single person who is otherwise not entitled to such accommodation under the law.

14. Therefore, the Committee constituted on the direction of the apex Court has given the detailed findings and declared respondent No.6, Dr. Muhammad Shafique Arshad, as Category-I Officer, who was appointed on the recommendation of Federal Public Services Commission (FPSC) in Federal Medical Institutions/Hospital under Ministry of Health and transferred to the same/equal status, who

was allowed to continue his service as regular employee of these Institutions/Hospitals. The respondents Ministry of Health, Government of Pakistan has filed the petition, whereby apex Court confirmed that respondent No. 6 was referred as Category-I in PIMS and such status could not be withdrawn in any manner and the detailed observations of the committee dated 01.01.2019 confirmed this aspect.

15. While considering all these details referred above, the petitioner has failed to demonstrate any of his personal right to claim civil post of Professor of Cardiology, which has already been notified by Central Selection Board, Government of Pakistan, in which respondent No.6 has been appointed after due process of law.

16. This Court has confronted learned counsel for the petitioner qua his claim as to whether instant writ petition is considered to be in the nature of quo-warranto, whereby he has conceded that he has not filed the instant writ petition with the claim of quo-warranto against respondent No.6 as his personal rights are involved, rather he is only challenging the eligibility of respondent No.6, which has already been thoroughly scanned by the Departmental Selection Board, Government of Pakistan and the same could not be further checked by this Court in judicial review under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as petitioner has failed to demonstrate any of his right in this regard as petitioner himself was a contract employee. Even otherwise, the apex Court has settled the status of contract employees with the specific observations that contract employees have no right to file writ petition in terms of **2021 SCMR 1045 (Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Muhammad Younas)**, **2021 SCMR 673 (Government of Khyber Pakhtunkhwa through Secretary Industries, Commerce and Technical Education, Manpower**

Training Department, Peshawar and others Vs. Shahzad Iqbal and others), 2020 SCMR 1664 (Pakistan Railways through Chairman, Islamabad and another Vs. Sajid Hussain and others), 2021 SCMR 998 (PTCL Vs. Muhammad Samiullah), 2021 SCMR 824 (Shahzad Shahmir and others Vs. Government of Sindh through Chief Secretary, Karachi and others), 2020 SCMR 507 (Province of Punjab through Secretary Agriculture Department, Lahore and others Vs. Muhammad Arif and others).

17. In view of above, instant writ petition is not competent, therefore, same is **DISMISSED**.

**(MOHSIN AKHTAR KAYANI)
JUDGE**

RAMZAN