

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

WP No. 4690-P/2016

Dr. Mehfooz Hussain

Vs

Khyber Pakhtunkhwa through Secretary to Govt.

Health Department, Peshawar & others

JUDGMENT

Date of hearing. 12.04.2017

Petitioner (s) by: M/s. Shumail Ahmad Butt & A.Rahim Khan
Jadoon, advocates

Respondent (s) by: M/s Shakeel Ahmad, Advocate & Mr. Moin-
uddin Hamayun, Assistant AG.

MUHAMMAD YOUNIS THAHEEM, J.-

Through this single judgment we propose to decide the instant writ petition alongwith ***WP No.4765-P/2016*** titled as ***Prof. Dr. Sadaqat Jabeen Vs Govt. of Khyber Pakhtunkhwa & others*** and ***WP No.4777-P/2016*** titled ***Dr. Musa Kalim Vs Govt. of Khyber Pakhtunkhwa & others***, as all these petitions involving common question of law and facts.

2. Brief facts of each petition are as under:

i) WP No.4690-P/2016: The petitioner namely Dr. Mehfooz Hussain in response to a circular dated

18.07.2016 issued by respondent No.2 inviting applications for appointments for different positions of Chairman of departments from entire faculty of LRH, MTI Peshawar. The petitioner applied against the post of Chairman of Ophthalmology Department, other petitioners of connected petitions also applied against their respective post for which they consider themselves eligible and the Search Committee recommended petitioner for the appointment as Chairman, Department of Ophthalmology. The same recommendations of search committee received at Dean Office on 25.10.2016 but were not accepted and were rejected by the Dean by declaring petitioner as unsuitable, remain involved in the activities against the MTI reforms Act and such was the explanation for rejection of said recommendations. The petitioner prayed for setting aside of impugned actions and rejection of the recommendations of the Chairman Search Committee vide the impugned letter dated 28.11.2016 issued by the Dean with prayer that it be declared null and void, against law, illegal, without lawful authority, caused miscarriage of justice and of no legal effects upon the rights of petitioner and writ be issued by directing respondents particularly Dean to

accept said recommendations of such committee and appoint petitioner as prayed for.

ii) WP No.4765-P/2016: The petitioner Mst. Prof. Dr. Sadaqat Jabeen also applied for appointment as Chairman Gynecology and Obstetrics Department in response to same Circular as discussed above and was recommended after completion of legal process for selection by the Search Committee vide letter received to the Dean on 31.10.2016 but said recommendations by the said committee were rejected by the Dean vide impugned letter dated 28.11.2016 on the charges that she remain involved in strikes against MTI reforms Acts, there were complaints against her by her junior staffs, her opposition to the proposal of shifting of Gynecology Department to Molvi Jee Hospital etc and this was the explanation for rejection of the recommendations of committee.

iii) WP No.4777-P/2016: Petitioner namely Musa Kaleem in response to the said Circular, applied for the appointment of Chairman of Pediatric department and after adopting due process of selection was recommended by the said Search Committee to the Dean for his appointment as Chairman Pediatric Department on 02.11.2016 but Dean in spite of acting upon the

recommendations of Search Committee rejected the recommendations by forwarding explanation that petitioner was unsuitable for the position of Chairman in view of lack of scholarship with the charges of his involvement in Anti MTI reforms activities, who became instrumental in delaying the implementation of said reforms with additional charges that he indulged in litigation by challenging the MTI reforms Act before the Court and instigated employee of HMC for strike.

3. The petitioners prayed for the relief by declaring the acts and impugned rejection and re-advertising of same positive impugned letter dated 28.11.2016 as null and void, explanation for rejection is without any cogent and justifiable reasons lacking fairness and proof, without lawful authority, seeking relief for issuance of writ, directing the respondents to accept the recommendations of said committee and appoint petitioners against the posts of Chairman to the respective departments as prayed for by the petitioners of each petition.

4. Comments were called from respondents No.3 & 4 in the above petitions who submitted their comments alongwith certain documents in their support

and supported the impugned actions and explanation for rejection of recommendations held by Search Committee vide office letter dated 28.11.2016 by the Dean/respondents.

5. Arguments heard. Record perused.

6. From the submissions made before this Court and perusal of record, the question for determination before this Court is as to whether the explanations forwarded by Dean for rejection under authority vested in him by MTI Regulation, 2015 are valid, reasonable within the bounds of law, based on principle of justice, justifiable, speaking and in accordance, with circular, regulations, equity, good conscience and law, so this Court considered the explanation for rejection of recommendations from all aspects thoroughly alongwith regulations, and law. During course of arguments, learned counsel for petitioners produced copy of recommendations of Search Committee for the selection of Departmental Chairmen according to which Dean of LRH, MTI, Peshawar constituted a Search Committee comprising of Professor Sajjad Muhammad Khan as Chairman, Professor Dr. Mukhtiar Zaman as Medical Director, Professor Rehana

Rahim, Professor Muhammad Amjad Taqweem and Associate Professor Mian Amjad Ali as core members and a number of co-opted members from each departments for the respective Chairman for interviews according to regulations. Same document was not objected and was not annexed with petition as per contention of learned counsel, copies were refused and now they became successful to obtain these copies under access to information enactment. The said committee after completing process of pre-interview ranking by examining their CVs in the light of criteria circulated by the Dean, interviewed the candidates on 18th August, 2016. The procedure governing process of appointments of Department's Chairman provided under Regulations 21 (ix) of Lady Reading Hospital Medical Teaching Institute Regulations 2016 is reproduced below:

“IX) APPOINTMENT OF DEPARTMENT CHAIRMAN.

The Dean/Principal will form a search committee to recommend candidates for the post of each Department Chairman. The committee will consist of one faculty member from the concerned department and four faculty members from different departments, ensuring that the clinical and basic science departments are each represented by at least one member, except in the case of the Lady Reading Hospital, faculty members from the

Basic Science can only be included when a Basic Medical Sciences department is affiliated with the Hospital. The committee will also include the Medical Director of the Hospital or his nominee. The dean/Principal will appoint a Chairman from amongst the members of the committee. The search committee will invite applications and proceed as in 4 (d) to (f) of the Regulations. The committee will make its recommendation to the Dean who may accept or reject it. In the event of rejection, the Dean will provide a written explanation for his action to the search committee, which will then proceed to recommend another candidate following the procedure mentioned above.

(under lining is ours to emphasize)

7. So after following the relevant procedure under above cited regulations, scrutinizing qualifications of candidates, upon completion of selection process and interview forwarded these recommendations to the Dean and when said Dean received recommendations of the Search Committee about petitioners, the Dean/respondent No.3 himself in his letter dated 28.11.2016 in the very first paragraph has appreciated the task of Search Committee with positive notes, “its commitment and devotion in accomplishing the job of recommendation in a very meticulously and transparent manner.” So it was necessary for him as an authority to have forwarded such believable, unbiased

explanations with proofs for rejection of recommendations about the unsuitability of the petitioners for the posts which are missing in the explanations note forwarded, either appended with the record or argued before this Court to satisfy the judicial conscience of this Court.

8. So far as the other explanation forwarded about the active involvement in activities against MTI reforms Act is concerned, the filing of constitution petitions either for challenging varies of ibid Act or for seeking other reliefs is no good ground for rejection of recommendations which amounted depriving eligible candidates for appointment against positions of concerned departments. Moreover, it was not mentioned in the circular, Regulations that any candidate who had invoked the constitutional jurisdiction by filing writ petition, would be barred to apply for the concerned posts. So explanations forwarded being subjective in nature are based on misconceptions, misconceived against law, circular and Regulation and are without support of any valid proof recognized under the law, as petitioners are neither convicted persons from any Court of law nor their educational degrees or other testimonial

has been found fake nor has been declared by some lawfully constituted medical board as incapacitated, so these explanations lack fair reasoning.

9. The Dean as an authority also had to act, decide the matter on the basis of fairness, according to the principle of justice and law. In this respect wisdom is derived from judgment of Honourable Supreme Court in case ***Pir Imran Sajid and others Versus Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257)***, relevant rule is reproduced as blow:

“It hardly needs to be emphasized that the whole edifice of governance of the society has its genesis in the Constitution and laws aimed at to establish an order, inter alia, ensuring the provisions of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights. Provision of Article 4 embodies the concept of equality before law and equal protection of law and save citizens from arbitrary/discriminatory law and actions by the Governmental authorities. Article 5(2) commands that every body is bound to obey the command of the constitution 1. Every public functionary is supposed to function in good faith, honestly and within the precincts of its

power so that persons concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution. It would include principles of natural justice, procedural fairness and procedural propriety 2. The action which is mala fide or colourable is not regarded as action in accordance with law. While discharging official functions, efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory act on their part.”

(under lining is ours to emphasize)

10. In view of above dicta laid down by Honourable Apex Court and the explanations forwarded for rejection, we are of the firm view that respondent No.3 failed to comprehend his legal status, so, failed to honour the collective wisdom of the committee, as a decision of a single person without following rules of fairness could be based on his personal bias, whims and surmises more elaborately wherever statutes or rules or regulations have authorized some official with some particular authority or power to accept or reject the collective decision of the committee, then in case of rejection the explanation forwarded shall be coached with fairness, unbiased reasoning, principles of justice and law which is missing in the explanations contained

in impugned order dated 28.11.2016 about each petitioner. Therefore, such explanations for rejection are without reasonable, believable and plausible support, so are declared contrary to law, without proof, unfair thus has no any adverse effects upon the rights of petitioners particularly when there is no charge over the capacity and honesty of Search Committee rather as discussed above it has been admired. Hence, recommendations made by such committee are binding upon the authority as justice is not only delivered by law Courts but is also administered by the authority which though in no sense to be called Court, but to have act as judges of rights of others.

11. Thus what has been discussed above, we allow all the three petitions, direct the respondent No.3 to accept the recommendations of Search Committee and appoint the petitioners on their respective posts.

Announced:
12.04.2017

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