

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Amended Writ Petition No.1878-P/2019

*“Tauseef Raza **versus** Vice Chancellor, Khyber Medical
University, Peshawar & 3 others”*

Date of hearing: **24.10.2023.**

Mr. Taimur Noor, Advocate for the petitioner.

*M/S Abdul Munim Khan, Behlol Khattak & Aurangzeb Khan,
Advocates for the respondents.*

JUDGMENT

SHAKEEL AHMAD, J.- By presenting this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenge has been thrown to the order dated 8th December 2016, whereby and where-under, the notification/appointment order of the petitioner as Associate Professor Orthopedics (BPS-20) for KMU-IMS, Kohat issued vide notification No.KMU (SA&A)/2016/3-14/2840 dated 02.08.2016 was withdrawn/cancelled, and minutes of the meeting of Standing Recognition Committee held on 18.07.2018 whereby, his prayer for reconsideration of equivalency of qualification of Ph.D (Traumatology & Orthopedics) 2005 was declined. He has also challenged the legality, and defensibility of re-advertisement of the said post through publication dated 08.04.2017.

02. Filtering the unnecessary details, the facts which are requisite to be stated are that, in the year 1999, the petitioner got MD qualification, and in the year 2005, he did Ph.D in Traumatology and Orthopedics from Nizhny Novgorod State Medical Academy, Russia. He applied for registration of postgraduate qualifications i.e. **(i)** Ph.D (Traumatology & Orthopedics) 2005, **(ii)** Specialization in Traumatology & Orthopedics, 2005 and **(iii)** Specialized Training in Medicine (Clinical Ordinance), however, only postgraduate qualification of Ph.D Degree was considered and approved for permanent registration and accordingly, he was issued registration certificate, which was valid from 01.06.2006 to 31.12.2020. On 20.01.2011, pursuant to advertisement, the petitioner was appointed as Assistant Professor at Kohat University of Science & Technology, after following all legal and codal formalities. To obtain equivalence certificate, he deposited the requisite fee on 13.07.2016. In the meanwhile, by means of an advertisement, respondent No.2 invited applications for appointment against the post of Associate Professor (BPS-20), the petitioner applied for the same on the basis of his qualifications and experience, competed with others, and he was finally appointed as Associate

Professor Orthopedics (BPS-20) for KMU Institute of Medical Sciences, Kohat vide notification No.KMU(SA&A)/22nd Syndicate/2016/3-11/2840 dated 02.08.2016, on the terms and conditions, mentioned therein. After his appointment, he once again approached the concerned authority for grant of equivalence certificate, for which, the requisite fee was also deposited. However, his request for equivalency qualification was declined by the decision of the Standing Recognition Committee of the PM&DC on 18.07.2018, and his appointment order as Associate Professor was recalled by respondent No.1, as, he was unable to produce eligibility certificate within stipulated joining time, vide office order dated 8th December 2016. Being aggrieved by the same, the petitioner filed constitutional petition No.3830-P/2017 before this Court, which was dismissed vide order dated 16.01.2018 on having become infructuous, on the ground that the PM&DC has regretted to grant equivalency of qualification of Ph.D (Traumatology & Orthopedics) 2005 from Nizhny Novgorod State Medical Academy Russia. Feeling discontentment with the order of this Court, the petitioner filed Civil Petition No.4717 of 2018 before the Hon'ble Supreme Court of Pakistan,

which was dismissed vide order dated 11.02.2019 with the observations that no relief to the petitioner can be considered unless the letter dated 05.10.2018, whereby, his request for issuance of equivalency certificate was regretted, is challenged before the competent Court. Hence, this petition.

03. It was vociferously submitted by the learned counsel for the petitioner that the petitioner possessed the requisite qualification for appointment as Associate Professor, and after fulfilling all legal and codal formalities, he was appointed as such, through open competition, vide notification dated 02.08.2016, therefore, the impugned office order dated 08.12.2016, whereby, his appointment order/notification was cancelled, is illegal, without lawful authority and without jurisdiction. He next submitted that refusal of PM&DC to grant equivalency of qualification of Ph.D (Traumatology & Orthopedics), is illegal. He further submitted that on the same qualification, he was appointed as Associate Professor (Trauma & Orthopedics) and is still serving as such. He added that initially, petitioner was registered with PM&DC and this effect registration certificate was issued to him, his postgraduate qualification of Ph.D was also

approved for permanent registration and he was also issued equivalence to his Ph.D Degree by respondent No.4, therefore, opinion of the respondent No.2 that he shall be eligible for appointment in clinical subjects is erroneous and the impugned order is liable to be recalled.

04. In rebuttal, the learned counsel representing the respondents jointly argued that the petitioner could not meet the eligibility criteria, he was given several opportunities to produce eligibility certificate from PM&DC for his appointment as Associate Professor, but in vain, therefore, due to lack of requisite qualification, his appointment order was recalled. In support of their contentions, they relied upon PM&DC Regulation, 2011 and went on to say that the writ petition, being factually and legally not maintainable, may be dismissed with costs.

05. We have carefully heard the rival submissions of the learned counsel for the parties at great length and scanned the record and relevant law appended with the pleadings.

06. We find from the record that the petitioner possesses MD & Ph.D Degree in (Traumatology & Orthopedics) from Nizhny Novgorod State Medical Academy, Russia. On the basis of his said qualification, he

was appointed as Assistant Professor in BPS-19 through an open competition vide appointment order dated 20th January 2011 by KUST, Kohat and served as such till his appointment as Associate Professor. It is reflected from the record that by means of an advertisement, respondent No.2 invited applications for appointment as Associate Professor in BPS-20, the petitioner applied for the same, on the basis of his qualification and experience, competed with others, and finally, he was appointed as Associate Professor Orthopedics (BPS-20) for KMU Institute of Medical Sciences, Kohat vide notification No.KMU(SA&A)/22nd Syndicate/2016/3-11/2840 dated 02.08.2016, on the terms and conditions, mentioned therein. It will be advantageous to reproduce the same as under: -

Terms & Conditions

1. He will produce Medical Fitness Certificate from Medical Superintendent District Headquarters Hospital, Kohat at the time of joining the duty.
2. His services will be governed by the Act, Statutes, Rules, Regulations, policies & procedures of the University.
3. His appointment will be liable to termination at any time, if any of his education testimonials, credential/ experience certificates, citizenship etc, were found fake/ forged during verification.
4. His services will be liable to a probationary period of prescribed under the Khyber Medical University Employees Statutes and Service Rules, 2008 (Revised 2010) and as amended from time to time.
5. His services will be liable to termination at any time without assigning any reason before expiry of the period of probation/ extended period of probation, if his performance during this period is not found satisfactory. In such event, he will be given one month advance notice of termination from service or one month pay in lieu thereof, in case he wishes to resign any time, one month notice will be necessary or in lieu thereof one month pay will be forfeited.
6. He will be allowed the minimum of BPS-20 plus other allowances as admissible under the KUM rules.
7. His performance will be closely mentioned by the Head of Department and confirmation of his service will be carried out on the basis of satisfactory reports.

If the above terms and conditions of appointment are acceptable to him, he is required to assume the charge within 15 days after the issuance of his notification, failing which his appointment will be treated as cancelled and no subsequent appeal etc, will be entertained in this regard.

07. It was specifically mentioned in his appointment order that his services will be governed by the Act, Statutes, Rules, Regulations, Policies and procedures of the University. It was further stipulated that his appointment will be liable to termination at any time, if any of his education, testimonials, credentials/experience certifications/citizenship etc were found fake/forged during verification. His notification of appointment as Associate Professor was recalled by respondent No.1 as he failed to produce eligibility certificate within stipulated/extended joining time vide office order dated 8th December 2016. Being aggrieved of the act of PM&DC, the petitioner filed constitutional petition No.3830-P/2017 before this Court, which was dismissed vide order dated 16.01.2018 on having become infructuous, on the ground that the PM&DC has regretted to grant equivalency to qualification of Ph.D (Traumatology & Orthopedics) 2015 from Nizhny Novgorod State Medical Academy, Russia. Feeling discontentment with the order of this Court, the petitioner filed Civil Petition No.4717 of 2018 before the Apex Court, which was dismissed vide judgment dated 11.02.2019 with the observations that no relief to the petitioner can be given unless the letter dated

05.10.2018, whereby, his request for issuance of equivalency certificate was regretted, is challenged before the competent Court, where-after, this petition was brought before this Court. Having given thoughtful consideration to the submissions of the learned counsel for the parties, we are of the view that following questions require determination:

- (i) *Whether impugned office order dated 05.12.2016, whereby and where-under, appointment of the petitioner as Associate Professor through notification dated 02.08.2016, was laid to rest, suffers from legal infirmity and patently illegal?*
- (ii) *Whether refusal of PM&DC to issue equivalency certificate to the petitioner of qualification of Ph.D (Traumatology & Orthopedics) 2005 from Nizhny Novgorod State Medical Academy, Russia, is illegal or not?*
- (iii) *Whether petitioner lacks requisite qualification for appointment as Associate Professor?*

08. It is an admitted fact that petitioner was appointed under PM&DC Regulation 2011, which requires following qualifications for appointment: -

Section-ii
MINIMUM QUALIFICATIONS LEVEL REQUIRED FOR APPOINTMENT OF TEACHERS IN MEDICAL AND DENTAL INSTITUTIONS

Learning Levels	Duration	Clinical Medical/Dental Qualification	Basic Sciences Qualifications
Level-I	5-6 years	MBBS/BDS	
Level-II a	1 year after Level-I	Diploma	M.Sc Basic Sciences
Level-II b	02 years	MCPS/M.Sc/MPH/MSPH/or	M.Phil and

	after Level-I	other 2 years duration diploma	qualifications with other nomenclatures.
Level-III	4 years after Level-I	MD/MS/MDS/FCPS/and qualifications with other nomenclatures	FCPS/PhD/and qualifications other nomenclatures.
Level-IV	2 years after Level-III	Sub-Specialty Fellowship, second fellowship	D.Sc, or any post PhD nomenclature

1. Other nomenclatures qualifications to be decided by SRC or DEC as the case may be
2. Local MPH of one year will cease to be awarded after 2015 and holders of degrees of one year obtained after 2015 shall not be eligible for teaching position. MPH from foreign countries can be placed in Level-II as decided by the SRC/DEC
3. Local MDS of 03 years will cease to be awarded after 2015.
4. MSc in Basic Dental Sciences from foreign countries can be placed in Level-II b till a period as decided by the DEC.
5. Ph.D in clinical sciences shall not be accepted as a qualification for teaching.
6. Appointment as teacher of holders of Level-II b qualifications in Clinical or basic Medical/Dental Qualifications in clinical subjects/sciences subjects shall be governed by requirements of appointment mentioned in each specialty in pages ahead.

09. A perusal of the aforesaid provision of section ii appended with PM&DC Regulation, 2011 reflects that MD in clinical sciences shall not be accepted as a qualification for teaching, thus, keeping in view the aforesaid embargo, placed by PM&DC Regulation, 2011, petitioner was denied equivalency to his Ph.D (Traumatology & Orthopedics) 2005 from Nizhny Novgorod State Medical Academy, Russia

10. Having considered the case from all angles, we are of the view that he being a Ph.D was not eligible for teaching as provided by PM&DC Regulation, 2011, therefore, his appointment order as Associate Professor Orthopedic was rightly recalled by the respondent No.1 through office order dated 05.12.2016 and decision of PM&DC to issue his equivalency certificate, is strictly in

terms of the provision of PM&DC Regulation, 2011 and not in conflict with that. Having found no illegality, irregularity or jurisdictional defect in the impugned orders, hence, we dismiss this petition being bereft of any merit. No order as to costs.

Announced
24.10.2023.



JUDGE


JUDGE

DB Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad

Himayat, CS