

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.2835-P/2020

Wafa Gul D/o Hazrat Gul, and others
 (House Job Officers Rehman Medical Institution)
 Phase-V, Hayatabad, Peshawar.

Petitioner (s)

VERSUS

The Secretary Health to Government of Khyber Pakhtunkhwa,
 Civil Secretariat, Peshawar and others.

Respondent (s)

For Petitioner (s) :- Mr. Muhammad Ijaz Khan Sabi, Advocate.
 For Respondents: - Mr. Qazi Babar Irshad DAG. Arshad Ahmed
AAG, Qazi Jawad Ihsanullah and Hamza
Wali, Advocates.
 Date of hearing: 04.02.2021

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Through this common judgment, we propose to decide the instant and the following connected writ petitions, filed by the petitioners (*House Job Officers of Private Sector Hospitals*), as identical question of law and fact is involved therein.

- i. **Writ Petition No.856-A/2020**
 (Dr. Wafa Javed vs Govt of KP through its Secretary Health Civil Secretariat, Peshawar and others.
- ii. **Writ Petition No.2971-P/2020**
 (Dr. Muhammad Ayaz and others vs Pakistan Medical & Dental Council through its Registrar PMDC and others.
- iii. **Writ Petition No. 5475-P/2020**
 (Dr. Muhammad Hassan Khan vs Pakistan Medical Commission (PMC) through its Registrar, Islamabad etc.

2. The petitioners have completed MBBS Degrees from Private Sector Medical Colleges, namely, Rehman

Yasir Sami

Medical College (RMC), Pak International Medical College (PIM), Hayatabad Peshawar, and Women Medical & Dental College (WM&DC), Abbottabad, in the year 2020 and started House Job in the Private Sector Hospitals of the respondents. Their grievance is that under agreement(s) they were compelled by the respondents to receive Rs.43,000/- per month each, as stipend during the period of their house job, whereas in the Public Sector Hospitals i.e. Lady Reading Hospital (LRH) and Khyber Teaching Hospital (KTH) Peshawar, Rs.56,000/-and Rs.53,000/- per month, respectively, are being paid to the House Job Officers. Under regulation 21 of MBBS and BDS (Admission, House Job & Internship) Regulations, 2018, framed under the Pakistan Medical & Dental Council Ordinance, 1964, the respondents are bound to pay stipend amount to them which shall not be less than the highest amount paid in any public sector hospital of that Province. Against the discriminatory treatment of the respondents, the petitioners approached the respective respondents for redressal of their grievance, but they refused, hence, these writ petitions with the following prayer:-

"i. That refusal of respondents to pay monthly stipend to the petitioners equal to the highest amount of stipend, paid to the House Job Officers of Public Sector Hospitals, be declared as illegal, unlawful and against the provisions of Regulations No.16 and 21 of the MBBS & BDS

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*(Admissions House Job & Internship)
Regulations 2018.*

ii. Direct the respondents to pay the petitioners their monthly stipend amounting to Rs.56,000/- per month, equal to the stipend being paid to the House Job Officers of Public Sector Hospitals along with outstanding amount to be calculated on the basis of above threshold.

iii. To provide accommodation to the petitioners during the period of house job.

3. Initially, comments of the respondents were called which were submitted accordingly, where claim of the petitioners was refuted on various legal and factual grounds. The main objection of the respondents/Private Sector Medical Colleges & hospitals is that MBBS and BDS (Admissions, House Job and Internship) Regulations 2018 (as enforced and amended on 30.05.2019) are repealed by the Pakistan & Medical Council Ordinance, 2019, as such no more exist in the field. No protection or saving has been accorded to these Regulations by the repealing law. In this view of the matter, the Regulations being not in existence, the same cannot be made subject matter of writ of any kind whatsoever, for the purpose of their enforcement.

4. We have heard the exhaustive arguments of learned counsel for the parties and perused the record with their valuable assistance.

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5. Pakistan Medical & Dental Council (PM&DC) is a statutory body established and constituted under section 3 of the Pakistan Medical & Dental Council Ordinance, 1962 (**Ordinance 1962**). Under section 33(2) of Ordinance 1962, PM&DC was empowered and to frame the Regulations in respect of various functions of the Council. Consequently, the PM&DC framed MBBS & BDS (Admission, House Job & Internship) Regulations, 2018 ("**Regulation 2018**") to govern the matters pertaining to admissions, eligibility criteria and courses in Pakistan for MBBS and BDS examination and provisions relating to House Job and matters ancillary thereto. Under para No.16 of Regulation 2018, essentially on completion of his/her MBBS & BDS degree, every student shall undergo one year House Job while a recognized Medical College shall be responsible to create House Job vacancies annually in its Teaching Hospitals. Similarly, under para 21 of Regulation 2018, the amount of stipend paid to the House Officer in Private Sector Hospitals shall not be less than the highest amount of stipend paid in any public Sector Hospital in the Province. For the sake of convenience and ready reference, paras 16 and 21 of the Regulation, 2018, are reproduced below:-

"16. House Job for persons who have qualified MBBS or BDS course:- (1)

Without prejudice to the Pakistan Registration

of Medical and Dental Practitioners Regulations, 2008, every student on completion of his/her degree of MBBS or BDS, as the case may be, shall be required to undergo one year house job or internship, by whatever name called for, before full registration with the Council.

A recognized medical or dental college shall be responsible to create house job vacancies annually in its teaching hospital equivalent to its approved annual intake.

(2) Only persons provisionally registered with the Council as medical and dental practitioner shall be eligible for house job. The experience of house job or internship done prior to the provisional registration shall not be counted and accepted as experience of house job towards attainment of full registration. In Government teaching hospitals without medical/dental colleges, house jobs can be created on bed strength as specified in institutions accreditation performa or PM&DC.

(3) House job or internship training shall be carried out only in a hospital recognized by the Council under the Ordinance.

(4) Before awarding house job or internship, the hospital shall ensure that the

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candidate possesses a valid provisional registration with the Council.

“Regulation 21: Stipend or salary for house job or internship:- All public and private institutions shall be responsible to provide a paid house job to their graduates and there shall be no house job/internship in parent institute without honorarium. An institute may however provide house job/internship to graduates of other institutions depending upon its capacity but shall not be responsible for paying the graduates of institutes. **The amount of stipend or salary, by whatever name called, paid to house Officer or internee in private sector hospital shall not be less than the highest amount paid in any public sector hospital of that province.**

Honorary house jobs in special circumstances shall also be allowed in approved public sector hospitals if an applicant and a hospital so desires but the institution shall not allow house job beyond the slots allocated by the Council for house job in relevant institution”.

(Bold and underlines, supplied for emphasis).

6. In the year 2012 PM&DC Ordinance, 1962 was amended by PMDC (Amendment) Act, 2012, followed by PMDC Ordinance (Amendment) 2014 and PMDC

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(Amendment) Ordinance, 2015 and finally PMDC Ordinance, 2019 was promulgated, however, the Ordinance of 2019, was declared by the worthy Islamabad High Court Islamabad, in its consolidated judgment dated 08.01.2020, rendered Writ Petitions No.2800, 2825, 3837, 3901 and 3905 of 2019, as ultra vires to the Constitution and the affairs Ordinance of 1962 was revived in its original position. In the year 2020, vide notification dated 22nd September, 2020, the Pakistan Medical Commission Act, 2020 (Act of 2020) was promulgated, which at present regulate the affairs of the Medical Doctors throughout the country. Section 27 of the Act of 2020 speaks about the house job of graduates and their entitlement of stipend amount, which for the sake of convenience and ready reference is reproduced below:-

“27. House Job:—(1) Every person having obtained a provisional license under sub-section (2) of section 20 shall be required to undergo and successfully complete a mandatory one year house job, internship or foundation year, by whatever named called, at an institution recognized by the Commission or an equivalent of a house job outside Pakistan as may be recognized by the Commission.

(2) Every medical or dental college in Pakistan shall be responsible to provide a paid house job, at its own affiliated teaching hospital to all of its graduates have acquired a provisional

Provisional

license. Failure to provide a house job shall result in the medical or dental college reimbursing the stipend paid to the graduate by the training hospital where the graduate obtains house job training.

Provided that in the event the graduate opts voluntarily to pursue training in any other teaching hospital, their salary or stipend shall not be the responsibility of the medical or dental college of the graduate.

Provided further that the stipend or salary paid to house Officer shall be determined by the Provincial Government or Federal Government as applicable for public colleges and private colleges shall pay a stipend or salary not being less than the amounts applicable to public colleges. (emphasis supplied).

7. Learned counsel for the respondents (private medical colleges and hospitals) contended that on promulgation of Pakistan Medical and Dental Council Ordinance, 2019, the Pakistan Medical and Dental Council Ordinance 1962 (Act XXXII of 1962), was repealed and under section 42 of the Ordinance of 2019, the Council may, with the approval of the Ministry make regulations generally to carry out the purposes of the Ordinance. He further contended that the Ordinance of 2019, is completely silent about payment of stipend, whereas, the petitioners were indulged in the House Job when the

Kashif Sami

Ordinance of 1962 and Regulations of 2018 and 2019, were not in the field being repealed by the Ordinance of 2019, therefore, they cannot claim stipend in the mode and manner as provided under section 21 of the Regulation 2018 amended in 2019.

8. We are not in agreement with the arguments of learned counsel for the respondents;

firstly, because the Ordinance of 2019 has already been declared as *ultra vires* by the august Islamabad High Court Islamabad vide consolidated judgment dated 08.01.2020, rendered Writ Petitions No.2800, 2825, 3837, 3901 and 3905 of 2019, relevant para 58 whereof is reproduced below:-

“Before parting with this judgment, it is made clear that PMC Ordinance, 2019 is *ultra vires* to the Constitution, therefore, the affairs of PMDC have to be regulated under the PMDC Ordinance, 1962 which stands revived in its original position as referred in Fahad Malik case *supra*.”

In view of the judgment (*supra*), the Regulation of 2018, as amended in 2019, got restored and the provisions thereof with regard to stipend amount were applicable at the time of joining of house job of the petitioners;

Secondly, the MBBS and BDS (Admissions, House job and Internship) Regulation 2018 (as amended on

Fahad Malik

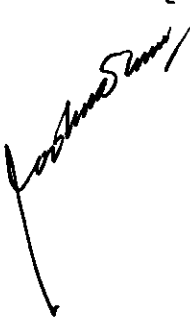
30th 2019), under para 21 provides the mechanism of payment of stipend or salary, by whatever name called, paid to house officer or interneer in private sector hospital which shall not be less than the highest amount paid in any public sector hospital of that province. Likewise, section 27 of the Pakistan Medical Commission, Act of 2020 (newly enacted law), which is still in field, also provides the above quoted provision. Mere silence of the Ordinance of 2019 which has died on its natural death as lapsed after 120 days i.e. in February 2020, would not be a sufficient to deprive the petitioners from their due entitlement because the intention of the legislature i.e. providing stipend to graduates of private Sector Colleges shall be equal to highest amount paid in public sector is very much evident from the recent enactment i.e. Pakistan Medical Commission Act of 2020, and;

Thirdly, the agreement(s) executed with the petitioners by the respondents w.e.f. 08.06.2020, is after the lapse of stipulated period of the Ordinance of 2019. On this score too, the contention of learned counsel for the respondents is not tenable. Needless to say that any agreement signed by an employee/worker against the Statutory provisions of law would be void and will not create any estoppel against the signatory. Undisputedly, after completion of MBBS and obtaining a provisional license under sub-section 2 of section 20 of the Act of

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2020, every candidate shall be required to undergo and successfully complete a mandatory one year house job at an Institution recognized by the Commission. Without completion of house job, a candidate would not be eligible to obtain a regular license under the PMC Act, 2020. In the above eventualities, completion of the house job training is essential for candidates and without payment of the remuneration as fixed by the Act of 2020, their duties would amount to force labour by the Private Medical Sectors. Executing contract against the statutory provisions of law is always deprecated by the courts of law on the ground of having no legal force. Resultantly, Para with regard to payment of stipend amounting to Rs.43000/- per month, is declared *void ab initia* and ineffective against the petitioners.

10. For the sake of discussion if we agree with the contention of learned counsel for the respondents that the Ordinance of 2019 being in filed had repealed the Ordinance of 1964 as well as the regulations made thereunder, therefore, the petitioners cannot claim stipend on the basis of criteria as mentioned in section 21 of the Regulations 2018 and 2019, then at this juncture we cannot ignore or oversight the judgment dated 14.12.2018 of the Hon'ble Supreme Court rendered in Human Right case No.38513 of 2018 (regarding stipend of house Officer



graduate of private medical colleges) Relevant part of which is reproduced below:-

“According to Regulation 16 read with Regulation 21 of MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018, all the medical graduates who are undergoing house job have a right to be paid if they are graduates of the public colleges and public hospitals are required to pay house job stipend to them. However, for graduates who have completed their graduation from private medical colleges, it is the obligation of the concerned colleges to either provide them house jobs in their own respective hospitals and pay them as other fresh doctors are being paid by public sector hospitals. Where graduates who have qualified from the private medical colleges are compelled to take house jobs in the public hospitals, it shall be the duty of all the concerned colleges all over Pakistan from where their graduates have completed their degrees, to pay their stipend at the specified rate either directly to those students every month by or before the 10th day of each month or to handover the cheques in their names to the concerned hospitals where they are doing house job. In case there is default in the payment thereof, the Chief Executives/Heads

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of such private medical Colleges shall be held personally responsible for disregarding the court's order. The matter stands disposed of according". (emphasis supplied).

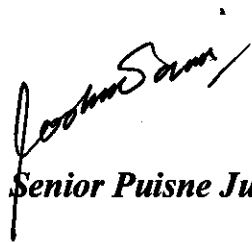
11. The judgment (supra) of the Hon'ble Apex Court, was and is still in the field and had binding effect under Article 189 of the Constitution; therefore, the petitioners on this score too, were entitled to stipend equal to the highest amount of stipend paid to the House job Officer of Public Sectors hospital.

12. For what has been discussed above, this and the connected writ petition mentioned in initial part of the judgment are allowed. The respondents shall pay the petitioners Rs.56,000/- per month as stipend amount in future as well as arrears of the past period.

Announced:

04.02.2021

M.Siraj Afridi PS



Senior Puisne Judge



JUDGE

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge
And Hon'ble Mr. Justice Syed Arshad Ali**