

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Constitution Petition No. D-3487 of 2017

Dr. Aden Waheed
Versus
Federation of Pakistan and 4 others

For the Petitioner : Mr. Ali Raza, Advocate
For the Respondent No.1 : Mr. Salman Talibuddin
Additional Attorney General
For the Respondent No. 2 : Mr. Suhail Hayat Khan Rana
Advocate
For the Respondent No. 3 : Mr. Syed Ahmed Ali Shah
Advocate, holding brief for
Mr. Khawaja Shams ul
Islam, Advocate
For the Respondent No. 4 : Mr. Ameeruddin, Advocate
For the Respondent No. 5 : Mr. S. Noman Zahid Ali
Advocate
Date of Hearing : 24.05.2018

JUDGMENT

Agha Faisal, J: The crux of this petition is the determination whether the Pakistan Medical & Dental Council (“**PMDC**”) was justified in denying the registration of the Petitioner as a dental practitioner, despite the Petitioner being duly qualified and having admittedly completed all the requisites in such regard.

2. The case set forth by the Petitioner is delineated in chronological detail herein below:

- i. It was submitted that the Petitioner obtained a degree of Bachelor Dental Surgery (“**BDS**”) from the Karachi University (“**KU**”), after having completed her education in such regard from the Altamash Institute of Dental Medicine (“**AIDM**”), a KU affiliate.
- ii. Earlier in the year 2005, the Petitioner after having successfully passed the pre Medical from the Board of Intermediate Education, Karachi got admission in Jinnah Medical & Dental College (“**JMDC**”).
- iii. The Petitioner then applied to AIDM on 09.02.2008 for migration from JMDC on the basis of NOC issued by JMDC dated 12.02.2008 (“**JMDC NOC**”).
- iv. The AIDM issued its no objection letter on 21.05.2008, with respect to the transfer of the Petitioner thereto against a vacant seat.
- v. The Petitioner’s education suffered a three year hiatus on account of her financial constraints. However, the Petitioner, and her family, saved the requisite funds and recommenced her education culminating in graduation with a BDS degree.
- vi. Learned counsel for the Petitioner drew the Court’s attention to the mark sheet of the Petitioner dated 13.03.2015, available at page-23 of the Court’s file, which clearly reflected that the Petitioner had passed all the requisites examinations to obtain a BDS.

vii. It was also demonstrated from the record that the KU has conferred upon the Petitioner a BDS degree dated 09.02.2017.

viii. Registration with the PMDC is a prerequisite for BDS graduates to practice in the field of dentistry in Pakistan and it is this registration that was being delayed to the Petitioner by the PMDC on one pretext or another.

3. The Petitioner was thus constrained to institute the present petition, inter alia, seeking a direction from this Court instructing PMDC to accord her the requisite registration, in due accordance with the applicable rules and regulations. It was prima facie demonstrated that the Petitioner had duly qualified as a dentist and all that was required for her to practice was her registration with PMDC.

4. After issuance of repeated notices to the PMDC, notice was served upon the Chairman / President of PMDC through District Judge Islamabad. The PMDC then filed its comments on 19.05.2018, wherein it pleaded that for the facts and grounds stated therein the present petition must be dismissed. The learned Counsel for the PMDC also appeared before us and argued PMDC's brief. It is apparent from a perusal of the PMDC comments that the PMDC had no cavil with the qualifications of the Petitioner and had not denied the factum that the Petitioner was duly conferred with a BDS degree by the KU.

5. However, it was contended by the learned counsel for the PMDC that the Petitioner was not entitled to the relief claimed as the JMDC NOC granted to the Petitioner back in 2008, being a

constituent of the migratory process of the Petitioner from JMDC to AIDM, was under objection. It was on this pretext that the Petitioner was denied registration by the PMDC and it was on this basis that PMDC pleaded that the present petition must be dismissed.

6. The PMDC attached a letter of JMDC, dated 9th November, 2017 (“**JMDC letter**”) and it may be pertinent to reproduce the relevant portion therefrom:

“As Ms. Aden did not officially withdraw from our college, she did not complete the clearance form, submit a letter of withdrawal, submit form for NOC request and we did not accordingly inform University of Karachi nor PMDC regarding her withdrawal. The copies of the documents you attached as proof do not have my original signature on it, but rather a signature stamp, which I don’t use for PMDC or University of Karachi documents.

We, however, have no objection to her having completed her studies in another college.”

(Underline added for emphasis.)

7. The JMDC letter, issued in 2017, cast doubt upon the JMDC NOC, issued in 2008, on the sole premise phrased as follows:

“The copies of the documents you attached as proof do not have my original signature on it, but rather a signature stamp, which I don’t use for PMDC or University of Karachi documents.”

8. It was however noted that the JMDC letter clearly extended its no objection in respect of the Petitioner’s migration to AIDM by categorically stating that JMDC has no objections to the Petitioner having completed her studied in another college.

9. Learned counsel for the PMDC referred to another letter issued by JMDC, dated 14.12.2016, wherein the JMDC NOC was declared as fake. This letter was in stark contradiction to the subsequently issued JMDC letter, wherein it was merely stated that

the JMDC NOC contained a signature stamp, which the said executant does not use for the PMDC and KU documents.

10. Mr. Salman Talibudin, learned Additional Attorney General, supported the cause of the Petitioner and submitted that it was a travesty that the Petitioner's fundamental right to practice her skill and profession was being fettered by the unjustifiable denial of PMDC's registration thereto. Per learned counsel, the grounds invoked by the PMDC for denial of registration were in apparent conflict with the enshrined principles of equity and justice.

11. It was submitted that the documentation for migration of the Petitioner from one institution to another were intra institution correspondence and the Petitioner herself could not be held culpable for any discrepancy belated discovered therein, if any.

12. It was further submitted that if the entire controversy was restricted to the issuance of a no objection to the migration by JMDC, then the JMDC letter categorically ameliorated the issue as it specifically stated that the said institution had no objection to the Petitioner having completed her education at another institution.

13. We have heard the respective learned counsel and reviewed the record available before the Court. The fundamental issue to determine is whether the Petitioner's right to enter upon her lawful profession can be justifiably curtailed by the denial of registration thereto. The PMDC has not pleaded any law, rules or regulations whereby they could justify the denial of the Petitioner's registration therewith, on the pretext of the alleged veracity of an inter institution migration correspondence. However, even if any such law edict was relied upon, the same would have to be adjudged on the anvil of

Article 8 of the Constitution. It is an admitted fact that the Petitioner has duly qualified and has been validly conferred with a BDS degree by the KU. The PMDC has itself admitted, vide minutes of its meeting dated 11.10.2017, that the Petitioner is a graduate. There is also no cavil to the actuality that the institutions where the Petitioner undertook her studies were duly accredited and competent to impart the requisite education culminating in a BDS degree.

14. The JMDC NOC was an instrument required to be delivered by JMDC to AIDM. An instrument in such regard was in fact issued and then subsequently termed by JMDC as fake. However, it is apparent from the record that this finding, of the JMDC NOC being fake, was contradicted by JMDC itself in the JMDC letter issued subsequently, wherein instead of maintaining the lack of veracity of the JMDC NOC it was submitted that JMDC NOC contained a signature stamp, which JMDC does not use for the PMDC and KU documents. With utmost respect, it is noted that the two letters are at tremendous variance to one another. Notwithstanding the foregoing the JMDC has issued the JMDC letter recently wherein it has categorically expressed that it has no objection to the Petitioner having completed her studies at another institution.

15. Education is a fundamental right and it is equally fundamental for a citizen to be empowered to utilize the education in pursuit of a lawful profession. Medical education is a specialized field and it requires the dedication of significant mental, physical and financial resources. The Petitioner's educational record, culminating in the BDS degree awarded by KU, is a testament to her discipline and dedication to the noble field of medicine.

16. In view of the reasoning contained herein, the subject petition is allowed with directions to the PMDC, being the Respondent No. 2 herein, to undertake the registration of the Petitioner as a dental practitioner upon due completion of the requisite procedure in accordance with the law.

JUDGE

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