

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:-

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

C.P No.D-3907 of 2016

Dr. Mushtaq Ahmed.....Petitioner

Versus

Federation of Pakistan & 2 others.....Respondents

Date of hearing 23.10.2018

Mr. Wasif Ali Mughal, Advocate for the Petitioner.

Sheikh Liaquat Hussain, Assistant Attorney General.

Mr. Muhammad Nawaz Khan Abbasi, advocate for Respondent
No.3.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The Petitioner has approached this Court for seeking directions to the Pakistan Medical & Dental Council (PM&DC) to recognize his Teaching Experience as Professor of Dentistry and issue required Certificate.

2. Basically the case of the Petitioner is that he obtained Degree in M.Sc. (Periodontology) from University of London in the year 1985, he applied to PM&DC for issuance of equivalence to his degree, and his request for recognition of his experience as Professor of Dentistry was declined by the PM&DC. Petitioner in support of his assertion, pleaded discrimination by saying that PM&DC had declared Dr. Rafiq Chatta, Dr. Rafiq Memon, Dr. Ghani, Dr. Abdul Rauf, Dr. Dilshad and Dr. Sajjad Akhund, eligible for the post of professor on the basis of their qualification, but his claim on the same premise was denied by the PM&DC, which is discriminatory.

3. To appreciate the above claim of the petitioner, this Court vide order dated 14.11.2017 called the representative of PM&DC, who appeared and filed her affidavit, she stated as under:-

“That I say that Dr. Rafiq Chatta having Registration No.270-D and Dr. Rafiq Memon having Registration No.598-D are eligible for the post of Professor on the basis of qualifications, while Dr. Ghani having registration No.554-D, Dr. Abdul Rauf having Registration No.234-D, Dr. Dilshad having Registration No.594-D and Dr. Sajjad Akhund having Registration No.619-D are not granted Eligibility Certificates as per record available with the PMDC.”

4. Brief facts of the case as per pleadings of the parties are that Petitioner claims to have obtained his Bachelor Degree in Dental Sciences (BDS) in the year 1975 from Liaquat Medical College, Jamshoro, Sindh, thereafter proceeded London to acquire postgraduate qualification in M.Sc (Periodontology) and after acquiring the aforesaid Degree in the relevant field, he applied for registration with PM&DC, who after scrutinizing the educational qualification of the Petitioner, verified the same and accorded registration certificate vide certificate dated 11.12.1986. Petitioner has submitted that M.Sc Degree obtained by him has equal status regardless of the preparatory course for one year full time. In this regard he referred one case of Dr. Shamim, who passed M.Sc in (Periodontology) in the year 1984 from the University of London and had been rendering her service at Khyber Dental College, Peshawar in the capacity of Professor/ Principal. Petitioner has submitted that on the aforesaid issue, letter dated 19.05.1987 issued by University of London is guiding principle regarding status of one year and two years course in the relevant field. Petitioner has submitted that in the year 1987 he joined Jinnah Postgraduate Medical Centre (JPMC) as an Assistant Professor in (Dentistry), thereafter he was promoted to the post of Associate Professor and after rendering more than 22 years (with effect from 23.04.1987 to 01.10.2009), he stood retired from JPMC in the

capacity of Professor (on current charges basis). Petitioner has submitted that after his retirement, he applied for the post of Professor in Baqai Medical University; Karachi on the basis of a certificate issued by the Joint Director, JPMC, however the same was forwarded to the PM&DC for the evaluation of the eligibility of the Petitioner for the aforesaid appointment in Baqai Medical University. Petitioner has submitted that PM&DC vide letter dated 26.04.2010 had cleared the issue of recognition of teaching experience of the petitioner.

Petitioner has submitted on the aforesaid opinion of PM&DC he sought clarification vide letter dated 30.04.2010, on the premise that they had accepted Teachers and Administrators with minor diploma (MCPS) / with no teaching experience as Professor in the Dentistry. Petitioner has submitted that in the year 2013, he applied for the post of Professor of Periodontology in the ISRA University, resultantly he was appointed on the aforesaid post vide letter dated 28.02.2014. Petitioner has submitted that he was also selected in Bahria University in the capacity of Professor in Periodontology Department vide letter dated 04.04.2014.

Petitioner has further submitted that his main grievance is against PM&DC on the issues as discussed supra and he at this stage does not press his case against the Respondent No.3. petitioner has submitted that he lodged formal complaint against them in the office of Wafaqi Mohatasib (Ombudsman) who vide order dated 10.12.2015 remanded the case of the Petitioner to the PM&DC for reconsideration and rectification if necessary by the PM&DC. Petitioner has submitted that PM&DC vide letter dated 20.04.2016, directed the petitioner to apply in PM&DC afresh.

Petitioner has submitted that due to non-availability of Teaching Experience Certificate at JPMC, Bahria University stopped his financial benefits vide letter dated 20.6.2016 and reverted him to the post of Associate Professor vide letter dated 24.6.2016. Petitioner being aggrieved by and dissatisfied with the aforesaid actions of the respondent-PM&DC has filed the instant petition on 30.6.2016.

5. Mr. Wasif Ali Mughal, learned counsel for the Petitioner has argued that the Petitioner obtained Degree in M.Sc. (Periodontology) from University of London in the year 1985, he applied to PM&DC for issuance of equivalence to his degree, and his request for recognition of his experience as Professor of Dentistry was wrongly declined by the PM&DC; that discrimination has been meted out with the petitioner as PM&DC had declared Dr. Shamim Akhtar, Dr. John S. Issac, Dr. Rafiq Chatta, Dr. Rafiq Memon, Dr. Abdul Ghani, Dr. Abdul Rauf, Dr. Dilshad and Dr. Sajjad Akhund, eligible for the post of professor on the basis of their qualification, which the Petitioner is possessing, but his claim on the same premise was denied by the PM&DC, which is highly discriminatory; that Respondent-PM&DC cannot ask the petitioner to apply afresh for recognition of his teaching experience as Professor of Dentistry after his retirement from JPMC in the year 2009; that Respondent-PM&DC has admitted the claim of the petitioner vide letter dated 26.04.2010. He lastly prayed for allowing the instant petition.

6. Respondent-PM&DC has filed comments and controverted the allegations leveled against them with the assertion that Petitioner's M.Sc. (Periodontology) from University of London

is a minor qualification with level-1 and he does not fulfill basic requirement of the post of Professor, having less level-III qualification; therefore he cannot be promoted as professor of Periodontology. However they reiterated their stance that that petitioner was required to apply afresh for recognition of his teaching experience as Professor, but the petitioner failed to avail the said benefit for the reasons best known to the Petitioner.

7. Mr. Muhammad Nawaz Khan Abbasi, advocate has filed vakalatnama on behalf of the Respondent No.3, which is taken on record. At this stage, he referred to the comments filed on behalf of the Respondent No.3 and prayed for dismissal of the instant petition against Respondent No.3.

8. Mr. Sheikh Liaquat Hussain, learned Assistant Attorney General has supported the stance of Respondent-PM&DC and argued that the instant petition is not maintainable.

9. We have heard the learned counsel for the Petitioner and perused the comments of Respondents No.2 & 3 as well as affidavit filed on behalf of the Respondent No.3 on the aforesaid issue.

10. The only question involved in the present proceedings is whether PM&DC has prescribed qualification and experience required for the post of Professor and petitioner is entitled to Teaching Experience Recognition Certificate from PM&DC?

11. We have noticed that PM&DC has refused to issue Teaching Experience Recognition Certificate as Professor to the petitioner on the premise that Petitioner's M.Sc. (Periodontology) from University of London is a minor qualification with level-1 and he does not fulfill basic requirement of the post of Professor,

having less level-III qualification as per PM&DC Regulations; therefor he cannot be promoted as professor of Periodontology. However, the representative of the Respondent-MP&DC appeared before this Court on 14.11.2017 and filed her affidavit along with Annexures i.e. PM&DC Faculty Registration Certificate dated 02.07.2015 valid up to 31.12.2019 and recognized the Petitioner as Associate Professor and not Professor.

12. To appreciate and dilate upon the forgoing question it is expedient to have a glance on the letter dated 26.04.2010 issued by the PM&DC regarding Recognition of Experience of the Petitioner in the relevant field. An excerpt of Teaching Experience Recognition Certificate of the Petitioner is reproduced as under:-

Sub: Recognition of Experience

Dear Sir,

I am directed to refer your letter No. Nil dated 12th April, 2010 on the subject cited above. It is to inform you that following experience is respect of Dr. Mushtaq Ahead Reg. No. 648-D can be counted as under:-

QUALIFICATION

- | | | |
|----|--------------|-------------------------------------|
| 1. | B.D.S | SINDH-1975 |
| 2. | M.Sc | London-1985 (Periodontology) |

TEACHING EXPERIENCE

1. **Assistant Professor of Dentistry at Jinnah Postgraduate Medical Centre Karachi from 23.04.1987 to 31.03.1991
3 years 11 months and 8 days.**
2. **Associate Professor of Dentistry at Jinnah Postgraduate Medical Centro Karachi from 01.04.1991 to 26.04.1994 3 years and 25 days. (To be counted as Assistant Professor.**
3. **Associate Professor of Dentistry at Jinnah Postgraduate Medical Centre Karachi from 27.04.1994 to 01.02.2008 13 years 9 months and 4 days.**
4. **Medical Professor (Current Charge Basis) of Dentistry at above Centre from 02.2.2008 to 01.5.2008-3 months. (To be counted as Associate Professor).**
5. **Associate Professor of Dentistry at Jinnah Postgraduate Centro Karachi from 02.05.2008 to 27.02.2009 9 months and 25 days.**
6. **Professor (Current Charge Basis) of Dentistry at above Centre from 28.02.2009 to 27.5.2009).**
7. **Associate Professor of Dentistry at Jinnah Postgraduate Medical Centro Karachi from 29.05.2009 to 08.07.2009 1 month and 10 days.**
8. **Associate Professor of Dentistry at Jinnah Postgraduate Medical Centro Karachi from 09.07.2009 to 30.09.2009 2 months and 21 days. (To be counted as Associate Professor.**

The applicant has 22 years 5 months and 3 days teaching experience as research publications in PM&DC approved journal with full credits. He is advised to contact appointing/selecting authority for determining his eligibility for a teaching post of Lecturers/Senior Registrars, Assistant Professors, Associate Professors, Professors, Professors and Examiners. This certificate is not valid for appointment beyond Associate Professor. To become Professor kindly reapply with the requisite qualification and publications.

13. Apparently, PM&DC has been given a mandate to establish uniform medical and dental practice across Pakistan by:-

“i) Prescribing a uniform minimum standard of courses of training for obtaining graduate and post graduate medical and dental qualifications.

ii) Prescribing minimum requirements for the content and duration of graduate and post graduate medical and dental courses of study.

iii) Prescribing the conditions for admission of courses of training as aforesaid.

iv) Prescribing minimum qualification and experience required

of teachers for appointment in medical and dental institutions.

v) Prescribing the standards of examinations, methods of conducting the examinations.

vi) Prescribing the qualifications and experience required of examiners for professional examinations.

vii) Registering faculty and students of all medical and dental institutions.

viii) Maintaining the Register of Medical & Dental Practitioners.

ix) Inspecting and formulate recommendations regarding recognition of medical and dental Institutions for training of undergraduate and postgraduate qualification.

x) Inspecting undergraduate and postgraduate examination for standardization.

xi) Deciding cases against registered practitioners for conduct and professional negligence.

xii) Inspecting and approve hospitals for house job and training.

xiii) Prescribing guidelines for medical and dental journals.

xiv) Issuing experience certificates to faculty.

xv) Setting up schemes of reciprocity with other countries and medical regulatory authorities.”

14. The Pakistan Medical and Dental Council Ordinance, 1962, provides Power to the Council to certify certain persons to be possessed of sufficient medical qualifications. Section 16.21 of the Ordinance provide Additional medical or dental qualification Section 16-A of the Ordinance provides Recognition of Foreign Additional Medical or Dental Qualifications.–

“The Council shall evaluate any additional medical or dental qualifications granted by any foreign institution and may–

(a) Recommend to the Federal Government that such institution or qualification be–

(i) Recognized and included in the Third Schedule as specified in section 16; or

(ii) Notified only and shall not be included in the Third Schedule, however, a separate list thereof shall be maintained; or

(b) Proceed as per section 15 or 19, as the case may be.

Section 19 Provides Power to the Council to certify certain persons to be possessed of sufficient dental qualifications.–

(1) If after an examination by a board constituted by the Council, the Council is satisfied that a person holding a qualification granted by a dental institution outside Pakistan, is possessed of sufficient knowledge and skill to be registered as a practitioner for the purpose of this Ordinance, it may recommend to the Federal Government to issue a notification in favour of such person to register him and his qualification. Upon such notification, the Council shall register the qualification possessed by the person without it being entered in any Schedule of this Ordinance.

(2) The Council shall register the qualification granted by a dental institution outside Pakistan, possessed by the person by maintaining a separate list in the register.

15. Perusal of record reflects that Respondent PM&DC has recognized the status of the Petitioner as an Associate Professor on the premise that he is having 22 years 5 months and 3 days teaching experience as an Assistant Professor and Associate Professor in the subject of Dentistry and has two Research publication in PM&DC approved general with full credits. As per record Petitioner was advised to reapply to PM&DC with the requisite qualification and publication. Apparently Petitioner has

failed to apply afresh for grant of Recognition of Teaching Experience Certificate from PM&DC. At this juncture, an important question arises as to whether this Court can evaluate the eligibility of the Petitioner in light of his qualification i.e. M.Sc. Degree in (Periodontology) from University of London?

16. To elaborate on the aforesaid point, we have noticed that the Petitioner has admitted in his memo of petition that he served in JPMC more than 22 years and was retired from service on 01.10.2009 on attaining the age of his superannuation i.e. 60 years in the capacity of Professor on current charge basis. Prima facie the certificate dated 29.03.2010 issued by JPMC shows the following factual position of the case:-

“This is to certify that Dr. Mushtaq Ahmed has worked in Jinnah Postgraduate Medical Centre, Karachi as under:-

1. ***Assistant Professor (Dentistry) with effect from 23th April 1987 to 31st March, 1991.***
2. ***Associate Professor (Dentistry) on acting charge basis from 1st April 1991 to 26th April 1994.***
3. ***Associate Professor (Dentistry) on regular basis from 27th April 1994 to 1st February, 2008.***
4. ***Professor of Dentistry on current charge basis from 2nd February 2008 to 1st May 2008.***
5. ***Associate Professor (Dentistry) with effect from 2nd May 2008 to 27th February 2009.***
6. ***Professor of Dentistry (on current charge basis) with effect from 28th February 2009 to 27th may 2009.***
7. ***Associate Professor (Dentistry) with effect from 28th May 2009 to 8th July 2009.***
8. ***Professor of Dentistry (on current charge basis) with effect from 9th July 2009 to 30th September 2009.***

On attaining the age of superannuation i.e. 60 years he retired from government service with effect from 1st October 2009.”

17. We have noticed that Section-II of the PM&DC Ordinance 1962 provides Minimum Qualifications Level required for

Appointment and Promotion up to the level of Professor which is as under:-

SECTION -II provides minimum qualifications level required for appointment for Teachers in Medical and Dental Institutions.

Learning levels	Duration	Clinical medical/Dental Qualifications	Basic Medical/Dental Sciences Qualifications
Level-I	MBBS 5 years BDS 4 years	MBBS/BDS	
Level-II a	Minimum 01 year after Level-I	Postgraduate Diplomas	M.Sc Basic Sciences, diploma in Medical Education, DMJ (1 year)
Level-II b	Minimum 02 years after Level-I	MCPS/M.Sc or other 2 years duration diploma and equivalent qualifications with other nomenclatures	MPH, MSPH/MHPE, DMJ (2 years), M.Phil and equivalent qualifications with other nomenclatures.
Level-III	Minimum 3 or more years after Level-I	MD/MS/MDS/FCPS/ and equivalent qualifications with other nomenclatures	FCPS/PhD and equivalent qualifications with other nomenclatures.
Level-IV	Minimum 2 years of recognized PG Qualification related field after Level-III	Sub-Specialty Qualification in relevant field	Sub-Specialty Qualifications in relevant field

1. Other nomenclatures /qualifications to be decided by SRC or DEC as the case may be
2. Holders of M.Phil and other Level-II b qualifications in basic medical/dental sciences will be eligible to become Professor till 31 Dec 2020.
3. PhD in clinical sciences shall not accepted as a qualification for appointment as teachers in clinical subject. MBBS/BDS graduates having PhD in basic subject with course work will continue to be appointed / promoted further . However MBBS/BDS graduates having PhD (basic science subject) with research work only i.e. without course work, shall not be appointed as teacher without acquiring additional level II-b qualification with course work in same subject.
4. Holders of Level III qualification in Surgery and Allied subjects are eligible for appointment and promotion upto professor after attaining requisite teaching experience in the respective basic medical sciences prescribed in these regulations i.e. in anatomy if he or she has acquired M.Phil/Level-II b in subject of Anatomy. Similarly level-III qualification holders of Medicine and allied are eligible for appointment and promotion upto professor after attaining requisite teaching experience in the respective basic medical sciences subject prescribed in these regulations i.e. Biochemistry, Physiology and Pharmacology if he or she has acquired M. Phil/Level-II b in the relevant subjects. Holders of Level III qualification in clinical subjects are no more eligible for fresh appointments/promotions without acquiring Level II b qualification in basic medical sciences. Clinical specialists will leave their original specialty on joining basic sciences faculty.
5. Qualification in clinical subjects included in schedule III having training period of less than three years will only be considered for appointment as specialist/senior registrar and after three (03) years teaching experience as senior registrar shall be eligible for promotion/ appointment as Assistant Professor and above as per regulations.
6. No online / distant learning degree will be accepted for teaching of clinical and Basic Subjects.
7. Teaching Experience acquired as Demonstrator/ lecturer before attaining Level II-b qualification is all basic subjects (medical) / dental) will be granted in ratio of 4:1 (maximum two and half years as Asst. Prof) and after acquisition of Level II-b as 2:1 as equivalent to Assistant Professor. Training period of Level-II b/III qualification will be counted as teaching experience in ratio 4:1 Teaching benefit will be granted for minimum duration of training prescribed for the qualification. This rule is applicable retrospectively. This experience will be counted equal to lecture/demonstrator as prerequisite for

appointment as Assistant Professor and equal to Assistant Professor for further promotion.

8. qualification less than 2 years but more than 1 year duration in any filed / specialty after level-I qualification will be classified as level-II a.
9. Faculty member having requisite qualification in Medical Education i.e. MHPE /PhD and wants to join Department of Medical Education as faculty will start his/her carrier as Asst. Professor of Medical Education and teaching experience gained by him/her as faculty member of clinical or Basic Medical Sciences subjects will not be counted for faculty appointment in Medical Education.

SECTION IV provides criteria for appointment and promotion of professorial Staff in undergraduate and postgraduate medical institution.

Post	Basic Qualification	Additional Postgraduate Qualification	Experience required	Research papers publications	Remarks
Professor	Do	Level III Post graduation like Ph.D/DCPS/MDS or equivalent postgraduate qualification recognized by the council in respective basic subject	At least three years teaching experience as an Associate Professor in the respective subject provided that total experience as an Assistant and Associate Professor is not less than eight years Or Nine years teaching experience as an Assistant Professor in the respective subject.	At least three research papers as Associate Professor published in standard dental/medical journal as approved by the PM&DC. Total 8 research papers in relevant subject.	Holder of Level II b qualification in respective subject are eligible to become professor till 2020. At least eight research papers after 31 December 2018 out of which three papers should be during the last three years.

18. We have seen that PM&DC has framed the Regulations 2011, which provides basic qualification for the post of Professor on the following Clinical subjects:

Oral Surgery, Operative/Restorative/Conservative Dentistry, Prosthodontics, Orthodontics, periodontia, Oral Medicine, Community Dentistry, Anesthesia.

Post	Basic Qualification	Additional Postgraduate Qualification	Experience required	Research papers publications	Remarks
Professor	Do	FCPS, MDS (Pak) OR Equivalent postgraduate qualification recognized/registered by PM&DC	Five years teaching experience as an Assistant Professor in the respective subject provided that total experience as an Assistant Professor & Associate Professor is not less than eight years. OR Nine years teaching experience as an Assistant Professor in the respective subject.	At least three research papers in three years be published in standard dental/medical journal as approved by PM&DC before promotion as Professor.	No person having minor postgraduate qualification shall be eligible for appointment/promotion as Professor.

19. We have also noticed that Teaching Experience recognized by the PM&DC is required for the purpose of appointment /promotion to the teaching post in any Medical and Dental Institution of Pakistan. In this regard, Regulation No. 42 of PM&DC provides as under:-

42. Keeping in view the dearth of qualified persons in basic fields of dentistry allied qualifications may be considered for appointment as faculty member. However the teachers would only get teaching experience in the subject he/she has taught. The allied subjects for appointment of qualified teachers would be:-

- 1) **Dental material- Operative Dentistry- prosthodontics**
- 2) **Oral Biology Oral Surgery/Orthodontics.**
- 3) **Oral Pathology Oral Surgery**
- 4) **Oral Medicine- Oral Surgery**
- 5) **Periodontology Operative Dentistry**

20. In view of the forgoing, legal as well as factual position of the case, we are of the considered view that as per PM&DC Regulation 2011 the appointment of Faculty / Teachers / Principals/ Deans /Administrative Staff in undergraduate and postgraduate Medical and Dental Institutions, candidate of Level-III having more than three years qualification is eligible to become Professor of Surgery. Prima facie periodontology is a clinical subject and the Petitioner possesses the Degree of M.Sc. in Periodontology, which as per PM&DC Regulations 2013 a minor qualification is having less level-III qualification.

21. In the light of above facts and circumstances of the case, we are of the considered view that the claim of the Petitioner for the promotion against the post of Professor can only be recognized if he meets the criteria as set-forth by the Respondent PM&DC and this Court cannot assess the eligibility as well as academic qualification of the Petitioner on the aforesaid pleas of the Petitioner and it is the Competent Authority of PM&DC to do the

need full in accordance with law if the Petitioner applies for grant of such Teaching Experience Certificate.

22. In the light of above discussion, the instant petition is disposed of along with the pending application(s), with direction to the Competent Authority of the Respondent-PM&DC to evaluate the eligibility of the Petitioner after giving ample opportunity of hearing to the Petitioner and take decision, without discrimination in accordance with law within a period of two months from the date of receipt of this Judgment.

Karachi

Dated:- 07.11.2018

JUDGE

JUDGE