

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-5147 of 2017

Present.

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

Mst. Yasmeen Akhtar & others Petitioners

Versus

The Government of Sindh and others Respondents

Date of Hearing: **06.11.2018**

Mr. Abdul Salam Memon, Advocate for the Petitioners.
Mr. Ali Safdar Depar, Assistant Advocate General Sindh

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-, The Petitioners have approached this Court for grant of Health Professional Allowance and other allied allowances i.e. Additional Pay Allowance, Non-Practicing Allowance, Hard Work Allowance and payment of compensation of family of Doctors, who fall victim of target killing or infectious diseases, as admissible to MBBS Doctors and Paramedical Staff serving in the Government Hospitals.

2. Basically the case of the Petitioners is that they are serving as Professional Physiotherapists in different Hospitals of the Government of Sindh i.e. Jinnah Postgraduate Medical Centre (JPMC), Civil Hospital Hyderabad, Special Education, National Institute of Child Health, Civil Hospital Karachi, Shahdadpur Civil Hospital and Civil Hospital Khairpur. Petitioners have submitted that they are entitled for the aforesaid allowances, which are being

paid to the MBBS Doctors and other Paramedical staffs serving in various Hospitals of the Government of Sindh.

3. Mr. Abdul Salam Memon, learned counsel for the Petitioners has drawn our attention to the Finance department letter No. FD(SR-III)5/40-2002(B), dated 20.07.2011 and argued that the Finance department had granted Additional pay allowance to Medical doctors on non-teaching side. He next submitted that Physiotherapists (non-teaching side) are entitled for the aforesaid allowances. Learned counsel added that the Respondent department forwarded the request of the Petitioners to the Finance department Government of Sindh for grant of the allowances and in this regard Summary for Chief Minister Sindh was floated but nothing has been done. Learned counsel has cited Notifications dated 06.02.2017 and 15.04.2016 issued by the Government of Khyber Pakhtunkhwa Finance Department (available page at 91-93) and argued that paramedic, nursing staff, pharmacist, drug inspector, drug analyst, chemist, physiotherapists, microbiologist and biochemist of Health department were granted Health Professional Allowances, whereas the Petitioners, who are performing the same duties have been denied the benefit of aforesaid allowances. Per learned counsel the same is discriminatory treatment meted out to the Petitioners; that the Respondents have conceded in paragraph 4, 5 & 6 of the comments that the profession of physiotherapy is an organ of Health Care System and the said allowances are awarded to the Medical doctors and Nurses; that the Respondents have denied the benefit of the aforesaid allowances to the Petitioners on the

premise that the five years study of physiotherapist is not equal to the study of medical professionals or pharmacists, who are better qualified. Learned counsel for the petitioners has objected to that assertion of the Respondents on the premise that the physiotherapists are professionals and are also in direct contact with patients of notified infectious diseases providing patient care assessment and evaluation along with physical treatment they provide help the handicap patients for their rehabilitation and their restoration as valuable members of the society, the omission of the aforesaid allowances is discriminatory attitude of the Respondents which is not sustainable under the law. The learned counsel has pointed out that the course study of physiotherapy is above five years academic course and elaborated that every academic year is subdivided in two semester of six months duration and the qualification of the Petitioners is at par with MBBS doctors and other paramedical staff, therefore the Petitioners are entitled for the allowances as claimed by them.

4. We have noticed that the Respondent No.3 has not offered any comments on the aforesaid plea taken by the Petitioners and have stated that the allowances cannot be given to Physiotherapists, equal to the MBBS doctors and from back date.

5. Mr. Ali Safdar Depar, learned Assistant Advocate General has argued that the five years study of Physiotherapists is not equal to the study of Medical professionals or Pharmacists, who are better qualified. He has next contended that the Physiotherapists are not at par with Doctors and other senior

professions, therefore there is no discrimination meted out to the Petitioners. He has further contended that this is not the case of same field or same profession, which is being dealt with in accordance with prevailing Rules and Regulations. Learned AAG has pointed out that no any Summary had been floated to the Competent Authority by the Health Department for grant of aforesaid allowances to the Petitioners; that the five years study of physiotherapists is not equal to the study of Medical Professional or Pharmacist, who are better qualified. Learned AAG further argued that qualification of Physiotherapists and MBBS doctors are quite different in all aspects. He lastly prayed for dismissal of the instant Petition.

6. We have heard the learned counsel for the Petitioners, learned AAG and have perused the material available on record.

7. In order to address the controversy, it would be beneficial to examine the courses of Physiotherapists in the field of Health Care System as pointed out by the learned counsel for the petitioners, which is as under:-

01. Anatomy	22. Medicine
02. physiology	23. Surgery
03. Kinesiology	24. Radiology & Diagnostic Imaging
04. Biostatistics	25. Human Growth
05. English	26. Community based Rehabilitation
06. Pakistan Studies	27. neurological Physical Therapy
07. Islamic Studies/ Ethics (for non-Muslim)	28. Evidence & arthritics
8. Bio Mechanics & Genetics	29. Prosthesis & Orthotics
9. Introduction to Computer	30. Cardio pulmonary Physical

	<i>Therapy</i>
<i>10. Bio Chemistry & Genetics</i>	<i>31. Scientific Inquiry & Research Methodology</i>
<i>11. Behavioral Sciences (Psychiatry & Psychology)</i>	<i>32. Clinical Decision Making & Differential Diagnostic</i>
<i>12. Medical Physics</i>	<i>33. Emergency Procedures</i>
<i>13. Pathology & Micro Biology</i>	<i>34. Primary Care in Physical Therapy</i>
<i>14. Pharmacology</i>	<i>35. Professional Practice (Law, Ethics & Admin)</i>
<i>15. Physical Agent & Electrotherapy</i>	<i>36. Integumentary Physical Therapy</i>
<i>16. Therapeutic Exercise & Techniques</i>	<i>37. Obstetric & Gynecological Physical Therapy</i>
<i>17. Health & Wellness</i>	<i>38. Pediatric Physical Therapy</i>
<i>18. Sociology</i>	<i>39. Gerontology & Geriatric Physical Therapy</i>
<i>19. manual Therapy</i>	<i>40. Sports Physical Therapy</i>
<i>19. manual Therapy</i>	<i>40. Sports Physical Therapy</i>
<i>20. Teaching Methodology</i>	<i>41. Supervised Clinical Practice</i>
<i>21. Community Medicine</i>	<i>42. Research Project</i>

8. In our view the physiotherapists have no role in certain ailments such as T.B, Swine flu etc. Prima facie the non-practicing allowance is admissible to those doctors, who are not allowed the private practice, in addition to non-practicing allowance has been allowed to those doctors of Health department, who are working against the posts in Secretariat side, Directorate of Health, Hospitals attached with Medical colleges and Malaria Control Program. The doctors holding the posts mentioned above are entitled for non-practicing allowances subject to following conditions:-

“a. Each Doctor shall furnish on affidavit that he has not undertaken private practice since 01.07.1983 or from the date he has assumed charge of the post.

b. In future the certificate may be given by the doctor concerned each month that he did not do private practice.

c. Non-practicing allowance shall have to be drawn every month which may on option be surrendered.”

9. Reverting to the plea taken by the learned counsel for the Petitioners regarding discrimination. We have considered this aspect of the case under Article 25 of the Constitution, which guarantees equal treatment to all persons similarly placed. Prima-facie in terms of Article 27 of the Constitution, no citizen in the service of the Pakistan or other person shall be discriminated in any manner. Article 27 does not only safe guard against the discrimination at the time of appointment of service but subsequent appointment as well. Disparity in the pay scale allowances in the province of Sindh, as compared to other provinces is in clear negation to the aforesaid Articles.

10. In the wake of above discussion, the aforementioned Constitution Petition is disposed of in the following terms along with pending application(s):-

- (a) Government of Sindh / Competent Authority is directed to consider the case of Petitioners for grant of Health Professional Allowance and pass an appropriate order as provided under the law after granting Petitioners a meaningful hearing within a period of two months.

JUDGE

JUDGE

Karachi
Dated:- 14.11.2018.