

# IN THE HIGH COURT OF SINDH KARACHI

Before:  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Adnan-ul-Karim Memon

## C.P No. D- 3550 of 2020

### **Arsalan Hassan**

Petitioner through : In person

### **Respondents No.1 to 3**

through : Mr. Ali Safdar Depar, AAG

Dr. M. Suleman,  
Deputy Executive Director  
JPMC Karachi

### **Respondent No.5**

Dr. Amtul Qudoos Latif : In person

**Date of hearing** : 14.10.2021

**Date of decision** : 14.10.2021

## **O R D E R**

**ADNAN-UL-KARIM MEMON, J.** – The petitioner filed this petition with the following prayer: -

- a. *To declare that impugned office order No.F.194/ADMN.I/JPMC dated 23 April 2020 issued by the respondent No.4 is illegal void and without lawful authority and liable to be set aside and further direct the respondent to issue fresh office order in favour of the petitioner (most senior and qualified) for the charge of Clinical Pathology (Main Laboratory).*
- b. *To declare that the respondent No.4 is illegally hold the charge of Head of Clinical Pathology (Main Laboratory), is liable to be issued show cause notice as to what authority of law to be she is holding such office at cost of public exchequer and against the principles of good governance.*
- c. *To declare that respondent No.5 Dr. Amtul Qudoos Latif is illegally hold the office of Clinical Pathology (Main Laboratory), as being Assistant Anesthetist and she may be repatriate to her parent department i.e. Anesthesia department.*
- d. *To declare and direct the respondents to issue fresh order in favour of petitioner for the charge of Assistant Professor (BPS-18) as being given other eligible officers in JPMC.*
- e.

2. The petitioner, who is serving as a medical technologist (BS-17) in Jinnah Postgraduate Medical Centre (JPMC) Karachi, has impugned

office order dated 23.04.2020 (page 35) wherein it is stated that the Executive Director will be the overall head of the Department of Clinical Pathology (Main Laboratory) till further orders and all indents, etc. will be signed by respondent No.5 and she will channelize all communication through the Executive Director. It is contended, inter alia, by the petitioner that the office order is liable to be set aside as the Executive Director as well as respondent No.5 do not possess the requisite technical qualification for the subject post. It is further contended that for a medical technologist a highly skilled health professional is required to be posted, who is supposed to be an expert in conducting tests and analyzing blood, other body fluids, and tissue samples; that medical technologists are responsible for operating and maintaining the equipment used to analyze specimens and ensuring that tests are completed in a correct and timely manner. He emphasized that the subject post can be looked after only by a person who has such technical qualification as discussed supra; and, the petitioner, being the senior-most medical technologist in the (Main Laboratory) of JPMC, ought to have been made Incharge of the subject post rather than respondent No.5.

3. The case of the petitioner is that on the recommendation of the Federal Public Service Commission, the petitioner was selected as Medical Technologist BPS-16. Later on, the same post was upgraded in BPS-17 with effect from 30-03-2011. After implementation of the 18th Constitutional Amendment, the administrative control of Jinnah Postgraduate Medical Centre (JPMC) was handover to the Health Medical Centre Department, Government of Sindh with effect from 01-07-2011; petitioner has raised his voice of concern when in his place an outsider/respondent No.5 was made Incharge of the (Main Laboratory) of JPMC, however, the said stance of the petitioner was refuted by the respondent-JPMC on the premise that he could not be promoted/appointed; and/or given charge of the post which is meant for teaching cadre and is not covered under the Service Rules notified on 26.03.1994. The petitioner being aggrieved by and dissatisfied with the aforesaid decision of respondent-JPMC has filed the instant petition.

4. Mr. Ali Safdar Depar learned AAG along with respondent No.5 who is present in Court submits that she is working in JPMC as

Assistant Professor (Pathology); that she has been assigned duty based on merit being a senior-most officer with relevant qualification and experience i.e. MBBS, M. Phil (Pathology), Ph.D. (Molecular Pathology in the process). Learned AAG has pointed out that the petitioner is a medical technologist BPS-17 and is a junior technologist who does not fulfill the criteria for promotion/appointment against the teaching post and is not capable to be assigned duty as incharge main laboratory. Moreover, there are other senior medical technologists at JPMC and his claim is based on fallacious premises; that as per job context and job contents of medical technologists they have to perform their duties with medical equipment, machines, and other medical gadgets; and, the demand of petitioner for separate office is irrelevant and not justified as per his job description; that as per rules medical officers, assistant anesthetists, registrar, causality medical officer, senior registrar, assistant director (Medical) are the eligible doctors for promotion against the teaching post in clinical and basic medical sciences in the medical institution; that respondent No.5 was entrusted current charge to the post of Assistant Professor (Clinical Pathology) BS-18 based on acquiring higher qualification i.e. M. Phil (Pathology) under the rules.

5. We have heard the learned counsel for the parties and perused the material available on record.

6. The question involved in the present proceedings is whether a Medical Technologist can be appointed as Assistant Professor (Micro Biology) on a current charge basis and be made incharge of the main laboratory of JPMC.

7. There is no cavil to the effect that medical technologist is healthcare professional and without the medical technologist, tests cannot be performed, data cannot be generated, and quality control is left undone. The medical technologist is the backbone of the medical institution and this is a separate cadre. The term "Cadre" has been defined in rule 9(4) of Fundamental Rules, 1922. The said Rule defines "cadre" to mean "the strength of the service or a part of the service sanctioned as a separate unit". Prima-facie, Medical Technologist does not belong to General/specialist cadre of health services personnel/Doctors; and, does not fall within the ambit of teaching cadre; that teaching cadre is defined under the Rules and the following

categories fall within the ambit of teaching cadre i.e. Lecturer, Demonstrator, Senior Lecturer, Demonstrator, Assistant Professors, Associate Professors, and Professors. The holder of M.Phil. (Microbiology), M. Phil (Chemical Pathology), M.Phil. (Histopathology) M.Phil. (Hematology), M.Phil. (Clinical Pathology), etc. are eligible for appointment in teaching cadre as Assistant Professor, Associate Professors, and Professor in Pathology with requisite teaching experience. However, we are unable to find a Medical Technologist post to be considered as a teaching cadre post. Prima facie, the aforesaid two cadres are distinct from each cadre, cannot be allowed to merge because they continued their parallel existence.

8. During the course of argument, we have been informed that the respondent vide letter dated 27.06.2018 declined the request of the petitioner on the subject issue on the ground that the post of Assistant Professor BPS-18 could only be filled by the Medical Officer BPS-17 and BPS-18 including Lecturers, Registrars, Senior Registrars and Demonstrators etc.; in the Medical Institution; whereas the petitioner was just medical technologist appointed in BPS-16; and, his post was upgraded in BPS-17, thus the claim of the petitioner to be appointed as Assistant Professor BPS-18, which is a teaching cadre post as per recruitment rules notified on 26.2.1986; and, prima-facie, the petitioner has no qualification and experience to claim appointment/promotion on such post; that merely having Medical Science degree other than MBBS degree and/or equivalent qualification on clinical side, is not justified to claim appointment on promotion post of Associate professor as per recruitment rules; and, if it is allowed it amounts change of cadre, which is not permissible under the law; even the petitioner has never been a lecturer/demonstrator. So far as his claim about transfer and posting on the subject post, prima-facie this is prerogative of the competent authority of respondent-Institution to place its employees as per their qualification and experience if deviated the consequences will follow accordingly.

9. Now, after we have scanned the file, we are clear in our minds that no civil/public Servant of a non-cadre post can be posted, out of cadre. Reliance is placed on the cases of Muhammad Bachal Memon and others vs. Syed Tan veer Hussain Shah and others (2014 SCMR 1539), Contempt proceedings against the Chief Secretary Sindh and others

**(2013 SCMR 1752)**, *Ali Azhar Khan Baloch v. Province of Sindh* **(2015 SCMR 456)**, and *Ajmal Hassan Khan and another Versus Government of Sindh and others*, **2012 P L C (C.S.) 1153**.

10. In the light of the foregoing, the request of the petitioner cannot be exceeded in the light of relevant rules and regulations.

11. In view of the above, the petition being misconceived is hereby dismissed with no order as to costs.

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Shahzad Soomro\*