

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
C.P. No.D-435 of 2016.

Present

Mr. Zafar Ahmed Rajput, J.  
Mr. Muhammad Iqbal Mehar, J

PETITIONER : Akbar Ali Khoso, through Mr. Rafique Ahmed  
K. Abro, advocate

RESPONDENT No.1 : Secretary Govt. of Sindh, Health Department,  
through Mr. Abid Hussain Qadri,  
State Counsel.

RESPONDENTS No. 2 to 5: Director, Jacobabad Institute of Medical  
Science (JIMS) & others,  
through Mr. Abdul Jabar Lashari, advocate

Date of Hearing : 31.08.2016.  
Date of Order : 31.08.2016.

ORDER

ZAFAR AHMED RAJPUT, J: Through instant petition, the petitioner seeks  
following relief:

- a) *That this Hon'ble Court be pleased to direct the respondents, particularly, the respondent No.1 to issue Notification/Transfer Orders thereby transfers the petitioner and 49 other employees from Civil Hospital, Jacobabad / D.H.O Jacobabad to the "Jacobabad Institute of Medical Sciences (JIMS)", without any further delay.*
- b) *To restrain the respondents, particularly the respondents No.1 and 2 not to entertain applications from the external/ extraneous applicants on the basis of advertisement got published by respondent No.2 in various newspapers, not to conduct/hold test and interviews and not to fill the said advertised posts in "Jacobabad Institute of Medical Sciences (JIMS), till final disposal of this petition.*



2. Mr. Rafique Ahmed K. Abro, learned counsel for the petitioner, submits that on 15<sup>th</sup> February 2013, the Provincial Assembly of Sindh passed *Jacobabad Institute of Medical Science Bill, 2013* for establishing *Jacobabad Institute of Medical Science (JIMS)* (herein after referred to as “**the Institute**”) and, vide Notification No. PAS/Legis-B-5/2013, dated 19<sup>th</sup> March 2013 *Jacobabad Institute of Medical Science Act, 2013* being Sindh Act No. XIX of 2013 was published in the official gazette as an Act of the Legislature of Sindh (hereinafter referred to as “**the Act**”). As per Section 4 (1) & (2) of the Act, the entire infrastructure including the human resources owned or vested in, or held in trust by the District Headquarter Hospital, Jacobabad were transferred to the JIMS and, vide letter No. SO-IIT(H)JIMS/26-39/2014, dated 17.02.2014, option form as sub-section 4 of the Section 4 of the Act was sent by the respondent No.1 i.e. Secretary, Health Department, Government of Sindh to the Civil Surgeon, Civil Hospital, Jacobabad with request to get the option from all doctors/paramedical staff, technical/non-technical officers/officials working in Civil Hospital, Jacobabad whether they want to opt the Institute OR want to continue work in Health Department, Government of Sindh, with further request that the detailed report after getting options be furnished for necessary action.

3. Mr. Abro further submits that the petitioner is employee of Health Department, Government of Sindh and he is posted as Store Keeper in the office of District Health Officer, Jacobabad and he as well as other 49 employees/staff members of Civil Hospital Jacobabad opted to join the Institute and were waiting for their transfer and posting in the Institute but instead of issuing such transfer orders/Notification by the respondent No.1, the Director of JIMS, the respondent No.2, got an advertisement published in various newspapers inviting the applications from the external candidates for filling various posts in the Institute, which act of the said respondent according to the learned counsel is illegal, without lawful authority and based on mala fide.

(2)

4. Conversely, Mr. Abdul Jabar Lashari, learned counsel for the respondent No.2, maintains that only the employees of Civil Hospital/DHQ Hospital Jacobabad were asked for exercising of their option, the petitioner is employee of District Health Office, therefore, his case was not considered, as such, this petition being misconceived is liable to be dismissed.

5. We have heard learned counsel for the respective parties and perused the material available on record. In order to appreciate the contention of learned counsel for the parties, we deem it appropriate to reproduce Section 4 of the Act, which reads as under;

*4. (1) All properties, rights and interest of whatever kind used, enjoyed, possessed, owned or vested in, or held in trust by the District Headquarter Hospital Jacobabad and all liabilities legally subsisting against it shall stand transferred to the Institute.*

*(2) All persons serving in the District Headquarter Hospital, Jacobabad, referred to in sub-section (1), immediately before the commencement of this Act shall, notwithstanding any law or terms and conditions of their service, stand transferred for service to the Institute on the terms and conditions as may be prescribed :*

*Provided that such terms and conditions shall not be less favourable than those applicable to them immediately before their transfer to the Institute.*

*(3) Any person transferred to the Institute under sub-section (2) including the person who has not so far reported to the Institute may opt to serve the Health Department.*

*(4) The option under sub-section (3) shall be exercised and submitted to Government within ninety days of the commencement of this Act and the option so exercised shall be final.*

*(5) On receipt of the option under sub-section (4), Government may transfer, or as the case may be, allow to continue the person concerned for service in the Health Department.*



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- (6) .....
- (7) .....
- (8) .....

6. It may be examined that with the establishment of the Institute under the Act, the services of all the employees serving in the District Headquarter Hospital, Jacobabad stood transferred for service to the Institute; however, with condition that any person transferred to the Institute including the person who has not so far reported to the Institute may opt to serve the Health Department. It has also been provided that on receipt of the option, Government may transfer, or as the case may be, allow to continue the person concerned for service in the Health Department. Hence, it is discretion of the Government to transfer the employee of District Headquarter Hospital, Jacobabad to the institute or allow him to continue his service in Health Department. As such, no employee of the Health Department can claim his transfer in the Institute as a matter of right.

7. It also reveals from the contents of the letter dated 17.02.2014, issued by the Health Department, Government of Sindh to Civil Surgeon, Civil Hospital, Jacobabad that the option was got from the doctors/paramedical staff, technical/non-technical officers/ officials working in "Civil Hospital, Jacobabad" if they wanted to opt the Institute. It is an admitted position that the petitioner is the employee of the Health Department and since he is not the employee of the "Civil Hospital, Jacobabad" he does not meet the criteria to opt the Institute.

8. For the foregoing facts and reasons, we do not find any merit in this petition, which is accordingly dismissed, with no order as to costs.

  
JUDGE

  
JUDGE