JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1452/2012
Naseer Ahmed and others
Versus
Federation of Pakistan through Secretary, Cabinet Division and others

Date of Hearing:	04.11.2019
Petitioner by:	Mr. Muhammad Umair Baloch, Advocate
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Ch. Imtiaz Ahmad, Advocate for respondent No.2/N.I.H. Mr. G.M. Jakhrani, Deputy Director, Ministry of National Health Services, Regulation and Coordination Mr. Ishtiaq Ahmad, Section Officer, Finance Division.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, who are Laboratory Technicians in the National Institute of Health, seek a direction to the respondents to make their service structure such as to bring it at par with that for the Lab Technicians in other institutions like Pakistan Institute of Medical Sciences, Islamabad etc.

2. The National Institute of Health (**"N.I.H."**) is an autonomous body under the administrative control of the Ministry of National Health Services, Regulations and Coordination (**"Ministry of N.H.S.R.&C."**). Since there was no service structure of staff working in the N.I.H., and the staff recruited in specific grades usually retired in the same scale, it created frustration amongst the staff of N.I.H. and caused a departure of experience staff. In order to avert this, the improvement in the service structure of the staff working in N.I.H. was approved by the Board of Governors (**"B.O.G."**) of the N.I.H. and referred to the Finance Division for approval. The Finance Division was of the view that the proposal regarding improvement in the service structure of Laboratory Technicians of the N.I.H. be first referred to the Establishment Division. Accordingly, vide letter dated 14.06.2011, the erstwhile Ministry of Health requested the Establishment Division to approve the proposal regarding the

improvement of the service structure of the Laboratory Technicians of N.I.H. In essence, the proposal was to improve the service structure so as to make it commensurate with the service structure of the medical staff in medical institutions / hospitals like Pakistan Institute of Medical Sciences, etc.

3. As a consequence of the Constitution (Eighteenth) Amendment, 2010, the erstwhile Ministry of Health was devolved. On 19.05.2012, the instant writ petition was filed. On 27.07.2012, the Section Officer (Health Wing), Cabinet Division appeared before this Court and submitted that all efforts were being made to redress the petitioners' grievances. On 03.10.2012, the Section Officer informed the Court that the Establishment Division had already approved the petitioners' case and the matter had been referred to the Finance Division. It was not until 14.05.2015 that this Court directed the Director (Administration), N.I.H. to route a summary for the service structure of the N.I.H.'s staff making reference to the earlier summary.

4. Summary dated 09.06.2015 was sent by the N.I.H. to the Ministry of N.H.S.R.&C. On 11.06.2015, this Court directed the Secretary, Establishment Division to personally look into the matter and redress the petitioners' grievances. Vide office memorandum ("O.M.") dated 26.02.2016, the Establishment Division informed the Ministry of N.H.S.R.&C. that the Establishment Division was not the competent authority for the upgradation of posts in the N.I.H. since the N.I.H. was an autonomous body and had its own service rules. It was advised that the N.I.H. may resolve the matter in the light of the decision taken in the 63rd meeting of the B.O.G. held on 19.12.2014 on the subject.

5. On 17.11.2015, the Establishment Division had granted a provisional approval to the draft service rules of N.I.H. These rules had been forwarded to the Finance Division which had not responded in the matter. On 23.05.2019, the Finance Division filed a report showing that a summary had been moved by the Ministry of N.H.S.R.&C. on the service structure of the N.I.H.'s employees, and that the proposals in the said summary had been approved by the Prime Minister on 07.12.2018.

6. On 19.06.2019, the summary dated 16.04.2018 was brought on the record of this Court. The said summary shows that a proposal for the improvement in the service structure of technical staff of N.I.H. was placed before the B.O.G. of N.I.H. in its 60th meeting. The B.O.G. of N.I.H. had recommended to refer the case to the Establishment Division and the Finance Division. Subsequently, the Ministry of N.H.S.R.&C. took up the matter with the Establishment Division for the creation of new posts and improvement of recruitment rules to implement the proposed service structure of Technicians in N.I.H. Apparently, the Establishment Division provisionally approved the service rules with the stipulation that on the creation of posts by the Establishment Division, the draft service rules will be re-submitted for a final approval. Furthermore, the Finance Division had advised that a summary should be moved to the Prime Minister through the Establishment Division and the Finance Division.

7. In the said summary, it was stated that in order to improve the service structure, 56 posts of Laboratory Technicians (BPS-09) were to be re-designated as Junior Technicians (BPS-09) whereas 88 posts with different designations in BPS-05 to BPS-07 were to be upgraded and re-designated as Junior Technicians (BPS-09). As a result of this, 88 posts in junior scales were to be treated as abolished. Thereafter, the junior technicians (BPS-09) in the new structure would be promoted as Technicians (BPS-12), Senior Technicians (BPS-14), Chief Technicians (BPS-16) and Principal Technicians (BPS-17) as per the approved percentage given in the policy. The financial implication was to be met out of the sanctioned budget of N.I.H. In the said summary dated 16.04.2018 for the Prime Minister, the Ministry of N.H.S.R.&C. proposed the implementation of the five-tier improved service structure of the para-medical staff/technical staff of the N.I.H. This improved service structure for the staff of N.I.H. was to be in line with the service structure of the para-medical staff/technical staff of the federal medical institutes/hospitals.

8. The matter was considered by the Establishment Division and on 26.04.2018, it took the view that since the N.I.H. was an

autonomous body, the policy of upgradation/re-designation of posts which was meant for Ministries/Divisions was not applicable to N.I.H. Furthermore, it took the view that the Prime Minister was not the competent authority for the re-designation of the posts of Laboratory Technicians (BPS-09) to that of Junior Technicians (BPS-09) and the upgradation/re-designation of posts in BPS-05 to BPS-07 into BPS-09. However, the Establishment Division took the view that the approval of the Prime Minister was only required for the implementation of the five-tier improved service structure of para-medical/technical staff of N.I.H. The Establishment Division endorsed the proposal regarding the implementation of the five-tier improved service structure of the para-medical/technical staff of N.I.H. elaborated in paragraph 5 of the Ministry of N.H.S.R.&.C's summary dated 16.04.2018 subject to the concurrence of the Finance Division.

9. On 20.11.2018, the Finance Division endorsed the said view of the Establishment Division.

10. On 07.12.2018, the Prime Minister approved the proposal endorsed by the Establishment and Finance Divisions only to the extent of the implementation of the five-tier improved service structure of para-medical/technical staff of N.I.H.

11. Despite the approval of the Prime Minister as to the implementation of the five-tier improved service structure of para-medical/technical staff of N.I.H., the respondents have taken no substantive step for the implementation of the said improved service structure.

12. The excuse put forth for not implementing the said improved service structure of the para-medical/technical staff of N.I.H. is the Finance Division's O.M. dated 21.08.2019 regarding austerity measures for the financial year 2019-20. Perusal of the said O.M. shows that as an austerity measure, the creation of new posts would be banned except those required for development projects and approved by the competent authority.

13. It ought to be borne in mind that the Establishment Division on 26.04.2018 had explicitly stated that *"approval of the Prime Minister is only involved for implementation of five-tier improved structure of*

para-medical/technical staff of N.I.H.". **The Establishment Division had also endorsed paragraph 6 of the summary dated 16.04.2018 in which the implementation of the five-tier improved service structure of the para-medical/technical staff of N.I.H., as elaborated in paragraph 5 of the said summary, was proposed. As mentioned above, paragraph 5 of the said summary clearly provided the five-tier improved service structure for the para-medical/technical staff of N.I.H. which was that under the new structure, Junior Technician (BPS-09) would be promoted as Technicians (BPS-12), Senior Technicians (BPS-14), Chief Technicians (BPS-16) and Principal Technicians (BPS-17).**

14. It is reiterated that the proposal regarding the five-tier improved service structure of the para-medical/technical staff of N.I.H. was endorsed by the Establishment Division on 26.04.2018 as well as the Finance Division on 20.11.2018 and also approved by the Prime Minister on 07.12.2018.

15. Perusal of the Finance Division's O.M. dated 21.08.2019 shows that it has not been issued with the approval of the Prime Minister. Therefore, the said O.M. cannot undo or override the approval of the Prime Minister regarding five-tier improved service structure of the para-medical/technical staff of N.I.H.

16. In view of the above, the instant writ petition is allowed to the extent that the respondents are directed to forthwith implement the decision regarding five-tier improved service structure of the para-medical/technical staff of N.I.H., and report compliance through the Registrar of this Court with the said directions within a period of thirty days from the date of the receipt of this judgment.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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