JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4108/2017
Dr. Zahid Azeem
Versus.
Pakistan Medical & Dental Council and another

Date of Hearing: 27.09.2018
Petitioner by: Syeda Nida Zahra, Advocate,
Respondents by: Mr. Attaullah Hakim Kundi, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Dr. Zahid Azeem, seeks a direction to respondent No.1 (Pakistan Medical & Dental Council) to correct the petitioner's experience certificate dated 12.04.2016 by including therein the petitioner's experience which was recognized in his experience certificate dated 13.09.2017. Furthermore, the petitioner seeks a direction to respondent No.1 to recognize his experience of 4 years and 10 months in the Army Medical College in accordance with the applicable regulations. As a consequence of the said recognition, the petitioner seeks to be considered for promotion.

2. Learned counsel for the petitioner submitted that since 04.05.2012, the petitioner has been serving as an Assistant Professor in the Department of Biochemistry in Azad Jammu Kashmir Medical College, Muzaffarabad; that the petitioner served as a Demonstrator/Lecturer in the Department of Biochemistry at the Army Medical College, Rawalpindi, from 2007 to 2012; that the petitioner had obtained MasterS in Philosophy (M.Phil) in the subject of Biochemistry from the Quaid-e-Azam University; that on 26.01.2012, the petitioner obtained Ph.D in Biochemistry from Quaid-e-Azam University; that on 30.10.2015, the petitioner applied to respondent No.1 for the issuance of an experience certificate; that in the experience certificate issued by respondent No.1 on 12.04.2016, the petitioner's experience as a Demonstrator at the Army Medical College, Rawalpindi, from 01.04.2007 to 07.02.2012 was not

recognized; that thereafter, on 20.04.2017, the petitioner again applied to respondent No.1 for the recognition of his experience; that vide letter dated 13.09.2017, the petitioner's experience of 1 year, 2 months and 21 days as a Demonstrator at the Army Medical College, Rawalpindi, was recognized; that under Regulation No.42 of the "Regulations for the Appointment/Promotions of Faculty Professional Staff/Examiners/ Principals /Deans /Administrative Staff in Undergraduate and Postgraduate Medical and Dental Institutions of Pakistan, 2017" ("the 2017 Regulations"), a Non-Medical Faculty Member could not be appointed as faculty in any Medical /Dental Institution or University, and Non-Medical Faculty already appointed could not be promoted further beyond title acquired till 02.03.2017; that the said Regulations were approved by respondent No.1 on 09.06.2017; that since the petitioner had acquired the qualifying experience of five years to be eligible for promotion as Associate Professor prior to the making of the said Regulations, respondent No.1 ought to have declared the petitioner as eligible for promotion as Associate Professor; that under the earlier Regulations, a Non-Medical Faculty Member with the qualifying experience of 5 years as an Assistant Professor could be promoted as an Associate Professor; that the delay by respondent No.1 in issuing the correct experience certificate to the petitioner could not operate to his detriment and he could not have been deprived of his right to be promoted as an Associate Professor; that even after the making of the 2017 Regulations, respondent No.1 had considered several Non-Medical Faculty Members to be appointed or considered for promotion; and that upon gaining the relevant experience for being eligible for promotion as an Associate Professor, strong vested rights were created in the petitioner's favour. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.1 submitted that the experience certificate issued to the petitioner

on 12.04.2016 was correct, whereas the one issued to him on 13.09.2017 was erroneous; that even otherwise, after the experience certificate dated 12.04.2016 was issued to the petitioner, he applied with a delay of almost 1 year for a corrected experience certificate to be issued to him; that in the event, the relief sought by the petitioner is granted to him, it would be in stark violation of Regulation No.42 of the 2017 Regulations; that the 2017 Regulations were approved by respondent No.1 on 09.06.2017 and were communicated to all Medical Colleges on 01.07.2017; that when the petitioner applied for the recognition of his experience on 28.07.2017, the 2017 Regulations had already been enforced; that the experience of a Non-Medical Faculty Member as a Demonstrator before Ph.D cannot be recognized; that in fact a Non-Medical Faculty Member who has not obtained a Ph.D cannot apply for or to be appointed as a Demonstrator; that since the petitioner had obtained a Ph.D in 2012, his experience as a Demonstrator after obtaining a Ph.D could be recognized; that the petitioner has not even been able to show that there was any vacancy of an Associate Professor prior to 30.10.2017 against which he could have been promoted; that the petitioner's reliance on Explanatory Rules No.14 and 15 to the *"Regulations for Examiners/Inspectors for the Undergraduate and Postgraduate Examination"* is misplaced since the said Regulations are applicable to Medical Faculty Members (i.e. MBBS and BDS); that Explanatory Rule No.38 clarifies that Non-Medical Graduate with Ph.D and M.Sc. in the relevant discipline will only be considered when Medical Graduates are not available after repeated advertisement in leading newspaper and verified by respondent No.1 and that experience certificate will only be issued to those Non-Medical Graduates who posses degree of Ph.D with Masters in respective subjects; that no vested rights accrued in the petitioner's favour at any material stage; and that respondent No.1 cannot act in a manner which would be tantamount to a violation of the 2017

Regulations. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. It is not disputed that the petitioner served as a Demonstrator of Biochemistry at the Army Medical College, Rawalpindi, from 01.04.2007 to 05.04.2012. It is also not disputed that the petitioner had not done his MBBS and is a Non-Medical Faculty Member. While working as a Demonstrator, the petitioner, on 26.01.2012, obtained Ph.D in the subject of Biochemistry from the Quaid-e-Azam University, Islamabad. From 05.04.2012 onwards, the petitioner worked as an Assistant Professor in the Department of Biochemistry at the Azad Jammu Kashmir Medical College, Muzaffarabad.

6. On 30.10.2015, the petitioner applied to respondent No.1 for the recognition of his qualifications and teaching experience. Respondent No.1, vide letter dated 12.04.2016, recognized 28 days of experience as a Demonstrator of Biochemistry at the Army Medical College, Rawalpindi. After more than one year, the petitioner, on 20.04.2017, again applied to respondent No.1 for the recognition of his qualifications and teaching experience. Vide letter dated 13.09.2017, respondent No.1 recognized 1 year, 2 months and 21 days as the petitioner's experience as a Demonstrator from 01.04.2007 to 07.02.2012, by counting the same at the ratio of 4:1. Additionally, 29 days of experience as a Demonstrator from 08.02.2012 to 05.04.2012 was recognized by counting the same at the ratio of 2:1. As per the said letter dated 13.09.2017, the petitioner had the qualifying experience of more than 5 years (as a Demonstrator and later as an Assistant Professor) to be considered for promotion as an Associate Professor. However, by this time the 2017 Regulations had been enforced by respondent No.1. Regulation No.42 of the said Regulations explicitly provides that *"Non-medical faculty member (Non-MBBS/ Non-BDS) will not be appointed as faculty in*

any medical / dental institution or University." **Furthermore, it was provided that** ***"Non-medical faculty already appointed shall not be promoted further beyond title acquired till 2nd March 2017."*** **By reason of the said Regulation, the petitioner, being a Non-Medical Faculty Member, could not be considered for promotion as an Associate Professor.**

7. The cause for the petitioner's grievance arosed when the petitioner's experience as a Demonstrator was not given recognition in respondent No.1's initial letter dated 12.04.2016. The petitioner feels that had the petitioner's experience as a Demonstrator been initially recognized as was done in respondent No.1's letter dated 13.09.2017, the petitioner would have been considered for promotion as an Associate Professor. The petitioner contends that had the petitioner's said experience been given due recognition on 12.04.2016, he would have been considered to have had the required teaching experience of 5 years as an Assistant Professor to make him eligible for promotion as an Associate Professor.

8. Now, the learned counsel for respondent No.1 took the position that respondent No.1 had erroneously recognized the petitioner's pre-Ph.D experience as a Demonstrator, in its letter dated 13.09.2017. He buttresses this position by making reference to the Explanatory Rule No.38 to the ***"Regulations for Examiners/Inspectors for the Undergraduate and Postgraduate Examinations."*** **The said Explanatory Rules provides** ***inter-alia*** **that** ***"Non-medical graduates with Ph.D and M.Sc in the relevant discipline will only be considered when medical graduates are not available after repeated advertisement in leading newspaper and verified by PM&DC."*** **Furthermore, it is provided that** ***"the experience certificate will only be issued to those non-medical graduates who possesses degree of Ph.D with Masters in respective subjects."*** **If the said Explanatory Rule is to be given its literal meaning then the recognition accorded by respondent No.1 to the petitioner's pre-Ph.D experience as a Demonstrator would be erroneous. Be that as it may, respondent No.1 did give**

recognition of 1 year, 2 months and 21 days to such experience, in its letter dated 13.09.2017. Since the said letter has not been withdrawn at any stage, I would proceed on the assumption that the recognition accorded to the petitioner's said experience had created rights in his favour.

9. Now, no explanation was given by the learned counsel for the petitioner for the inordinate delay of 1 year in re-applying to respondent No.1 for the recognition of his teaching experience, including his pre-Ph.D experience as a Demonstrator. It is not disputed that the 2017 Regulations were made in March 2017, and the same were approved by respondent No.1 on 09.06.2017. Since these Regulations were admittedly communicated to the Medical Colleges on 01.07.2017, this date, for all intents and purposes, would be considered as the date on which they became applicable. Upon these Regulations became applicable, a Non-Medical Faculty Member, could not be appointed or promoted as a Faculty in any Medical or Dental Institution or University. No effort has been made by the learned counsel for the petitioner to show that there was a vacancy of an Associate Professor against which the petitioner could have been promoted prior to the making or the enforcement of the 2017 Regulations. Even if it is assumed that on 12.04.2016, the petitioner's pre-Ph.D experience as a Demonstrator had been recognized, at best, he could have been considered for promotion as an Associate Professor provided he had the requisite teaching experience of 5 years as an Assistant Professor. Such recognition would not by itself result in the petitioner's automatic and immediate promotion.

10. In view of the above, I do not find any reason to grant the petitioner the reliefs sought by him in the instant writ petition. Consequently, this writ petition is dismissed with no order as to costs. Before parting with this judgment, I feel the need to observe that respondent No.1 must enforce Regulation No.42 of the 2017 Regulations without any discrimination. If after the enforcement or the making of the 2017 Regulations, respondent

No.1 has approved the appointment or promotion of a Non-Medical Faculty Member as Faculty in any Medical / Dental Institution or University, the same benefit ought to be extended to the petitioner.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018

(JUDGE)

*Qamar Khan**

Uploaded by: Zulqarnain Shah