IN THE PESHAWAR HIGH COURT, 
PESHAWAR JUDICIAL DEPARTMENT

Writ Petition No. 630/2010.

Dr. Muhammad Alam and another ...
…Versus… Government of NWFP through Secretary Health NWFP, Peshawar and others

Date of hearing …….05.11.2014.

JUDGMENT

Petitioner(s) By Mr________________________
Respondent (s) By Mr.________________________

************

ROOH UL AMIN KHAN, J.- Through this Constitutional Petition, filed Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed as under:-

“ by accepting the instant petition, a Writ be issued to the effect that the impugned Appointment Notifications dated 16.11.2009 to extent of Respondent No.5 & 6 whereby they
are appointed as Senior Registrar (BPS-18) in the Department of Ophthalmology KTH Peshawar is illegal, unlawful, void and without Lawful Authority, the Petitioners are legally entitled to be appointed against the said two posts of Senior Registrars Ophthalmology at KTH Peshawar w.e.f 16.11.2009 with all back benefits and wages with such other relief as may deem fit in the circumstances of the case may be granted in the interest of justice & fairness.”

2. The facts, in brief, leading to filing of this petition are that on 18.1.2009, respondent No.2 and 3 herein advertised two posts of Senior Registrar in Ophthalmology Department, Khyber Teaching Hospital, requiring 3 years teaching/practical experience in the subject specialty among other qualifications, the detail whereof has been mentioned in the instant petition. That thereafter, on 22.4.2009, the said posts were re-advertised according to the approved Service Rules, skipping the condition of three years teaching experience, as according to the rules, it was not a requirement. That a list of the candidates was prepared by respondent No.2 and 3
wherein 8 and 4 marks, respectively were awarded to respondent No.5 and 6 in the column of Teaching experience, besides other marks scored, and they were selected vide notification dated 16.11.2009 as Senior Registrars (BPS-18) at Khyber Teaching Hospital, Ophthalmology Department. That awarding the teaching experience marks to respondent No.5 and 6 were against the prescribed rules, therefore, the petitioners being aggrieved, filed their appeals/objections before and after the impugned notification, which were rejected. Hence this petition.

3. Having heard learned counsel for the parties, perusal of record would divulge that two posts of senior Registrar were lying vacant in Ophthalmology Department, Khyber Teaching Hospital which were advertised through publication in local dailies and applications were invited on printed forms from candidates possessing the following qualification:
i. MBBS or equivalent medical qualification recognized by the Pakistan Medical and Dental Council, and

ii. FCPS, MS, MD in the respective specialties or other equivalent qualification in the specialty recognized/registered by the Pakistan Medical and Dental Council.

4. During meeting of Departmental Selection Committee, marks for teaching experience were awarded to respondent No.5 and 6 which aggravated the grievance of petitioners. As per contention of learned counsel for petitioners, the post of Senior Registrar is first step in the teaching cadre, therefore, teaching experience is not required for the same post while the respondent No.2 and 3 have awarded marks to respondent No.5 and 6 which is blatant violation of rules and advertisement.

5. No doubt, the qualification required for competing for the post of Senior Registrar is provided in the advertisement as MBBS and FCPS, but it is minimum qualification for appointment against the said post and the candidate not equipped
with the requisite qualification, would not be entitled and eligible to apply for the post. It furnish the candidate with an endowment and give him quality and ability to compete for the post. Minimum qualification means that anybody possessing the qualification less than prescribed by the rules cannot be eligible for making application against the post and he cannot be considered for appointment but if a candidate having higher qualification and previous experience, the bar of minimum qualification would not be operated against him. As per advertisement, the required qualification for MBBS and FCPS was only meant for rendering a candidate to enter into the contest and competition for the post of Senior Registrar, hence, by any stretch of imagination, it cannot be said that the higher qualification or experience in the relevant field cannot be considered and a candidate would be penalized for acquiring higher qualification.

6. Under the Medical and Health Institutions and Regulation of Health Care Services Ordinance, 2002, in Khyber Pakhtunkhwa, five (5)
hospitals in the Province have been given full financial and administrative autonomy and its Institution Management Council have been entrusted with running of the affair of respective hospitals. Under Section 6 of the Ordinance ibid, the authority is vested in the Management Council to administer and manage the affairs of medical institutions, which shall consist of

i. The Chief Executive of the medical institution as Chairman;

ii. The Dean/Principal of the medical institution as member.

iii. The Medical Superintendent as member;

iv. Director, Finance;

v. Not less than three and not more than five non-official persons to be nominated by the Government;

vi. A member of the officers and staff members performing any other co-opted member.

vii. A representative of each of Health, Finance and members establishment Departments not below the rank of a Deputy Secretary.

The aforesaid statutorily constituted Management Council, under section 12 of the Ordinance ibid, beside constituting the following Sub-Committees may constitute such other Sub-
Committees as it may deem necessary for giving effect to the provision of Ordinance ibid.

a). The Executive Sub-Committee;
b). The Finance and Departmental Grants Sub-Committee;
c). The Registration and Medical Ethics Sub-Committee:
d). The Establishment and Medical Staff Sub-Committee;
e). The Nursing and Paramedics Sub-Committee;
f). Academic, Research and Publication Sub-Committee; and

The Khyber Pakhtunkhwa Medical Institution Rules, Rule-2 (P) of Definition Clause relates to the “Selection Committee” which means the committee constituted by the Management Council under section 12 of the Ordinance for the purpose of making recommendation for initial recruitment, promotion, grant of selection grade and move over, etc according to the “prescribed criteria” in respect of an employee of an institution. It is born from the record that the Management Council in exercise of the power
conferred by Section 12 of the Medical and Health Institution and Regulation of Health Care Services Ordinance, 2002 constituted the Service Sub Committee for formulation of scoring criteria for selection of Senior Registrar which was prepared and put into words accordingly and subsequently were given authoritative approval by the Institution Management Council in its meeting dated 6.11.2008. However, due to some short fall and anomalies, it was again placed for discussion in the meeting of Institution Management Council held on 18.5.2009, being specially convened for the purpose. After threadbare discussion and various amendments and modifications in the above referred criteria, it was approved by majority of the members of Institution Management Council. As per above said formulated criteria, 10 marks were allocated for research publication while 15 marks were apportioned for experience in the following manner:-

   a. Experience before post graduation in the relevant field= 0.5 Marks per year (Maximum= 02 Marks)

   b. Experience after post graduation in the relevant field= 1 Mark per year (Maximum 5 Marks)
c. Teaching experience in the relevant specialty = 2 Marks per year (Maximum 8 Marks)

7. There is no cavil to the proposition that 8 and 4 marks were allocated to the respondent No.5 and 6, respectively for their teaching experience in the relevant specialty but the same has been awarded in accordance with the approved scoring criteria of Institution Management Council, thus, on getting the above said score of experience coupled with the marks of qualification/research paper/work and interview performance, the respondent No.5 and 6 attained the highest merit position amongst the contestant, thus were suitable and deserving for selection. The contention of the petitioners that the post of Senior Registrar being first step for entrance to teaching cadre and no teaching experience is required for it, is unpersuasive. The minimum requisite qualification enunciated in the advertisement does not entail that only Medical Officer clothed with minimum qualification shall be considered and the candidate possessing higher qualification and better experience
be deprived. In fact it is not only Medical Officer or Junior Registrar with the teaching experience to apply for the post but also other doctors working in other teaching hospitals and even the Assistant Professors etc may also apply and they would be entitled for the marks of their experience gained at other institutions, inside or outside the country.

8. It is settled law that the employer has every right to fix the minimum criteria for selection of an employee. If in the selection process, apart from award of marks provided in the advertisement, qua minimum criteria, had also given certain weight to the academic and professional qualification of a candidate as well, then the selection process would not be said to be unfair merely because in advertisement the entire selection criteria was not disclosed. As long as the process of selection was transparent, fair and based on reasonable classification, the Court would not compel the employer not to apply its recruitment policy/criteria merely because it was not published in its entirety in advertisement through which applications were invited. We have gone through the formulated
selection criteria for the post of Senior Registrar and have found it fair, just and reasonable and has rightly been applied by the selection committee. Admittedly, the respondent No.5 and 6 were on much better position than the petitioners, thus, we are sanguine that petitioner is vested with no such right whatsoever and his case is not supported with any legal basis in the matter of appointment to the post of Senior Registrar. Authority for the appointment of respondent with regard to their fitness and suitability to the post of Senior Registrar is a matter falling exclusively within the administrative domain of Institution Management Council and as such is not open to Judicial Review.

9. In so far, the objection of learned counsel for petitioner regarding grant of marks for a publication of research paper is concerned, suffice it to say that as per record, the marks and scoring for research papers were awarded to all the candidates in pursuance of the recommendation and advice of specially constituted research scrutiny committee and subsequently each and every mark/score was rechecked and finalized in presence of all the
candidates, for assuring transparency in the appointment process. More so, we while sitting in our extraordinary writ jurisdiction cannot substitute our opinion for that of the Selection Committee so long as the rules and procedure has been properly followed.

10. In wake of the above, the learned counsel for petitioners failed to make out a case for indulgence of this Court. Thus the instant writ petition is dismissed in limine.

CHIEF JUSTICE

JUDGE

Announced on
5th November, 2014

*Amir*