Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

W.P.No.1295-P/2017.

JUDGMENT

Date of hearing......20/06/2017

Petitioner by: Zartaj Anwar......Advocate

Respondent by: Najma Ahmad, A.B.S. A. Danyal Chaman,

SYED ARSHAD ALI, J:- Through the present petition, the petitioner has made the following prayer:-

"that on acceptance of this writ petition, an appropriate writ may please be issued declaring the petitioners fit and eligible for the post of Clinical Technician Pathology (BPS-12) at Farid Khan Shaheed DHQ, Hospital Thall, Hangu and not calling the petitioners to compete alongwith other eligible candidates on the basis that his qualification was not registered with medical faculty is illegal, unlawful, without lawful authority and violative upon the rights of the petitioners thus needs to declare illegal void ab-initio and the petitioners may be allowed to compete with all other candidates for the post."

2. The essential but the brief facts of the case are that Medical Superintendent Farid Khan Shaheed DHQ, Hospital, Hangu invited applications from eligible candidates for various posts including one post of Clinical Technician Pathology (BPS-12) "The Post". The eligibility criteria as envisaged in the advertisement was matriculation 2nd Division and Diploma in relevant field from Medical Faculty, Khyber Pakhtunkhwa. The petitioner on the basis of his qualification i.e. (i) SSC (ii) Four years BSc (Hons) MLT
from Wazir Muhammad Institute of Para-Medical Technology affiliated with Ghandara University, Peshawar and (iii) two years diploma from Pakistan Institute of Medical Science, Islamabad Pakistan, applied against the Post. However, neither he was called for written test nor for interview for obvious reasons that the diploma obtained by the petitioner was neither from Medical Faculty of Khyber Pakhtunkhwa nor from any institution recognized by the Medical Faculty of Khyber Pakhtunkhwa.

3. The learned counsel for petitioner contended that the petitioner is highly qualified and experienced person. He has even obtained BSc (Hons) in Medical Laboratory Technology from Ghandara University, which is a chartered University, hence, the petitioner was eligible for the post. He has also submitted that the petitioner has deposited fee for registration of his degree.

4. On the other hand, learned counsel for respondents have controverted the arguments of petitioner with vehemence and submitted that the respondent institution could consider only those candidates for appointments against The Post who had obtained degree/diploma from Medical Faculty of Khyber Pakhtunkhwa. This requirement is also duly mentioned in the advertisement and the relevant rules.

5. The award of degree in medical sciences remained regulated since pre-partition of the sub-
continent. Initially Indian Medical Degrees Act, 1916 "Act of 2016" governed the right to conferment of degrees, certificates to the persons qualified to practice Western Medical Science. Section 3 of the Act of 2016 confers the right of granting or issuing degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice Western Medical Science upon specific authorities as the Government may by notification in the official gazette specifies. Section 4 of the Act of 2016 further prohibits that no person other than as mentioned ibid is authorized to confer aforesaid degrees licenses etc. and the contravention of the same was an offence under section 5 of the Act of 1916. We have also before us a notification No.S.O.III (T) 4-16/77 whereby Faculty under the name and style of Khyber Pakhtunkhwa Medical Faculty was notified under the aforesaid Act. The said notification for ease reference is reproduced as under:-

GOVERNMENT OF KHYBER PAKHTUNKWA HEALTH DEPARTMENT.


No.S.O.III(T) 4-16/77. In exercise of the powers conferred by section 3 of the Medical Degree Act 1916 (VII of 1916) and in supersession of the Government of West Pakistan, Health Department Notification No.
ME.II/2-56, dated the 17th April, 1957 the Government of Khyber Pakhtunkhwa is pleased to constitute a Medical Faculty known as "KHYBER PAKHTUNKHWA MEDICAL FACULTY" and to authorize it to exercise powers and perform functions subject to the general control of the Government in the manner to the extent hereinafter appearing.

1. In this notification, unless the context other-wise requires:-

   (a) “Faculty” means the Khyber Pakhtunkhwa Medical Faculty; and

   (b) “Government” means the Government of the Khyber Pakhtunkhwa Province.

2. The Faculty shall perform functions through a Governing Body which shall consist of eleven members including one member from the Finance Department, to be appointed either by virtue of office or by name by Government. Provided that the Secretary to the Government of Khyber Pakhtunkhwa, Health Department shall be one of its member, who shall also be its president:-

   (1) The Governing Body shall elect from among its members vice president,

   (2) The Vice President shall, subject to his continuing as member of the Governing Body, hold office for a term of two years.

4. A member of the Governing Body, other than a member appointed by virtue of office, shall hold office for term not exceeding three years,
unless sooner removed by Government, and may be reappointed for another term of three years.

5. No person shall be or shall continue to be member of the Governing Body---who:-

(a) Is or at any time has been convicted of an offence involving moral turpitude; or

(b) Is or at any time has been adjudicated in solvent; or

(c) Is found lunatic or becomes of unsound mind; or

(d) Is or at any time has been disqualified for employment in; or dismissed from, the service of Pakistan; or

(e) Is under twenty one years of age; or

(f) Is not a citizen of Pakistan.

6. Government may, by order in writing and after of affording an opportunity of being heard, remove any member of the Governing Body, if he:-

(a) Refuses or fails to discharge or becomes, in the opinion of Government, in capable of discharging his responsibilities under this Notification; or

(b) Has, in the opinion of Government, abused his position as such member; or

(c) Has absented himself from two consecutive meetings of the Governing Body without sufficient cause.
7. Notwithstanding anything contained in this Notification, Government may remove any member of the Governing Body at any time without assigning any reason, and any member may at any time before the expiry of his term resign his office and on the acceptance of such resignation by Government he shall cease to be a member.

8. Government may fill in the vacancy in the Governing Body caused by the resignation, death or removal of any member and the person so appointed shall be a member for the unexpired term of the member who resigned, died or was removed, as the case may be.

9. (1) The Headquarters of the Faculty, shall be at Peshawar, and Governing Body shall Ordinarily hold its meetings at the Headquarters; provided that Government may direct the Governing Body to hold its meeting elsewhere.

(2) The Governing Body shall regulate its own procedure for convening meetings, circulations and service of notices of meetings, and keeping records of such meetings;

Provided that it shall hold at least two meetings in a year, one in the month of April and other in October.

10. 1. The decision in the meeting of the Governing Body shall be taken by majority of the members present and voting and in case of equality of votes, the president or the Vice president as the case may be, presiding over the meeting, shall have the casting vote.

2. Six members shall constitute quorum for a meeting of the Governing Body.

3. The meetings of the Governing Body shall be presided over by president and in his absence the Vice President shall preside over the meetings.

4. The minutes of the meeting shall be recorded and circulated by the Secretary; provided that in the absence of Secretary, the President or as the case may be, the Vice president, presiding over
the meeting, may authorize any member to record and circulate the minutes of the meeting.

11. There shall be a whole time Secretary of the Governing Body, who shall be the Chief Executive Officer of the Faculty.

12. (1) The Faculty shall have the right to confer grant or issue degrees, Diplomas, License, Certificates any other documents stating or implying that the holder, grantee or recipient is qualified to practice western medical Science, or to perform duties of the respective category.

(2) for the ultimate purposes of conferring, granting or issuing of Licenses and Certificates on or to certain persons so as to enable them to perform duty as Medical Technicians, Health Assistants, Sanitary Inspectors, Medical and Health auxiliaries, Dispensers, Dressers, Paramedical Workers in leprosy, Radiographers or Laboratory Assistants or any other category that may be approved by Government, the Faculty shall perform all or any of the following functions:

(i) to prescribe courses of study and curriculum;

(ii) to recognize medical institutions for imparting instruction and providing training;

(iii) to prescribe standards, qualifications, eligibility and procedure for admission of persons in such institutions;

(iv) to prescribe standard, eligibility and procedure for holding examinations;

(v) to provide for conducting and making arrangements of examinations and for preparation, approval, announcement and publication of results of such examinations.

(vi) to receive grants, gifts and donation and other contributions whether generally or for specific purpose;

(vii) to fix, demand and receive fee and other charges from the students and candidates;
(viii) to institute awards, scholarships and prices;

(ix) to hold, control, and administer the property and funds of the Faculty;

(x) to prepare, process and pass the annual budget;

(xi) to make provision for buildings, premises, furniture, apparatus, books and other means required to carry out the purposes of the Faculty;

(xii) to sanction such expenditure as may be necessary to carry out the purposes of the Faculty;

(xiii) to confer, grant or issue, license, diplomas, and certificates on or to the persons who have qualified in the prescribed courses and examinations so as to enable them to perform duties and functions as medical technician, health assistants, sanitary inspectors, dispensers, Medical and Heath auxiliaries, dressers, Paramedical workers, in leprosy, radiographers, laboratory assistants, or any other category of persons who may be approved by Government and to prescribe forms of licenses, and certificates to be issued or granted to such persons;

(xiv) to appoint sub-committee from amongst its members for any specific purposes; and

(xv) to do all other acts necessary for carrying out the purposes of the Faculty.

13. The Faculty shall be competent to acquire, hold and dispose off property, both movable and immovable.

14. The Faculty shall have a fund to which shall be credited its income from fees, donations, trusts, bequests, endowments, contributions, grants and other sources. The funds shall be maintained in accordance with the orders passed by the Government from time to time.

15. (1) the Faculty shall maintain proper accounts and other relevant records and prepared annual statements of accounts, in accordance with such
directions as may be issued by Government and Auditor General of Pakistan.

(2) the annual statements of accounts of Faculty shall be submitted to Government within the six months of closing of the financial year.

(3) the accounts of the Faculty shall be audited by the Auditor General of Pakistan.

16. (1) The Faculty may, subject to such general or special orders as Government may, from time to time, give, appoint such officers and servants as it considers necessary for the efficient performance of its functions on such terms and conditions as may be prescribed by bye-laws.

(2) The Faculty shall employ such officers and other persons as may be transferred to it by Government, on such terms and conditions as may be determined by Government.

17. The Governing Body may, by General or special order in writing, direct that such of its powers, duties or functions shall, in such circumstances and under such conditions, if any, as may be specified in order, be exercisable also by the president or such officer as may be specified therein.

18. The Governing Body any with the previous approval of Government, make byelaws not inconsistent with this notification to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this notification.

Sd/-

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA,
HEALTH DEPARTMENT.
Endst: No: S.O.III(T)4-16/77, dated Peshawar the 1st November 1977.
6. In order to reconstitute and reorganize the Khyber Pakhtunkhwa Medical Faculty established under the Medical Degrees, Act 1916 and for the purpose of giving it necessary autonomy, raising its standards of training, examination and registration of paramedics and allied health professional pertaining to preventive, promotive, curative, and occupational health sector in the province, Khyber Pakhtunkhwa Faculty of Para-medical and Allied Health Science Act, 2016 was promulgated (Act of 2016). According to the Act of 2016 holding of examination in the institutions affiliated with the Khyber Pakhtunkhwa Medical Faculty and granting diplomas, certificates in the relevant field is the exclusive domain of the Khyber Pakhtunkhwa Medical Faculty. Act of 2016 has repealed the Indian Medical Degrees Act, 1916. However, under its repeal and saving section, all degree and certificates granted under the Act of 1916 have been protected.

7. It is an admitted fact that none of the petitioner's certificate/degree or diploma has been granted by the Khyber Pakhtunkhwa Medical Faculty nor the institution from which he has obtained the said certificates and diplomas are affiliated with Khyber Pakhtunkhwa Medical Faculty, therefore, the petitioner fails to fulfill the essential requirement as envisaged in the advertisement.
When this is the position then we have no other option but to dismiss the instant petition.

Announced.
Dt. 20.06.2017.

(A.K. KHAN)