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Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No.993/2013/BWP
(Dr. Muhammad Javed Arif Vs. Province of Punjab, etc.)

J U D G M E N T

Date of Hearing	13.06.2013
Petitioner by:	Dr. Malik Muhammad Hafeez, Advocate.
Respondents by:	Mr. Manzoor Ahmad Warriach, AAG with Muhammad Iqbal Sial, legal advisor (QMC).

Atir Mahmood, J. Brief facts as narrated in the writ petition are that the petitioner after being awarded MBBS decree by the Quaid-i-Azam Medical College/Bahawalpur joined the Health Department as Medical Officer on ad hoc basis and served at different Basic Health Units (BHUs) for the period of more-than two years. The respondent No.3/Principal of Quaid-i-Azam Medical College/Bahawalpur Victoria Hospital invited the applications against the post of Medical Officer/demonstrator through advertisement dated 15.06.2007 published in Daily Nawa-i-Waqt. A call letter was issued by respondent No.3 for written examination for the post of Medical Officer/demonstrator. The petitioner was declared as selected candidate however he was amongst the four reserve candidates. It is averred in the petition that during the year 2008-10, 40 posts became vacant on different occasions and the petitioner wrote letters to the respondent No.3 for his appointment as Medical Officer/demonstrator but of no avail. The petitioner raised many factual grounds regarding preparation of merit by stating that his marks were wrongly calculated

by the respondent No.3 due to which petitioner filed writ petition No. 5157 of 2012 which was disposed of by this Court with a direction to the Secretary Health to decide the representation of the petitioner in accordance with law and merit policy. The petitioner further submitted that the representation of the petitioner was dismissed by respondent No.2 vide order dated 26.01.2013. He further submitted that six seats in Quaid-i-Azam Medical College/Bahawalpur Victoria Hospital, Jubilee Female Hospital & School of Nursing are still lying vacant.

2. Learned counsel for the petitioner submitted that the application for relaxation of age limit was accepted by the Principal of College/Chairman Selection Board but respondent No.2 did not consider that the Principal was empowered to relax the upper age limit of the petitioner upto 3 years under Article/Sr. No. 42 of the Schedule-V of the Punjab Medical and Health Institution Rules, 2003 made under Section 18 of the Punjab Medical and Health Institutions Act, 2003. It is further submitted that the petitioner has served as Medical Officer in the Health Department for a period of more-than two years which period is required to be excluded from the age of the petitioner while determining the issue of over age and prayed for setting aside the order dated 26.01.2013 passed by respondent No.3 and sought a direction for his appointment as Medical Officer/demonstrator. He has relied upon the cases reported as Muhammad Yaqoob v. Secretary, Local Government and Rural Development Department, Lahore and others (2005 SCMR 76) and Ghulam Mustafa v. Punjab Public Service Commission, Lahore through Secretary and another (2008 PLC (C.S.) 1117) Lahore.

3. On the other hand, respondents No. 1 & 2 by filing parawise comments submitted that the writ petition is not maintainable on the ground that earlier writ petition No. 5157/2010 was disposed of by this Court vide order dated 26.11.2012 with the direction to the Secretary Health to decide the same in accordance with law. Further submitted that the petitioner was not selected or appointed as Medical Officer as he was ineligible for such appointment being overage

because the maximum age on the closing date was required to be 45 years whereas the petitioner's age was more-than 46 years.

4. Respondent No.3 submitted independent para-wise comments and almost reiterated the stance taken by respondents No. 1 & 2 with further observation that 82 candidates were selected for the post of Medical Officer/demonstrator and 4 were kept as reserve candidates and out of those 82 candidates all joined their services and no post remained vacant at that relevant time and as the petitioner was not selected on merit, therefore, he was not offered the job. The learned counsel for the respondent submitted that out of 4 reserved candidates 3 applied afresh in the next advertisement and all of them were recruited but the petitioner could not be selected being overage. Another aspect of awarding wrong marks as 26 out of 50 marks in the recruitment process held in April, 2007, the learned counsel for the respondent submitted that the petitioner obtained 25 marks and awarding of 26 marks was incorrect for the reason that the petitioner cleared his examination in more-than one attempt and for this reason he was not entitled to grant of that one mark.

5. Arguments of learned counsel for the parties have been heard and record also perused.

6. Precisely the question which is to be determined by this Court is whether the petitioner was eligible to be appointed as Medical Officer/demonstrator by relaxation of age and whether the petitioner was entitled for the said post on merit. From the perusal of the record it is revealed that subsequent to recruitment process the petitioner wrote a letter to the Chief Minister Punjab which has been annexed with the petition as annexure P/7 whereby he admitted that he was selected as a reserve candidate. It further transpires that the petitioner when selected as reserved candidate was duly considered and at that relevant time the question of relaxation of age did not come in the way but he could not succeed being lower in merit and all the 82 vacancies were filled by the candidates who were selected on merit.

7. Thereafter, the petitioner filed writ petition No. 5157/2010 BWP with the following prayer:-.

“ that by accepting this petition, petitioner may very kindly be declared entitled to be selected as Medical Officer/Demonstrator by issuing direction to respondent Secretary from the date of selection made by the respondent at the relevant time, with approval for the appointment for the post applied for, in the interest of justice. Any other relief whatsoever this Hon’ble Court deems fit may also be granted in favour of the petitioner in the high interest of justice.”

This petition was filed after almost three years of the recruitment process. However, the said petition was transmitted to respondent No.2/Secretary Health, vide order dated 26.11.2012 passed by this Court. The respondent No.2 dismissed the same vide impugned order dated 26.01.2013. In my opinion filing of this petition as well as earlier writ petition No. 5157/2010 BWP by the petitioner is an exercise in futility for the simple reason that the process of recruitment was already completed, the selected candidates joined the service and no fresh post was advertised for which the petitioner could have sought the relaxation of upper age limit. The case law relied upon by the learned counsel for the petitioner is quite distinguishable and is not attracted in this case.

8. In view of the above discussion, the petitioner has not been able to make out a case for interference by this Court in its writ jurisdiction. Resultantly, this writ petition being devoid of any merit, is *dismissed*.

(ATIR MAHMOOD)
Judge

N.A Nasir*