

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal Nos.540 to 542 of 2021

(Against the judgment dated 04.02.2021 passed by the Peshawar High Court Peshawar in W.P. Nos.2835-P/2020, 856-A/2020, 2971-P/2020)

Rehman Medical College & another

(in C.A.540/2021)

Women Medical and Dental College & another

(in C.A.542/2021)

Pak International Medical College through its Principal, Phase-V, Hayatabad & another

(in C.A.541/2021)

...Appellant(s)

Versus***Wafa Gul & others***

(in C.A.540/2021)

Dr. Wafa Javed & others

(in C.A.541/2021)

Dr. Muhammad Ayaz & others

(in C.A.542/2021)

...Respondent(s)

For the Appellant(s):	Qazi Jawad Ehsanullah, ASC <i>(in C.A.540,541/2021)</i> Syed Haziq Ali Shah, ASC Mr. Muhammad Sharif Janjua, AOR <i>(in C.A.542/2021)</i>
For Respondent No.76:	Mr. Faisal Fareed, ASC
For Respondent No.32:	Syed Rifaqat Hussain Shah <i>(in C.A.540-542/2021)</i>
For Respondent No.1,8,9, 36,69:	Mr. Muhammad Ijaz Khan Sabi, ASC <i>(in C.A.540-542/2021)</i>
Remaining Respondent(s)	Nemo
For the Department	Zia Ullah, Deputy Secretary Health, KP.
Date of hearing:	09.11.2021.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- A controversy arisen out of common judgment dated 04.02.2021 by a learned Division Bench of the Peshawar High Court relating to the quantum of stipend to be

paid to the graduates/internees from private medical colleges, doing house jobs, is being assailed through leave of the Court dated 08.06.2021. The High Court directed the petitioners to pay the internees stipend in accordance with paragraph 21 of the MBBS and BDS (Admissions, House Job & Internship) Regulations, 2018 (**the Regulations**) that mandatorily requires the amount of stipend not less than the highest amount paid in any public sector of the province. It was in the backdrop of violation of this Regulation that brought the internees to the High Court to successfully claim equal treatment.

2. Qazi Jawad Ehsan Ullah, learned ASC, as a lead counsel, argued that reliance by the Peshawar High Court on the Regulations *ibid* is misconceived inasmuch as after repeal of the parent Statutes i.e. the Pakistan Medical and Dental Council Ordinance, 1962 as well as Pakistan Medical and Dental Council Ordinance, 2019, subordinate arrangements thereunder were also cast away and, thus, it was for the appellants to settle a conscionable amount for the internees having regard to their numbers, commensurate with the services rendered by them; it is next argued that the learned High Court misdirected itself by requiring enforcement of Regulations, no longer in the field and, thus, it was not open for it to purportedly enforce a right that did not exist; it is further argued that the internees signed contract with the medical colleges prior to the enactment of Pakistan Medical Commission Act, 2020 (**the Act**) and, thus, they cannot claim a past benefit accrued under section 27 (2) of the Act as no one can unilaterally alter or amend the terms and conditions of an agreement; it is last argued that no determination has yet been made by the Provincial Government with regard to fixation of honorarium for house job officers as envisaged under section 27 *ibid* and, thus, the impugned judgment is not sustainable. Syed Hafiz Ali Shah, learned ASC, has adopted the submissions made at the bar. Respondents defended the impugned judgment maintaining that a well reasoned judgment merited no interference.

2. Heard. Record perused.

3. Though ingeniously articulated, nonetheless, we are not impressed by the submissions made at the bar. Completion of house job is a *sine qua non* for a medical graduate to embark upon his/her career. After payment of hefty fees in a long drawn academic session spanned over half a decade; it is the time he/she legitimately aspires hard work to bear fruit. A reasonable stipend, commensurate the nature/status of

assignment is an equitable due, denial whereof contravenes the command provided under Article 3 of the Constitution of Islamic Republic of Pakistan, 1973. For the convenience of reference, it is reproduced below:

"The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principles, from each according to his ability to each according to his work."

Similarly, disparity in payment of stipend to the graduates/internees of private medical colleges constitutes discrimination as it cannot be classified either reasonable or sustainable on the touchstone of any intelligible differentia. Reference to the *mutually settled agreement* cannot override statutory arrangements extending benefit to the respondents. The High Court has rightly taken care of these aspects of the case by clearly referring to the statutory arrangements holding the field. Reference may be made to section 27(2) of the Act which unambiguously provides that "*.....public colleges and private colleges shall pay a stipend or salary not being less than the amounts applicable to the public colleges*". Argument that Government has not yet made any such determination and as such the private colleges are within their remit to determine the amount of stipend as per their own choice is entirely beside the mark. Appeals fail with no order as to costs. Dismissed.

Chief Justice

Judge

Judge

Islamabad, the
9th November, 2021
Azmat/-