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PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 10th January, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-6/2019/1722.— The Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Bill, 2018 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 21st December, 2018 and assented to by the Governor of the Khyber Pakhtunkhwa on 3rd January, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA MEDICAL TEACHING INSTITUTIONS REFORMS (AMENDMENT) ACT, 2018

(KHYBER PAKHTUNKHWA ACT NO. I OF 2019)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 10th January, 2019).*

AN ACT

*further to amend the Khyber Pakhtunkhwa
Medical Teaching Institutions Reforms Act, 2015.*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015), for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. IV of 2015.--
-In the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015), hereinafter referred to as the said Act, in section 2,-

(i) for clause (c), the following shall be substituted, namely:

“(c) “Chairperson” means the Chairperson of the Policy Board or the Board of Governors of a Medical Teaching Institution, or the subordinate committee or sub-committee, as the case may be;”;

(ii) in clause (f), for sub-clause (ii), the following shall be substituted, namely:

“(ii) those staff, who act as service provider to the patients in the hospital.”;

(iii) in clause (g-i), for sub-clauses (i) and (ii), the following shall be substituted, namely:

“(i) an employee of a Medical Teaching Institution appointed under this Act and regulations made under this Act; or

(ii) an existing employee of the Medical Teaching Institution, appointed by the Management Council, under the Khyber Pakhtunkhwa Medical And Health Institution and Regulation of Health Care Services Ordinance, 2002, prior to promulgation of the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018; or”;

(iv) in clause (h), after the word “means”, the words “and includes” shall be inserted; and

(v) for clause (i), the following shall be substituted, namely:

“(i) “Medical Teaching Institution” means a Medical College, a Dental College, or other health related teaching institutions and their affiliated teaching hospitals in the public sector, the setting

up of which is funded in majority by public funds and the majority operating expenses of which are funded by public funds, or which is directly under the control of Government and provides healthcare services, medical education and training, and medical research;”.

3. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. IV of 2015.--
-In the said Act, in section 4,-

- (i) in clause (a), after the words “health services”, the words “and services” shall be inserted.

4. Insertion of new section 4A to the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, after section 4, the following new section shall be inserted, namely:

“4A. Policy Board.---(1) Government, on the recommendations of Search and Nomination Council, shall constitute a Policy Board at Provincial level, consisting of such number of members as Government may determine but not less than five (05) members and not more than seven (07) members, all of whom shall be from the private sector:

Provided that the Search and Nomination Council may recommend to Government that one third of the members of the Policy Board may be from the members of the Boards.

(2) The members shall hold office for a period of three (03) years, unless otherwise directed by the Government and shall have such qualifications as provided in sub-section (5) of section 5 of this Act and shall be eligible for re-appointment.

(3) The Chairperson of the Policy Board shall be elected in the same manner as provided in sub-section (6) of section 5 of this Act.

(4) The Policy Board shall-

- (a) determine in consultation with Government, the base standards for the Medical Teaching Institutions and its enhancement from time to time, as and when required;
- (b) recommend to Government, policies for the improvement of the Medical Teaching Institutions;

- (c) recommend to Government various rules and amendments therein that it may seek to make;
- (d) recommend model regulations and other policies and amendments therein, to be framed by the Board of each Medical Teaching Institution;
- (e) plan and implement specialized central training programs as and when required for management and employees of all Medical Teaching Institutions;
- (f) establish the minimum qualification standard, for all posts in Medical Teaching Institutions to ensure merit base appointment; provided that the Board of any Medical Teaching Institution may enhance such minimum qualification of merit at their discretion;
- (g) provide guidance and advice on any matter referred by the Board or Government;
- (h) review the annual reports of each Medical Teaching Institution and give recommendations thereon; and
- (i) assist, aid or advise the Government on any matter relating to the health sector as referred to them by the Government.

(5) The Policy Board shall meet at least three times in a year, in addition to hold an annual meeting, which shall be attended by the members of the Boards of all Medical Teaching Institutions.”

5. Amendment of section 5 of the Khyber Pakhtunkhwa Act No. IV of 2015.--
-In the said Act, in section 5,-

- (i) for sub-section (1), the following shall be substituted, namely:

“(1) There shall be a Board of Governor for each Medical Teaching Institution to administer and manage its affairs and shall have overall superintendence and control over the functions and all matters of a Medical Teaching Institution.”;

- (ii) in sub-section (2),-

- (a) after the words “but not”, the words “less than three members and not” shall be inserted; and

- (b) for the word "Government", the words "Chief Minister" shall be substituted;
- (iii) in sub-section (3),-
 - (a) the words "and they have the right to vote" shall be deleted; and
 - (b) for the words "and notified by Government", the words "by Chief Minister" shall be substituted; and
- (iv) in sub-section (7), after the word "members", the words "of the Board" shall be inserted.

6. Amendment of section 6 of the Khyber Pakhtunkhwa Act No. IV of 2015.--
-In the said Act, in section 6,-

- (i) for sub-section (2), the following shall be substituted, namely:

"(2) No act or proceedings of the Board shall be invalid, merely on the ground of existence of any vacancy subject to any act or proceeding of the Board taken by less than three members on account of vacancies shall be ratified immediately by the Board upon the minimum membership of the Board as provided in sub-section (2) of section 5 of this Act.";

- (ii) for sub-section (5), the following shall be substituted, namely:

"(5) The Chairperson of the sub-ordinate committee or as the case may be, sub-ordinate committee, shall be appointed by the Board from amongst its members, to ensure unbiased oversight.";

- (iii) for sub-section (8), the following shall be substituted, namely:

"(8) Subject to the provisions of this Act and the rules made thereunder, the Board may constitute sub committees of the Board and subordinate committees to perform such functions as may be prescribed by the Board:

Provided that a subordinate committee shall be headed by a member of the Board."; and

- (iv) for sub-section (10), the following shall be substituted, namely:

“(10) The Secretary to the Board shall be an employee of the Board, who shall perform all secretarial and office functions of the Board at the direction of the Chairperson; and would be responsible for recording minutes of the Board meetings, convening Board meetings, carrying out communication with all Board members, and all other functions as may be prescribed by the Board or the Chairperson.”.

7. Amendment of section 7 of the Khyber Pakhtunkhwa Act No. IV of 2015.--

-In the said Act, in section 7,-

(i) in sub-section (1),-

(a) in clause (k), the words “Recruitment Committee” shall be deleted; and

(b) for clause (l), the following shall be substituted, namely:

“(l) compliance to Government and Board policies and base standards set under clause (a) of sub-section (4) of section 4A and in case of any deviation from agreed base standards or procedures, shall obtain prior approval from the Government or the Policy Board, as the case may be;”;

(ii) in sub-section (2), after the word “Government”, occurring for the first time, the words “Minister for Health” shall be added;

(iii) after sub-section (2), as so amended, the following new sub-section shall be inserted, namely:

“(2A) For the purpose of sub-section (2), the Minister for Health shall issue such policy and other directives to all the Medical Teaching Institutions, from time to time, as it deems fit, and all the Medical Teaching Institutions shall be bound to act in accordance with such directions.”;

(iv) for sub-section (4), the following shall be substituted, namely:

“(4) The Chairperson may, in case of exigency of service, appoint Deans, Hospital Director, Medical Director, Nursing Director and Finance Director on officiating basis; provided that all such appointments shall be for a period of three (03) months and thereafter, Board shall make regular appointments in the prescribed manner.”; and

- (v) after sub-section (4), the following new sub-section shall be added, namely:

“(5) The Board shall appoint the Dean, Hospital Director, Medical Director, Nursing Director and Finance Director of the Medical Teaching Institution.”.

8. Amendment of section 8 of the Khyber Pakhtunkhwa Act No. IV of 2015.--

-In the said Act, in section 8.-

- (i) in sub-section (1).-

(a) before clause (a), for the word “Government”, the words “Chief Minister” shall be substituted.;

(b) after the words “appointed as members”, the words “of the Board and members of the Policy Board” shall be inserted.;

(c) in clauses (e), (f) and (g), for the word “Government”, the words “Chief Minister” shall be substituted.;

- (ii) in sub-section (3), for the word “Government” wherever occurring, the words “Chief Minister” shall be substituted.

9. Amendment of section 9 of the Khyber Pakhtunkhwa Act No. IV of 2015.--

-In the said Act, in section 9.-

- (i) for the sub-section (3), the following shall be substituted, namely:

“(3) In each college, there shall be an Academic Council, headed by the Dean and consisting of such members as may be prescribed, to set principles and standards for teaching, research, training, student admissions, curriculum development and to ensure and inculcate the highest ethical standards.”; and

- (ii) sub-sections (4), (5), (6) and (7) shall be deleted.

10. Insertion of new sections 9A and 9B to the Khyber Pakhtunkhwa Act No. IV of 2015.---

-In the said Act, after section 9, the following new sections shall be inserted, namely:

“9A. **Management Committee.**---(1) For each Medical Teaching Institution, there shall be a Management Committee headed by Dean and consisting of-

- (a) Hospital Director;
- (b) Medical Director;
- (c) Nursing Director;
- (d) Finance Director; and
- (e) two persons nominated by the Board on the recommendation of the Dean.

(2) The Management Committee shall-

- (i) subject to delegation of powers by the Board, appoint or terminate any and all employees of a Medical Teaching Institution in accordance with the rules and regulations framed under this Act;
- (ii) review and recommend for approval to the Board, the Annual Budget, for the Medical Teaching Institution, as prescribed by regulations;
- (iii) coordinate efforts to ensure achievement of the Base Standards;
- (iv) submit a quarterly report on management, health care services and financial management on a prescribed format to the Board;
- (v) recommend to the Board any addition of a department, facility or post at the Medical Teaching Institution; and
- (vi) perform all such functions as may be specifically prescribed by regulations.

9B. Dean.---(1) The College shall be headed by a Dean of the College.

(2) The Dean shall be appointed by the Board for a period of five (05) years, and shall be eligible for re-appointment, on such terms and conditions and having such qualifications and experience as the Board may prescribe. The Dean shall act as the Chief Executive Officer of the Medical Teaching Institution and shall act in such capacity as per the directions of the Board and the regulations framed under this Act.

(3) The Dean, on appointment, shall simultaneously receive a faculty appointment at a level commensurate with his qualifications and the prescribed Institutional requirements for the faculty post, which

appointment shall not be limited to the term applicable to the office of the Dean.

(4) The chairpersons of various departments for Medical Institutions shall be appointed by the Dean, from amongst the medical faculty on such terms and conditions and in such a manner as may be prescribed by the Board. A chairperson may be removed by the Board on the recommendation of the Dean.

(5) The Dean may be removed from the office by the Board, before the expiration of the period of five (05) years, at any time on such grounds as may be prescribed including failure to achieve targets set by the Board.

(6) In the performance of functions, the Dean shall be responsible to the Board and the chairpersons of the department shall be responsible to the Dean and Academic Council.

(7) The Board from amongst the chairpersons shall appoint a Vice-Dean to perform the functions of the Dean in the absence of the Dean.”.

11. Amendment of section 10 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 10,-

(i) for sub-section (1), the following shall be substituted, namely:

“(1) The Board shall appoint a full time Hospital Director for the Medical Teaching Institution for a period of five (05) years, and shall be eligible to re-appointment, on such terms and conditions as the Board may determine; provided that no Board member shall be appointed as Hospital Director.”:

(ii) in sub-section (3), for the word “three”, the word “five” shall substituted; and

(iii) sub-section (4) shall be deleted.

12. Amendment of section 11 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 11,-

(i) for clause (b), the following shall be substituted, namely:

“(b) preparation of the annual budget, and business plan for presentation to the Management Committee and Board.”; and

- (ii) in clause (f), after the words "execution of Board", the words "and Management Committee" shall be inserted.

13. Amendment of section 12 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 12.-

- (i) for sub-section (1), the following shall be substituted, namely:

"(1) The Board shall appoint a full time, Medical Director for the hospital for a period of five years and shall be eligible for re-appointment, on such terms and conditions as the Board may determine: provided that no Board member shall be appointed as Medical Director.";

- (ii) after sub-section (1), as so substituted, the following new sub-section shall be inserted, namely:

"(1A) The Medical Director, on appointment, shall simultaneously receive a faculty appointment at a level commensurate with his qualifications and the prescribed Institutional requirements for the faculty post, which appointment shall not be limited to the term applicable to the office of the Medical Director.";

- (iii) in sub-section (2), after the word "prescribed", the words "by the Board" shall be added;

- (iv) in sub-section (3),-

- (a) for the word "three", the word "five" shall be substituted; and

- (b) after the word "prescribed", the words "by the Board" shall be added; and

- (v) sub-section (5) shall be deleted.

14. Amendment of section 13 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 13, in clause (f), after the words "the Hospital Director," the comma and words ", the Management Committee" shall be inserted.

15. Amendment of section 14 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 14,-

- (i) for sub-section (1), the following shall be substituted, namely:

“(1) The Board shall appoint a full time, non-practicing Nursing Director for a the hospital for a period of five years, and shall be eligible for re-appointment, on such terms and conditions as the Board may determine; provided that no Board member shall be appointed as such.”;

(ii) in sub-sections (2), (3) and (8), after the word “prescribed”, the words “by the Board” shall be added; and

(iii) sub-section (4) shall be deleted.

16. Amendment of section 15 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 15, after the words “of three years” the words and comma “and shall be eligible for re-appointment.” shall be inserted.

17. Amendment of section 16 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 16,--

(i) for sub-section (2), the following shall be substituted, namely:

“(2) Before the commencement of this Act, all administrative and teaching staff recruited by the Management Council in the prescribed manner under the repealed Khyber Pakhtunkhwa Medical and Health Institution and Regulation of Health Care Services Ordinance, 2002, regardless of status of terms and conditions of service, shall be considered employees of the concerned Medical Teaching Institution on such terms and conditions as may be prescribed by regulations;

Provided that such terms and conditions shall not be less favorable in financial terms than the terms and conditions admissible to them immediately before the commencement of this Act.”;

(ii) for sub-section (3), the following shall be substituted, namely:

“(3) Before the commencement of the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018, all the civil servants serving in an existing Medical Teaching Institution, who opted for the employment of the Medical Teaching Institution, shall be subject to terms and conditions of employment as prescribed by regulations including but not limited to their service structure, promotion and disciplinary matters. Such opting employees shall be entitled to post-retirement benefits and emoluments as per existing government laws and rules. The Medical Teaching Institution shall deposit pension contribution on their behalf.”;

- (iii) after sub-section (3), as so substituted, the following new sub-sections shall be inserted, namely:

“(3A) Civil servants, who do not opt for absorption in the Medical Teaching Institution, so notified, shall be dealt with in such a manner as provided in section 11A of the Khyber Pakhtunkhwa Civil Servants Act 1973, for their future posting, which includes deputation to the Medical Teaching Institution subject to a request being made by the Board:

Provided that a civil servant working in a Medical Teaching Institution, shall at all times, be deemed to be on deputation. All deductions made from the pay of such civil servants shall be deposited by the borrowing authority.”;

“(3B) A civil servant at the request of the Board may be sent on deputation to a Medical Teaching Institution by the Government. For civil servants on deputation to the Medical Teaching Institution, pension contribution shall be made by the Medical Teaching Institution. The deputation of a civil servant to a Medical Teaching Institution may be terminated by the Board at any time without assigning any reason thereof and such civil servants services shall revert to the Government immediately upon such termination being notified by the Board.”;

- (iv) for sub-section (5), the following shall be substituted, namely:

“(5) A civil servant, who opt to serve the Medical Teaching Institution, shall cease to be civil servant from the date of his absorption in the service of the Medical Teaching Institution concerned and their seniority, pension and other matters vis-à-vis employment in the Medical Teaching Institution, shall be determined in the manner, as may be prescribed.”; and

- (v) after sub-section (6), the following new sub-sections shall be added, namely:

“(7) All employees of a Medical Teaching Institution, whether having opted or directly appointed prior to the commencement of the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018, or pursuant to the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018, shall be at all times governed exclusively by the terms and conditions of service, as may be prescribed by regulations.

(8) All employees of a Medical Teaching Institution, except the Dean, Hospital Director, Medical Director, Nursing Director and Finance Director, shall have the right to appeal against any penalty, censure or termination of their employment to the Board.

(9) Any employee aggrieved by a decision of the Board may seek resolution of the grievance by referral of the grievance or dispute to the Board of Arbitration for Medical Teaching Institutions. The decision of the Board of Arbitration shall be final in all respects.

(10) On commencement of the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amendment) Act, 2018, and subject to notification of establishment of the Board of Arbitration, all employment disputes as may be pending before any Court of law shall be transferred with immediate effect for adjudication to the Board of Arbitration in terms of section 16A of this Act.”

18. Insertion of new section 16A to the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, after section 16, the following new section shall be inserted, namely:

“16A. Board of Arbitration for Medical Teaching Institutions.----(1) Government shall establish by notification a Board of Arbitration for Medical Teaching Institutions and frame Dispute Resolution Rules for the functioning of the Board of Arbitration.

(2) The Board of Arbitration shall consist of a minimum of ten arbitrators nominated by the Government for a period of five (05) years from amongst retired Judges of the Supreme Court or High Court or advocates of the Supreme Court of Pakistan having at least twenty-five (25) years experience of active practice as an advocate. The arbitrators shall be nominated for a term of five (05) years.

(3) Government shall appoint in the prescribed manner, a Secretary of the Board of Arbitration, who shall be responsible for managing the affairs of the Board of Arbitration and its operations in accordance with rules to be made under this Act.

(4) The arbitrators shall receive such remuneration as prescribed by rules for each matter in which they act as arbitrators.

(5) The employee and the Medical Teaching Institution shall have the right to nominate from amongst the arbitrators one arbitrator each and the Secretary shall appoint the umpire from amongst the remaining arbitrators to form the

arbitral panel for adjudication of each dispute referred to the Board of Arbitration.

(6) Each dispute referred to the Board of Arbitration shall be decided within a maximum of ninety (90) days from being filed by a complainant. The award of the arbitration panel shall be final and binding on all parties to the dispute and shall be implemented within fifteen days of having been rendered.

(7) The parties to a dispute referred to arbitration may be required to pay an arbitration fee as prescribed by the rules subject to such fee not being more than the aggrieved employees one month salary. Any shortfall in the cost of operation of the Board of Arbitration shall be funded by the Government.

(8) Every award of the Board of Arbitration shall within seven (07) days of being rendered be filed by the Secretary of the Board of Arbitration with the Registrar of the High Court. Unless a petition challenging the award is instituted pursuant to sub-section (9), the award upon having been filed with the Registrar of the High Court shall be deemed to have been made a rule of Court and executable as an order of the Court.

(9) Any party to an arbitration may within fifteen (15) days of the rendering of the award challenge an award by way of a petition before the High Court and which shall be heard a Divisional Bench of the High Court.

(10) The High Court on a petition challenging an award may either-

(a) modify or correct an award if-

- (i) the award contains any obvious error which can be amended without affecting such decision; or
- (ii) the award contains a clerical mistake or an error arising from an accidental omission;

(b) remit an award if-

- (i) the award has left undetermined any of the matters referred to arbitration, or where it determined any matter not referred to arbitration, and such matters cannot be separated without affecting the determination of the matters referred; or
- (ii) the award is so indefinite as to be incapable for execution; or

(iii) the objection to the legality of the award is apparent on the face of it; and

(c) set aside the award if-

(i) the arbitrators have misconduct themselves or the proceedings; or

(ii) the award has been improperly produced or is otherwise invalid.”.

19. Amendment of section 17 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 17,-

(i) in sub-section (1), for the words “The question of option shall be streamlined under the rules”, the words “The Board may in its discretion specify further periods for exercise of the option as may be prescribed” shall be substituted.;

(ii) for sub-section (3), the following shall be substituted, namely:

“(3) Employees, who do not opt for the private practice within the premises of the hospitals, clinics, imaging facilities and laboratories of the Medical Teaching Institutions, and shall not be entitled to any increase and adjustment, incentives, bonuses or other ancillary benefits or administrative post, except in case of extraordinary need, as decided by the Board.”; and

(iii) in subsection (9), for the word “rules”, the word “regulations” shall be substituted.

20. Amendment of section 19 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 19,-

(i) in sub-sections (4) and (5), after the word “prescribed”, the words “by regulations after approval from Government” shall be inserted; and

(ii) for sub-section (7), the following shall be substituted, namely:

“(7) The Board shall not invest any money in the Fund in listed securities or any derivatives thereof, whether listed or not.”.

21. Amendment of section 20 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 20, in sub-section (1),-

- (i) after the word "approved", the words "by the Board" shall be inserted; and
- (ii) after the words "prescribed", the words "by regulations" shall be added.

22. Amendment of section 21 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 21, after the words, brackets and figures "Penal Code (Act XLV of 1860)", the words "provided it shall not ascribe to them any rights of employment or benefit as may be otherwise applicable to public servants" shall be inserted.

23. Amendment of section 24 of the Khyber Pakhtunkhwa Act No. IV of 2015.---In the said Act, in section 24,-

- (i) in sub-section (1), before the word "Board", the words, brackets, figures and comma "Subject to clause (d) of sub-section (4) of section 4A," shall be inserted.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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