

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**W.P. No.1148-P/2023**

**Muhammad Zuhaib and others**

**Vs.**

**Government of Pakistan through Ministry of  
Health & Sciences, Islamabad and others**



**Date of hearing**                      **25.05.2023**

**Petitioner(s) by:**                      **Mr. Waseem-ud-Din Khattak, Advocate.**

**Respondents by:**                      **Mr. Doulat Khan Mohmand, DAG.**  
(No.1 and 2)

**Respondent by:**                      **Sardar Sadat Ali, Advocate.**  
(No.3)

**Respondent by:**                      **Mr. Mansoor Tariq, Advocate.**  
(No.4)

**Respondents by:**                      **Mian Asif Aman, Advocate.**  
(In CM No.1128-P/2023)

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**JUDGMENT**

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**IJAZ ANWAR, J.** This writ petition is filed under Article  
199 of the Constitution of Islamic Republic of Pakistan, 1973,  
with the following prayer:-

*"It is, therefore, most humbly prayed that on acceptance of this writ petition, the admission in the Medical & Dental Colleges of Pakistan for the seats reserved of erstwhile FATA may graciously be made on the basis of eligibility criteria set by the Pakistan Medical & Dental Council. Furthermore, the marks obtained by the petitioners in the MDCAT test be given the same weightage as set by the PM&DC. Any other order/remedy appropriate in circumstances of the case may also be graciously granted."*

2.                      In essence, as per the averments of the petition, the petitioners have challenged the decision of respondent No.4, whereby, the admission/seat allocations at various Medical and Dental Colleges was based on the score obtained

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in Aptitude Test, despite the criteria already set out by the PM&DC for admission in various Medical & Dental Colleges of Pakistan.

3. Comments were called from the respondents who furnished the same wherein, they opposed the issuance of desired writ asked for by the petitioners.

4. CM No.1128-P/2023 filed for impleadment of the applicants names mentioned therein as respondents in the penal of respondents of the main writ petition is allowed. Office is directed to do the needful in the memo of main writ petition and also in the relevant registers.

5. At the very outset of hearing, it has been pointed out by learned counsel for the petitioners that last year too, when the Higher Education Commission invited applications from the desirous students of erstwhile FATA under the project known as "Provision of Higher Education Opportunities for Students of Balochistan and FATA", there was a criteria provided for the purpose of admissions against the scholarship and that criteria was considered by a Division Bench of this Court in Writ Petition No.2000-P/2021 decided on 02.07.2021 and held it to be violative of the provisions of Pakistan Medical Commission Act, 2020 (hereinafter to be referred as "the Act").

6. We have gone through the judgment of this Court dated 02.07.2021 and find that in exactly same facts and circumstances, the criteria devised for the selection of students

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for the scholarships was adjudged to be violative of "the Act" and has directed in the following manner:-

*"In view of the above, we hold that:-*

- i. HEC will grant admission against the aforesaid reserved seats only to those students, who have passed MDCAT test according to the criteria of PMC;*
- ii. HEC shall revise its merit list wherein 50% weightage shall be given/assigned to the marks obtained by a student in MDCAT;*
- iii. HEC would be at liberty to follow their policy for allocation of marks according to its criteria in the remaining 50% marks".*

7. Learned counsel for respondent No.3/PM&DC has duly supported the averments of the petition and stated that the criteria devised by respondent No.4/HEC is against the express provisions of "the Act".

8. Learned counsel for the respondent-HEC has, however, insisted to distinguish the earlier order of this Court; as such, we have heard both the parties at considerable length. We will, however, discuss and respond to the arguments of learned counsels for the parties at appropriate place in this judgment.

9. Perusal of the record reveals that vide the advertisement published in different newspapers under the heading "Undergraduate Scholarship for students of Balochistan and Erstwhile FATA", applications were invited from outstanding students of Balochistan and FATA who intend to pursue undergraduate studies in HEC recognized in public/private sector universities/Degree Awarding Institutions of Pakistan. The scholarships are being offered for the academic year, 2022-23 in all areas of study/disciplines under

the project entitled "Provision of Higher Education Opportunities for Students of Balochistan & erstwhile FATA (Phase-III) Batch I". Besides, other eligibility criteria mentioned in the said advertisement, para-5 and 6, being relevant, is reproduced as under:-

*"5. Placements on reserved seats will be open merit within the selected scholars only. PM&DC/PMC minimum eligibility criteria/rules and regulations will be applicable.*

*6. Those who are already enrolled in Medical/Dental Colleges and Engineering Programmes will not be considered against the reserved seats but shall be considered for offer of scholarships, if on merit".*

10. The eligibility criteria provided in Section 18 of "the Act", being relevant, is also reproduced as follows:-

*"18. Medical and Dental colleges admissions tests (MDCAT).*

*1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan.*

*2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:*

*Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year, 2021 and thereafter.*

*3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Movements strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions*

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**imposed by the relevant university to which such college is affiliated:-**

**Provided that the marks obtained by a student in the MDCAT conducted the Authority shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public colleges”.**

11. In view of the criteria mentioned in Section 18 of “the Act”, while preparing merit for the purpose of considering admissions in the public sector colleges, atleast 50% of the weightage is to be given to the marks obtained by students in the MDCAT test conducted by the National Medical Authority. While strictly following the principles provided by “the Act” for admissions in the public and private sector Medical & Dental Colleges, the Provincial Government Health Department has notified Admission Policy for the year 2022-2023. In Regulation 14, the criteria is mentioned, whereby, merit for such admission is to be prepared. It, being relevant, is reproduced as under:-

**“14. The candidate shall apply to concerned Admitting University for admission by submitting his/her SSC, HSSC or FSc and his/her Medical and Dental College Admissions Test (MDCAT) result. The concerned admitting university shall prepare a merit list by a weight age formula as under:**

- |  |            |
|--|------------|
| <b>(a) SSC/Matric/Equivalent</b>                               | <b>10%</b> |
| <b>(b) Adjusted marks in FSc or equivalent examination</b>     | <b>40%</b> |
| <b>(c) Medical and Dental Colleges Admissions Test (MDCAT)</b> | <b>50%</b> |

**Provided that no candidate shall be considered eligible on merit if the student has acquired a minimum of 60% marks in FSc/equivalent, 55% marks for MBBS or 45% marks for BDS in MDCAT.**

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*Furthermore, it shall be responsibility of the candidates to settle their cases with Inter Board Committee of Chairmen (IBCC), Islamabad (IBCC) and should get clearance certificate from IBCC, Islamabad for recognition of their qualifications as equivalent to FSc (Pre-Medical)".*

12. Similarly, the additional criteria for "Federal Reserve and Quota Seats" is provided in the regulations, the same is reproduced as follows:-

***"Federal Reserve and Quota Seats:***

***I. Merged Area Districts (Mad)/Balochistan Project Seats:***

*The seats have been created under the project titled Provision of Higher Education Opportunities for Balochistan & newly Merged Area Districts (MAD).*

*The candidates applying against Merged Area Districts (Mad)/ Balochistan Project seats reserved in Khyber Pakhtunkhwa Medical and Dental Colleges shall directly apply to Higher Education Commission on the prescribed form. The HEC shall finalize the list of candidates to be admitted as per Policy formulated for the said project. Nomination of candidates shall be sent by HEC, Islamabad to the KMU-AC through Secretary Health, Government of Khyber Pakhtunkhwa. In order to avoid duplication on rest of newly Merged Area Districts (MAD) reserved seats HEC will invite newly Merged Area Districts (MAD) Secretariat while awarding scholarships to these candidates.*

*Any subsequent shifting will be the responsibility of KMU-AC and Home & Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa".*

13. The weightage formula has also been provided in these regulations as follows:-

***"Weightage for preparation of final merit list will be as under:-***

<b><i>EXAMINATION/TEST</i></b>	<b><i>WEIGHTAGE</i></b>
<b><i>i. SC/Matriculation/Equivalent</i></b>	<b><i>10%</i></b>

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- ii. *Adjusted marks in FSc or equivalent examination* 40%  
iii. *Entry Test (MDCAT)* 50%

**EXAMPLE:**

*A candidate has obtained marks:-*

- i. *SSC or Equivalent qualification 880/1100 or 80.00000%*  
ii. *Adjusted F.Sc. marks or equivalent level marks 880/1100 or 80.00000%*  
iii. *PMC MDCAT Test passing Marks 110/200 for MBBS and 90/200 for BDS.*

*His/Her merit will be calculated as follows:*

*%age mark Weightage = Weightage Factor Marks*

*a. Weightage for SSC =  $80.0 \times 0.1 = 8.00000$*

*b. Weight age for FSc =  $80.0 \times 0.4 = 32.00000$*

*c. Weightage for Entrance Test =  $60.0 \times 0.5 = 30.00000$*

*Merit score of the candidate =  $a+b+c=8.0+32.0+30.0=$   
**70.0% Final***

*Calculation in percentage will be rounded up to five decimal points".*

14. It is pertinent to mention here that the seats in question were duly approved by the Federal Government and the respondent-Higher Education Commission has been duly authorized to act as executing agency for admission in pre-medical category of reserved seats of scholarships for erstwhile FATA and Balochistan. The respondents, with their comments, have duly annexed the PC-I Form under the heading "Provision of Higher Education Opportunities for Students of erstwhile FATA Phase-III, Batch-I". In PC-I Form, wherein, it is mentioned in para-3 that Higher Education Commission, Government of Pakistan is sponsoring and executing agency. Similarly, the "eligibility criteria" is mentioned in para 6.5 as below:-

**"6.5 Eligibility Criteria:-**

1. *Candidate must have the age less than or equal to 22 years on Closing date for Undergraduate Scholarship Program.*

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2. *Candidate must have valid domicile or local certificate of Balochistan/erstwhile FATA duly signed by district administration.*
3. *Candidates must have completed 12 years of education with at least 60% marks in FA/F.Sc/I.COM/ICS/DAE and equivalent for Undergraduate program.*
4. *The candidates who are already availing any other HEC/Government scholarship are NOT eligible to apply.*
5. *Candidates must have acquired the requisite academic qualifications on or before the closing date.*
6. *Result awaiting students will not be eligible to apply”.*

The “selection procedure” is given as follows:-

*“Selection Procedure*

*Advertisement in print media and HEC website for inviting the applications of potential.*

*HEC Scholarship Award Test specifically arranged for UG scholarships with minimum 50% passing marks.*

*Scholarship will be awarded to the students studying/seeking admission in HEC recognized Universities/DAIs/Institutions.*

*Scholarships will be awarded to only those candidates who have not awarded/availed the HEC/or any other undergraduate scholarship before.*

*The selection of the Scholarship Awardees will be finalized by the Chairman Project Steering Committee (PSC)”.*

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15. In the instant case, besides the basic eligibility of having passed the MDCAT test, the respondent-HEC has been authorized to conduct HEC Scholarship Award Test and a student to remain in the contest for the limited scholarship seats has also to pass this ability test by atleast 50% as passing marks.

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16. The justification for providing their own criteria by respondent-HEC is given that it has duly been agreed upon in a meeting of the first Project Steering Committee held on 05.04.2023 in agenda item No.4 i.e. "authorization of merit calculation formula as per previous practice" and according to this decision, 20% weightage is given to SSC, 30% to HSSC and 50% to HEC award test.

17. Interestingly, in the instant matter, the advertisement for the Undergraduate Scholarships has provided last date for submission of online applications as Monday, 13.02.2023. The Aptitude test was conducted and the result was announced on 13.03.2023 but irrespective of the criteria of weightage for preparation of merit as provided by "the Act", the respondent-HEC has formulated the merit list in terms of the criteria approved by the Project Steering Committee in its meeting held on 05.04.2023. It is pertinent to mention here that Section 18 of "the Act" has a statutory backing passed by the competent legislature, however, the respondent-HEC has completely ignored the same. It is pertinent to mention here that the judgment relied upon by learned counsel for the petitioners fit on all fours as by then, 60% weightage was assigned to the Aptitude test by the HEC while the remaining was distributed for SSC and Intermediate examinations and it was held by this Court that the HEC is bound to prepare the merit list in which 50% weightage shall

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be given/assigned to marks obtained by the students in MDCAT test.

18. It has been extensively argued by learned counsel for the respondent-HEC that being a policy matter, principle of estoppel is applicable to the case of the petitioners as they have appeared pursuant to the advertisement providing terms and conditions, as such, it cannot be questioned later. We duly accept the contention of learned counsel for the respondent-HEC, however, as noted above in the eligibility criteria as well as in the "important note" mentioned in the advertisement, shortlisting is to be made on the basis of marks obtained in Aptitude test and academic credentials but it has nowhere mentioned that for preparation of merit list, the criteria provided under Section 18 of "the Act" is to be ignored.

19. It is pertinent to mention here that the aim and object of the promulgation of "the Act" was "to provide for the regulation and control of the medical profession and to establish a uniform minimum standard of basic and higher medical education and training and recognition of qualifications in medicine and dentistry". The constitution of the Commission is provided in Section 3 of "the Act" while composition is provided in Section 4 of "the Act". Similarly, in terms of Section 8(2)(f) of "the Act", it is the power and function of Pakistan Medical Council to "frame regulations for conduct of admissions in medical and dental colleges and

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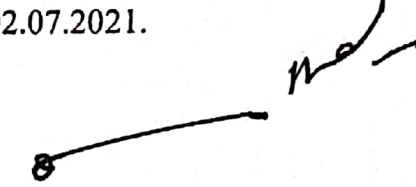
examinations to be conducted by the Commission and approve the examination structure and standards of the medical and dental colleges admissions tests, national licensing examination and the national equivalence board examinations as proposed by the national medical and dental academic board including the standards of revalidation of licenses to practice medicine or dentistry in Pakistan". Thus, it is only the PMC to provide the criteria/conduct of admissions in medical & dental colleges and the standard of medical and dental colleges' admissions tests. Section 18 of "the Act", as reproduced above, has specifically provided a criteria in detail for such admissions, thus, the arguments of learned counsel for the respondent-HEC that the seats in question are to be filled in as per the criteria of the HEC amounts to overstepping its mandate, because, in terms of the decision of the Federal Government, seats were created for filling it and providing them scholarships but it does not mean that the minimum standard/criteria provided by the Federal Government through the promulgation of "the Act" can be defeated by a criteria provided by first Project Steering Committee.

20. We are, thus, of the view that as decided by this Court, 50% weightage is to be given to the marks obtained by the students in MDCAT and that the HEC would be at liberty to follow their policy for allocation of marks according to its criteria in the remaining 50% marks.

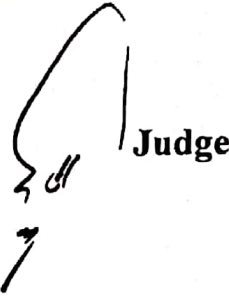
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21. For the reasons stated above, we allow and dispose of this writ petition. The merit list prepared by the respondent-HEC for the special quota seats shall be revised in accordance with the judgment of this Court passed in Writ Petition No.2000-P/2021 decided on 02.07.2021.

**Announced**  
**Dt:25.05.2023**



**Senior Puisne Judge**



**Judge**

(DB) Hon'ble Mr. Justice Mohammad Ibrahim Khan and Hon'ble Mr. Justice Ijaz Anwar

\*Muhammad Allah\*

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Peshawar High Court, Peshawar  
Authorized Under Article 8, 7 of  
the Qanoon-e-Shahadat Act 1984

31 MAY 2023

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