

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

37492 / Writ

23-Nov-2023

From,

The Deputy Registrar(Judicial),
Islamabad High Court,
Islamabad.

To,

1_ **Shaheed Zulfiqar Ali Bhutto Medical University**
(SZABMU), Sector G-8/3, Islamabad through its Vice Chancellor.

2_ **Shaheed Zulfiqar Ali Bhutto Medical University,**
(SZABMU), Sector G-8/3, Islamabad through its Registrar.

3_ **School of Dentistry, Dental Hospital,**
(SZABMU), Sector G-8/3, Islamabad through its Principal.

4_ **Pakistan Medical and Dental Council (PM&DC)**
Maive Area, Sector G-10/4, Islamabad.

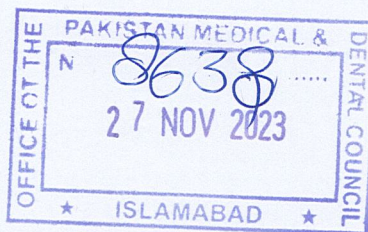
5_ **Ministry of National Health Services,**
Regulations and Coordination, Pak Sectt, Islamabad.

Subject: W.P. 1979/2023 Service Other (SB)

Dr. Ain us Saba Ayub etc. -VS-Shaheed Zulfiqar Ali Bhutto Medical University etc.

Dear Sir,

I am directed to forward for information and immediate compliance a copy of this Court's order dated **22-11-2023** passed by the Honourable Mr. Justice Mohsin Akhtar Kayani in the above noted case.



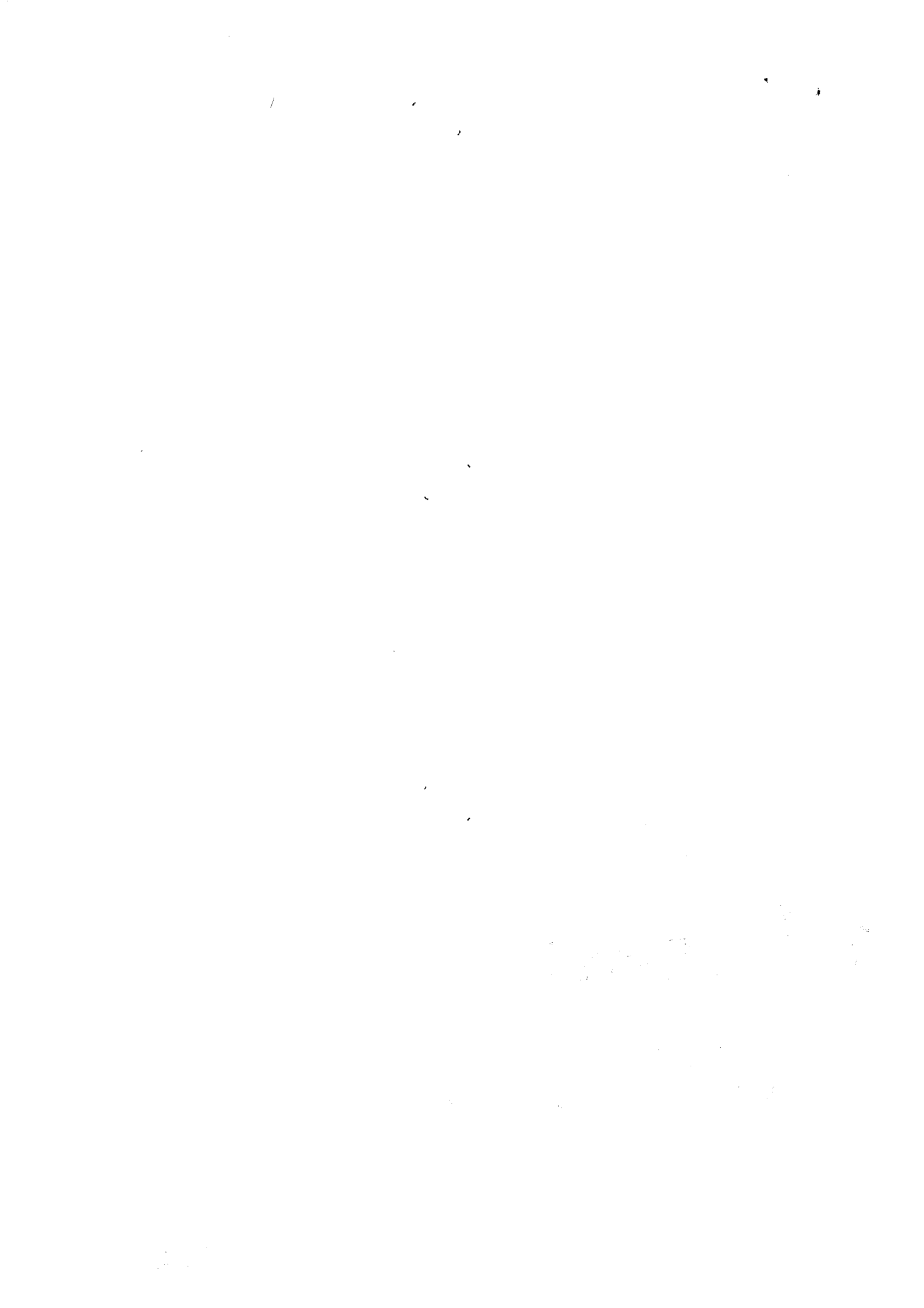
Yours Faithfully,

Assistant Registrar (Writ)

For Deputy Registrar (Judicial)

Decided Matter





1-A

IN THE HONOURABLE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No. 1979 /2023

1. Dr. Ain Us Saba Ayub, Senior Registrar, R/o House No. 743, Road-C, Phase-IV, Bahria Town, Islamabad.
2. Dr. Nida Qasim Hayat, Associate Professor Anatomy R/o Farm No. 7, Kirthar Road, Sector H-9, Islamabad.
3. Dr. Fouzia Aslam, Assistant Professor OMFS, R/o House No. 7, street 1-B, sector F-10/3, Islamabad.
4. Dr. Sana Ali, Senior Registrar, OMFS, R/o Flat No. 2, Block 27-D, Sector G-10/3, Islamabad.

----- **PETITIONERS**

VERSUS

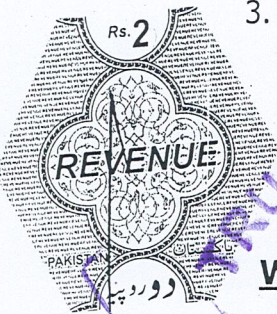
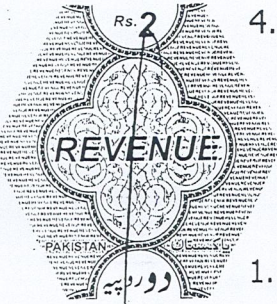
1. Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), Sector G-8/3 Islamabad through its Vice Chancellor.
2. Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), Sector G 8/3, Islamabad.through its Registrar.
3. School of Dentistry, Dental Hospital, Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), Sector G-8/3 Islamabad; through its Principal.

--- **RESPONDENTS**

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth;-

That the petitioners are filing the instant writ petition before this Hon'ble Court against the impugned advertisement dated 06.05.2023 published in Daily Newspaper 'Dawn' by the respondents in order to recruitments of different posts i.e Professors, Associate Professors, Assistant Professors and Senior Registrars etc., while changing the eligibility criteria in sheer violation of the Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020 read with Shaheed Zulfiqar Ali Bhutto Medical University Act,



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Exhibit No. 1
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JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.1979-2023

Dr. Ain Us Saba Ayub and others

Versus

Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU) and
others.

W.P No.2716-2023

Dr. Halima Sadia Qazi

Versus

Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU) and
others.

W.P No.2672-2023

Najam Ul Hassan and others

Versus

Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU) and
others.

Petitioners by:

Mr. Naseem Ahmed Shah, Ms.
Saiymah Kazmi and Zafar Kundi,
Advocates.

Respondents by:

Mr. Usman Rasool Ghumman, AAG.
Mr. Ashtar Ausaf Ali, Barrister Osama
Rauf and Mr. Soban Hayat, Advocates
for SZABMU.
Mr. Saad Khan Mayar, Advocate for
PMDC.
Rana Umer, Director, Ministry of
NHSR&C.

Date of Hearing:

15.11.2023.

.....
MOHSIN AKHTAR KAYANI, J. By way of this common
judgment, I intend to decide all these captioned writ petitions having
similar question of law and facts.

2. Through W.P No.1979-2023, the petitioners have assailed the
advertisement dated 06.05.2023 published in daily newspaper

whereby eligibility criteria provided in Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020 has been changed in order to accommodate some of the contract employees, who did not qualify for the above referred positions and respondents have also reduced Basic Pay Scales for all the said posts in order to accommodate their blue eyed persons, who even do not fulfill requisite qualifications notified by the HEC & PMDC.

3. Through W.P No.2716-2023, the petitioner Dr. Halima Sadia Qazi is aggrieved with the condition imposed by respondent No.1/SZABMU qua issuance of NOC vide letter dated 26.07.2023 on the ground that she has applied for deputation as Assistant Professor (Paediatric Dentistry) from Ayub Medical College, Abbottabad qua her posting to School of Dentistry, Shaheed Zulfiqar Ali Bhutto Medical University, though NOC was issued to her through the impugned letter, but restriction was imposed in the manner that "*final actualization will be done after the decision of High Court in writ petition No.1979/2023 dated 17th June, 2023 on School of Dentistry appointments*".

4. Through W.P No.2672-2023, the petitioners have prayed for regularization of their service in Shaheed Zulfiqar Ali Bhutto Medical University w.e.f. the date of their joining; that petitioners are contractual employees and they have been forced to apply against the present positions in accordance with new advertisement. Learned counsel for the petitioners has pointed out that Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020 only provides the concept of regular employees in terms of Section 2(xx) of the Rules subject to fulfillment of other prerequisites.

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Registrar
Employees Section
Shaheed Zulfiqar Ali Bhutto Medical University
Abbottabad

change the nomenclature of the position of School of Dentistry by downgrading the original Basic Pay Scales provided in the Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020, even they are not permitted to change the eligibility criteria of qualification and experience notified in those rules. It has further been contended that the petitioners have applied for different positions in the previous recruitment process and they have qualified the written examination and interview, but the result has not been announced till date, the reason best known to them and as such continuous appointment in these positions give rise to a situation, whereby they can claim the regularization in the light of case law reported as **2019 PLC (C.S) Note 19 (Imran Ahmed and others Vs. Federation of Pakistan and others)**. At last one of counsel representing petitioner Dr. Halima Sadia Qazi claims that petitioner's case be dealt in accordance with law and once NOC has been issued to the petitioner, the same cannot be conditionalized, which is an illegal act.

6. Conversely learned counsel for Shaheed Zulfiqar Ali Bhutto Medical University contends that the advertisement under challenge has been settled by Syndicate of the University in their meeting and the criteria referring the eligibility qualification as well as grades i.e. Basic Pay Scales have been referred on the basis of previous structure available in the project and after closing of the project, regular positions have been announced. It has further been contended that the eligibility criteria has been referred on the basis of PMDC regulation, 2018, which has been given protection under the PM& DC Act, 2022, as such the petitioners have on right to claim enhancement in experience and requisite criteria at their own whim

to challenge the condition imposed regarding NOC by the respondent/University.

7. Counsel for PM&DC has also highlighted the regulations and claims that the service structure provided in Shaheed Zulfiqar Ali Bhutto Medical University has nothing to do with the PM&DC regulations, which are only meant to provide the minimum standard for Appointment of Teachers in Undergraduate and Postgraduate Dental Institutions, whereas university has independent right to enhance the criteria at their own end in accordance with their rules and regulations, but they cannot go beyond the standard set out by the PM&DC.

8. Arguments heard and record perused.

9. Perusal of record reveals that the entire issue started when the advertisement was published in Daily Dawn qua the recruitment against the different posts of Professor, Associate Professor, Assistant Professor Senior Registrar etc., in which eligibility criteria allegedly has been changed from Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020.

10. In order to consider this aspect, it is necessary to reproduce the eligibility criteria:-

Sr. No.	Post/BPS	Eligibility criteria provided in Rules, 2020	Eligibility criteria provided in the advertisement
1.	Professors	<p>BPS-21.</p> <p>i) MBBS/BDS with MD/MS/FCPS/MDS/Ph.D/ Membership of Royal Colleges (UK)/Diplomat of American Board or equivalent International terminal qualification (as determined by HEC) in the Clinical Medical/Dental Science disciplines</p> <p>ii) 10 years teaching/research experience in an HEC/PM&DC recognized University/institution, including</p>	<p>BPS-20</p> <p>i) B.D.S or equivalent qualification duly registered/recognized by the PM&DC.</p> <p>ii) FCPS or MDS or equivalent postgraduate qualification in the relevant field duly registered/recognized by the PM&DC.</p> <p>iii) At least three years teaching experience as an Associate Professor in the relevant subject provided</p>

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		journals recognized jointly by HEC and PM&DC. (with at least 5 of these publications in the last 5 years).	Assistant Professor in the respective subject duly registered/recognized by the PM&DC. iv) Eight research papers out of which three should be published in the last three years in medical /dental journal duly approved by the PM&DC.
2.	Associate Professors	BPS-20. i) MBBS/BDS with MD/MS/FCPS/MDS/Ph.D/Membership of Royal Colleges (UK)/Diplomat of American Board or equivalent International terminal qualification (as determined by HEC) in the Clinical Medical/Dental Science disciplines. ii) 8 years teaching/research experience (including at least 5 years as Assistant Professor) in HEC/PM&DC recognized University/institution or professional experience in the relevant field in a national or international organization. iii) 10 research publications in journals recognized jointly by HEC and PM&DC. (with at least 4 of these publications in the last 5 years).	BPS-19 i) B.D.S or equivalent qualification duly registered/recognized by the PM&DC. ii) FPSC or MDS or equivalent postgraduate qualification in the relevant field duly recognized by the PM&DC. If the no candidate with the aforesaid qualification is available, then candidates possessing MCPS or M.Sc, or other two years postgraduate degree/diploma in the relevant field shall be considered. iii) At least five years teaching experience as an Assistant Professor in the relevant subject. iv) Five research papers published in medical/dental journal duly approved by the PM&DC.
3.	Assistant Professor	BPS-19 i) MBBS/BDS with MD/MS/FCPS/MDS/Ph.D/Membership of Royal Colleges (UK)/Diplomat of American Board or equivalent International terminal Qualifications (as determined by HEC) in the clinical Medical/Dental Science disciplines. ii) For Ph.D degree holders from Pakistan, the Ph.D thesis must be evaluated by two foreign Experts as per HEC guidelines for award of Ph.D degree, in case foreign evaluation was not done, than the candidate must provide evidence of two publications in Journal recognized by HEC.	BPS-18. i) B.D.S or equivalent qualification duly registered/recognized by the PM&DC. ii) FCPS or MDs or equivalent postgraduate qualification in the relevant field duly recognized by the PM&DC. OR iii) MCPS or M.Sc, or other two years postgraduate degree/diploma in the relevant field duly registered/recognized by the PM&DC. iv) At least one year teaching experience as Lecturer Demonstrator/Instructor before or after FCPS or MDS in the relevant subject. OR At least two year teaching experience as Lecturer/Demonstrator /Instructor before or after

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			Lecturer/Demonstrator/ Instructor before or after MCPS or M.Sc. or equivalent in the relevant subject. v) Two research papers published in medical/dental journal duly approved by the PM&DC.
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11. I have attended the above referred comparative analysis chart with reference to PM&DC regulations for Appointment of Teachers in Undergraduate and Postgraduate Dental Institutions, which is equivalent to the qualifications and eligibility criteria referred in the advertisement and not in the rules referred above, therefore, question arises as to whether the regulation of PM&DC is to be treated as benchmark or Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020 is to be considered as a minimum standard of Pakistan Medical and Dental Council Act, 2022, which has been enacted to consolidate the law relating to the registration of medical practitioners and dentists and reconstitute the Medical and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry, such aspect if read in conjunction with Section 9 of the PM&DC Act, 2022, whereby the powers of the Council have been explained, especially with reference to clauses d, g, h, which are as under:-

- d. to approve accreditation standards, for under-graduate medical and dental programs of study based in Pakistan;
- g. to grant recognition to medical and dental institutions in Pakistan which train or grant or both train and grant medical and dental post graduate qualifications and to the qualifications granted by these institutions leading to registration of the graduates of those programs to practice medicine and dentistry in Pakistan as specialists;
- h. to approve the assessment of international under-graduate medical programs and institutions for

24 NOV 2023

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12. The above mentioned powers clearly spell out that PM & DC is the master regulator to deal with the affairs of Undergraduate Medical and Dental programs of study in Pakistan leading to general registration of the graduates of those programs to practice medicine and dentistry in Pakistan including but not limited to accreditation of National Medical Institutions for registration of their graduates in Pakistan with further powers to determine the accreditation standards for Undergraduate Medical and Dental programs of study based in Pakistan. In this regard Act provides the concept of Medical and Dental Colleges Admission Tests (MDCAT), National Registration Examination (NRE), National Equivalence Board Examination (NEB), the Recognition of Medical Institutions and qualifications, whereby the detailed mechanism has been provided for inspection, recognition and accreditation, even to register medical practitioner.

13. In order to achieve all these functions, PM&DC has powers to make rules and regulations in terms of Rule 47 with the prior approval of the Federal Government, generally to carry out the purposes of this Act, in which they are also allowed to make the regulations i.e. called as PM&DC regulations for the appointment /promotions of faculty / teaching staff /examiners /principals /deans/vice chancellors in undergraduate and postgraduate medical & dental institutions/medical universities of Pakistan 2018, which laid down the appointment criteria for appointment and promotion and grant of teaching experience for all Medical and Dental Institutions, recognized under the Act, previously under the ordinance, as such that is the minimum standard to be observed for

medical and dentistry education. The PM&DC Act is a special law

empowered all powers to regulate the affairs across Pakistan with

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therefore, the same has to be followed in letter and spirit by all means.

14. Now adverting towards the second question as to whether the eligibility criteria provided in Shaheed Zulfiqar Ali Bhutto University (Employees Service) Rules, 2020 provides the grades, age limits, minimum qualification, experience and other conditions against the post of Professor, Senior Registrar, Associate Professor, Assistant Professor etc. are contrary to the PM&DC regulations, the answer is in "Negative", rather service rules fall within the mandate of Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013 amended as Shaheed Zulfiqar Ali Bhutto Medical University (Amendments) Act, 2018, which empowers the Syndicate to settle all these questions and after their due deliberation, they have notified their service rules providing the age limit, qualification and experience against different positions, though the same is higher than the minimum criteria provided by the PM&DC in the regulations, but that does not mean that the PM&DC regulations have not been followed.

15. In this regard, this Court has been guided with the decision passed in 26, 27 and 28th meeting of the Syndicate of the University, which have approved the advertisement, appointment and faculty staff against the sanctioned posts. However, the issues relating to school of dentistry has been considered in the Syndicate meeting in the following manner:-

The Chair further briefed about recruitments of Dental Hospital, School of Dentistry. He elaborated that the matter of Faculty from BPS-17 to BPS-20 was placed in 26th Meeting of the Syndicate (13th April, 2023) and the Honorable House decided with concern to adopt the standard procedures on the subject matter and follow all

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interviews on 26 June 2023 after formally scrutinizing all application through a committee. Despite initial restriction by the Mandokhel Committee, a writ petition and temporary stoppage by the Election Commission of Pakistan. Whole process was completed on 18th September 2023 though, the final appointment letters will be issued only once the court gives its final verdict on the writ petition. The process of recruitment of SoD was highly appreciated by all Syndicate members and also thanked high profile external panel of experts who participated in the interview process.

“The House Unanimously endorsed the whole recruitment process.”

After that, observation was raised by two Honorable members regarding advertisement of SOD that the BPS grades should be at par with University professors but majority of members supported that BPS grades should be as approved in the PC-4 and endorsed by Finance and Planning and finally by the Syndicate in its 26th Meeting that is Demonstrator (BPS-17), Assistant Professor (BPS 18), Associate Professor (BPS 19) and Professor (BPS 20). In future after concurrence of Finance and Planning these can be upgraded but at present University should proceed with currently approved BPS scales.

16. In the light of detailed findings given by the Syndicate, there is nothing left in favour of the petitioners to seek indulgence of this Court qua the interpretation of advertisement with reference to the eligibility and qualification of the posts, especially when University itself agreed to settle the eligibility criteria in PC-4 of the original project, in which all the positions have already been downgraded and it was also approved by the Syndicate that in future after concurrence of Finance and Planning, the post can be upgraded, but presently University proceed with currently approved Basic Pay Scales, which reflects that changing of the nomenclature of the

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Dentistry and the majority of the posts are lying vacant, which further effect the general public, who could not be able to avail the required medical treatment.

17. I have gone through the case of petitioner Dr. Halima Sadia Qazi, who is only challenging the letter dated 26.07.2023, whereby she has been granted NOC for deputation from Ayub Medical College, Abbottabad to School of Dentistry Shaheed Zulfiqar Ali Bhutto University, as such deputationist has no right to challenge the conditions imposed by the borrowing Department, especially the position on which the petitioner is interested to be deputed by way of deputation is a bone of contention in the connected writ petition, therefore, instant writ is not maintainable.

18. While considering the cases of Dr. Ain Us Saba Ayub and others, who claimed that they are working hard in their department from the initial appointment against contractual project post and have not been given regularization effect till date and they are claiming their rights on the basis of case law reported as **2019**

PLC(C.S) Note 19 (Imran Ahmed and others Vs. Federation of

Pakistan and others). No doubt the said judgment was upheld by

the Supreme Court of Pakistan, where Adhoc, Contract, Project

Employees have been discussed in details and their regularization

methodology was settled, but instant matter is entirely different from

Imran Ahmed case supra and the said case was based upon the

regularization policy, which was notified by the Federal Government,

whereby this Court has given one time dispensation and placed a

permanent embargo in any future appointment, in such a mode and

manner.

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some of the petitioners are facing the overage factor, but their appointment letters clearly spell out that the appointee will not have any right to claim regular absorption or appointment against this post in this University. However, He/She can apply fresh for regular appointment as per the University Recruitment Rules whenever the posts will be advertised", such aspect disentitles the petitioner for claim of regularization, even otherwise it is also highlighted by the University that all the petitioners have applied for the posts, advertised by the University and competed in the recruitment process, therefore, in such scenario, there is no infringement of their fundamental rights in this case.

20. In view of above, all these writ petitions are not made out, therefore, same are hereby **DISMISSED**. However, it is expected from Shaheed Zulfiqar Ali Bhutto Medical University to issue appointment letters to all the eligible candidates, who were selected in the process within Seven (07) days.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 22.11.2023.

JUDGE

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1979/23

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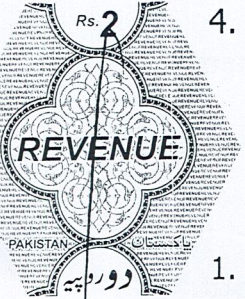


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IN THE HONOURABLE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No. 1979 /2023

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4. Dr. Sana Ali, Senior Registrar, OMFS, R/o Flat No. 2, Block 27-D, Sector G-10/3, Islamabad.



----- **PETITIONERS**

VERSUS

1. Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), Sector G-8/3 Islamabad through its Vice Chancellor.
2. Shaheed Zulfiqar Ali Bhutto Medical University (SZABMU), Sector G 8/3, Islamabad. through its Registrar.
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