

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.2481/2023,
Date of Ins. 15.08.2023,
Date of Decision.22.01.2024

1. Abrar Ahmed Khawaja Son of Kh. Bashir R/o new Mohallah Tehsil and District Muzaffarabad (Student of Intermediate (Pre-Medical) Muzaffarabad, Azad Jammu and Kashmir;
2. Mohammad Usman S/o Mohammad Khursheed Awan R/o Ward No. 10, Mohallah Lower Plate Tehsil and District Muzaffarabad;
3. Aliza Ba Ashfaq D/o Ashfaq Ahmed Khan R/o Chota Galla Banjosa Tehsil Rawalakot District Poonch (Student of Intermediate (Pre-Medical);
4. Shabana Rasheed Butt D/o Abdur Rasheed R/o Shawai Chella Bandi Tehsil and District Muzaffarabad (Student of Intermediate) (Pre-Medical);
5. Alishba Masood D/o Kh. Mohammad Masood R/o Babu Mohallah Tehsil and District Muzaffarabad (student of Intermediate (Pre-Medical);\
6. Aimen Karim D/o Imran karim R/o House No. 216 Sector C/03, Mirpur

...Petitioners.

VERSUS

1. Pakistan Medical and Dental Council through its Registrar having office at G-10/4 Mauve Area Islamabad;
2. Board of Directors of Pakistan Medical and Dental Council through its Secretary having office at G-10/4 Mauve Area Islamabad;
3. Azad Govt. through Secretary Health having office at new Secretariat Chatter Domail, Muzaffarabad;
4. Joint Admission Committee Azad Jammu and Kashmir for Admission of Pre-Medical Students through its Chairman having office at Muzaffarabad Medical College Azad Jammu and Kashmir;

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مجلس حقوق اطفال اور صحت
دہلی ریجنسٹرار (تقریباً)
سہ ماہیہ اعلیٰ اور نیشنل
22/01/2024

Pakistan Medical Commission candidates willing to get admissions in MBBS & BDS were required to pass Medical and Dental Colleges Admission Test (MDCAT) which was valid for two year. It is submitted that the students were allowed to get benefit of MDCAT result for two years and valid for two sessions in case of re-appearing in MDCAT test if a student avails better marks he or she was entitled to get benefit of his new result otherwise his previous result was to be considered while forming merit for admission in MBBS & BDS, however, the official respondents mentioned that result is valid for one year without legal backing. It is contended that Pakistan Medical Commission was redesigned by government of Pakistan by establishing Pakistan Medical and Dental Council (PMDC) and Pakistan and Medical and Dental Council (PMDC) once again issued directions regarding MDCAT result by extending the period of 2 years to 3 years.

The writ petition was admitted for regular hearing vide order dated 22.12.2023. Written statement has been filed on behalf of respondents, wherein, it is stated that the petitioners have no locus standi to file the instant writ petition because they have an alternate

فصل مطابق اصل درست ہے
 ذہنی رجسٹرار (نقل) (۱)
 وزارت صحت اور تعلیم
 اسلام آباد
 ۲۰۲۳

remedy. It is further stated that the writ petition is hit by principle of laches. It is submitted that the result card is valid for admission in session 2022-23 and the same is admitted by the petitioners, hence, acquiescence and estoppel is attracted by the case. It is further submitted that the petitioners have appeared in MDCAT test in 2023 and accepted all the terms and conditions and policy of authority hence they have no locus standi to file the instant writ petition. It is contended that the petitioners have not challenged the PM&DC Act, 2022 and Result Card issued 2022, hence, the writ petition is not maintainable. It is further contended that the petitioners have not arrayed necessary party because the policy issued by PMDC and if this policy is cancelled the students of all over the Pakistan and AJK will effect at this bleated stage.

I have heard the learned counsel for the parties and gone through the record of the case.

It is the claim of petitioners that to get admission in MBBS & BDS Medical and Dental College test was required to be passed which was valid for two years according to Pakistan Medical Commission, however, Pakistan Medical and Dental Council issued public

ملک سابقہ امر درست ہے
 ذہنی رجسٹرار (قولہ)
 صحت اور طبی امور کے وزیر
 20/11/23

announcement regarding MDCAT-2023, on 14th July, 2023 wherein it has been declared that results of MDCAT for the year 2022 are no longer valid for seeking admission in the Session 2023. The PM&DC is established under the Act of 2022, and the Pakistan Medical Commission Act, 2010 stood repealed. The PM&DC is reconstituted to keep minimum stander of basic and higher education in Medicine. It possess the power to regular and make rules and regulations for the conduct of admission in Medical and Dental Colleges in Pakistan and AJ&K. The PM&DC is the sole regulator of all Medical and Dental institutions in Pakistan and AJK and all the medical programs in the said institutions are made in accordance with the regulation and policies formulated by it and the Medical and Dental Institutions are bound to follow the law, directions and decision made by it. The Pakistan Medical & Dental Council has declared that the result of MDCAT-2022 are no longer valid for seeking admission in session 2023 which was already mentioned on the individual result certificates. The relevant portion of Public announcement regarding MDCAT-2023 dated 14.07.2023 is as under:

پاکستان میں طبی اور دندانی کالجوں کے داخلے کے لیے مڈکٹ-2023 کے نتائج کو مسترد کیا گیا ہے۔
 (تقریر)
 ایف پی ریجنسٹرار (تقریر)
 پاکستان میں طبی اور دندانی کالجوں کے داخلے کے لیے مڈکٹ-2023 کے نتائج کو مسترد کیا گیا ہے۔
 14/7/23

Result Validity

The MDCAT result 2023 of one province shall be valid for entire country and shall be valid for a period of three years from the date of its examination as per Section 17 of PM&DC Act 2022. The results of MDCAT-2022 are no longer valid for seeking admission in session 2023 which was already mentioned on the individual result certificates.

The council further declared that passing criteria of MDCAT-2023 has been approved as under for seeking admission in Medical or Dental Colleges.

MBBS:	55%
BDS:	50%

It is an admitted fact that when the petitioners participated in MDCAT examination in 2022, the law in field was PMC Act, 2020 which was repealed by the Act of 2022. The petitioners Abrar Ahmed Khawaja, Alishba Masood, Shabana Rasheed Butt, Alizba Ashfaq and Mohammad Usman, have attached their result cards of MDCAT 2022 with the writ petition as annexure "PD" at pages 28 to 33 of paper book, wherein the following words have been written in their result card that this result is valid for admission in 2022-23. The exact words have been written as under:

"This result is valid for admission in session 2022-23."

The petitioners have not challenged the result cards issued in 2022, so, the petitioners have accepted all

تقر مطابق اصل درست ہے
 قلمی رجسٹرار (تقریر)
 عدالت عالیہ راولپنڈی
 26/11/22

the terms and conditions and policy of authority, hence, they have no right to challenge the same.

The learned Legal Advisor for Medical Colleges stated at bar that all the petitioners have got admission in MBBS & BDS and declared pass. The learned Legal Advisor placed some result cards MDCAT 2023 wherein Abrar Ahmed Khawaja the petitioner secured 177/200 and declared pass eligible for MBBS & BDS Admissions. Mohammad Usman, the petitioner secured 169/200 and declared pass eligible for MBBS & BDS Admissions, Shabana Rasheed Butt, the petitioner also obtained 176/200 marks and declared as pass eligible for MBBS & BDS. Alisha Masood, also secured 164/200 marks and declared as pass eligible for MBBS and BDS Admissions. So, the petitioners appeared in MDCAT 2023 by accepting the policy of PMDC. After the MDCAT 2023 the petitioners No. 1, 2, 3 and 5 got admissions on self finance and petitioner No. 4 got the admission on district quota in session 2023-24.

The Division Bench of Peshawar High Court in a case titled "Yasir Ali and others Vs Pakistan Dental and Dental council and others" has held that the impugned announcement made by PM&DC is in fact an administrative decision/ policy formulated by

تقرض مطابق اصل در دست ہے
 ذیل کی رجسٹر (نقل)
 کیس نمٹانے کے لیے
 28/11/21

it being a regulatory authority to regulate higher education in Medicine and Dentistry having authority to make rules and regulations for conduction of admissions in Medical and Dental colleges. The relevant portion of judgment is as under:

“9. Under the circumstances and facts discussed above, we are clear in our mind that when the petitioners appeared in MDCAT in 2022, they were governed by PMC Act, 2020 and the said Act, did not contain any provisions, whereby their MDCAT result could be validated for two or three years as claimed by them. The Act of 2022, containing the provision of validation of result for three years in terms of Section 17(4) cannot be given retrospective effect. The impugned announcement, made by PM&DC is in fact an administrative decision/policy, formulated by it, being a regulatory authority to regulate higher education in Medicine and Dentistry having authority to make rules and regulations for conduct of admissions in Medical and Dental Colleges. This impugned decision policy was not particularized or person specific to the petitioners, but it was made applicable to all the students, who appeared in MDCAT, 2022 which does not seem to be discriminatory or arbitrary. Even otherwise, the impugned public announcement dated 14th July 2023, being an administrative decision/policy of PMDC fall outside our domain, unless and until it is shown that it violates fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan or is at variance to the proviso of the constitutions or opposed to any statutory provision or demonstrably arbitrary or discriminately.”

So, in my considered view, the impugned public announcement dated 14th July 2023 is an administrative decision/

محکمہ تعلیم و ترقی
صحت اور کونورسٹی
پاکستان
14 جولائی 2023

policy of PMDC falls outside my domain, unless and until it is shows that it violates fundamental rights guaranteed under the Azad Jammu & Kashmir Interim Constitution ,1974. This policy was not particularized or person specific to the petitioners but it was made applicable to all the students who appeared in MDCAT, 2022.

In light of what has been discussed above, the writ petition is not maintainable, it is therefore, dismissed with no order as to the costs.

Muzaffarabad
22.01.2024

S/Ed
CHIEF JUSTICE

نمبر - 1018 -
پابلی کورٹ مظفر آباد
نام سائل محمد حفیظ جوہر
تاریخ پیش آنے درخواست 26-01-24
تاریخ ادخال اجرت 28-01-24
تاریخ تیاری نقل ///
تاریخ اجراء نقل ///
دستخط نقل نویس ///
29-01-24

نقل مطابق اصل درست ہے
ڈپٹی رجسٹرار (نقل)
الٹ انٹرایکٹ ایڈووکیٹس و کونسلرز
22/01/24