

Blue Slip Case

LAHORE HIGH COURT RAWALPINDI BENCH RAWALPINDI

No. 2543 /Writ

Dated 25-1- /2022

From,

The Deputy Registrar, (Judl.)
Lahore High Court, Rawalpindi
Bench, Rawalpindi,

To,


1. Federation of Pakistan through Ministry of National Health Services, Regulations & Coordination, Kohsar Block, Pakistan Secretariat Islamabad.
2. Ministry of National Health Services, Regulations & Coordination, through its Secretary, Kohsar Block, Pakistan Secretariat Islamabad.
3. Pakistan Medical commission (PMC) through its President, 4 Service Road South, Mauve Area, G-10/4 Islamabad.
4. SOAR Testing & evaluation Platform (SMC-PVT) Ltd. (TEPS), Plot No. 134, St No. 9, Sector 1-10/3, Islamabad.
5. Quaid-e-Azam University through its Vice Chancellor, Islamabad.

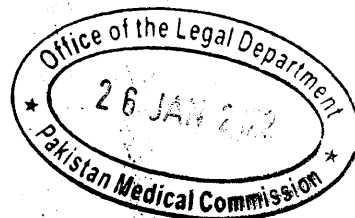
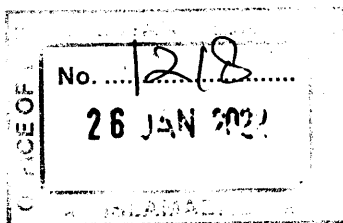
Subject: - Writ Petition No. 4146 / 2021.

Ali Hussain Manzoor. **Versus** Federation of Pakistan, etc.

Memo,

I am directed to forward herewith copy of Order dated **13.01.2022**, passed by Mr. Justice **Jawad Hassan**, for information and immediate compliance in the above noted case.


Assistant Registrar (Writ)
For Deputy Registrar (Judl.)
24.01.2022



- 1 -

IN THE HONORABLE LAHORE HIGH COURT RAWALPINDI BENCH,
RAWALPINDI

WP No. 4146/21

Ali Hussain Manzoor S/o Fawad Manzoor, r/o Muhallah Hill View, GT Road,
Hassan Abdal, District Attock.

..... *Petitioners*

Versus

1. Federation of Pakistan through Ministry of National Health Services, Regulations & Coordination, Kohsar Block, Pakistan Secretariat Islamabad.
2. Ministry of National Health Services, Regulations & Coordination, through its Secretary, Kohsar Block, Pakistan Secretariate Islamabad.
3. Pakistan medical commission (PMC) through its President, 4 Service Road South, Mauve Area, G-10/4 Islamabad.
4. SOAR Testing & evaluation Platform (SMC-PVT) Ltd. (TEPS), Plot No.134, St No.9 , Sector I-10/3, Islamabad.
5. Quaid e Azam University through its Vice Chancellor, Islamabad.

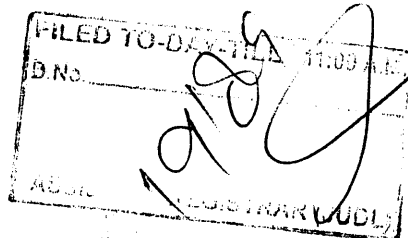
..... *Respondents*

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

Respectfully Sheweth:-

Brief facts of the case are as under,

1. That the addresses of the parties have been correctly mentioned in the heading of the Petition and the same is sufficient for the purpose of process and all communications which may be issued by this Honorable Court.
2. That the Petitioner is brilliant student with outstanding educational carrier and secured sufficient marks to get admission in Medical Colleges of Pakistan in examination of O Levels & A Levels conducted by University of Cambridge United Kingdom (Copies of result cards are appended herewith as Annexure – C1 to C4)



ORDER SHEET

IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

W.P. No.4146 of 2021

Ali Hussain Manzoor Versus Federation of Pakistan, etc.

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
------------------------------------	------------------------------------	---

13.01.2022 Mr. Hassan Raza Pasha, ASC with Wajih Hassan Pasha and Mehar-un-Nisa, Advocates for the Petitioner.
Mr. Rashid Hanif, Deputy Attorney General with Malik Ahtesham Saleem, Assistant Attorney General for Pakistan.
Sardar Taimoor Aslam, ASC for the Respondents.

The Petitioner through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") has prayed as under:

"In the above said circumstances it is most respectfully prayed that this Honorable Court may kindly allow the instant Petition and issue direction to the Respondents to set aside the impugned result card dated 23rd September, 2021 and result reviewed dated 9th November, 2021 by declaring it as illegal and unlawful.

It is further prayed that this Honourable Court may kindly direct the Respondent No.3 to evaluate the Petitioner's result in the light of the report furnished by the skilled team of the Respondent No.5 and thereafter the enhancement of grace marks of a large numbers of students

W.P. No.4146 of 2021

which were given by Respondent No.3 without implementation of review policy in the interest of justice.

It is further prayed that review of the Petitioner's result should be conducted in presence of skilled evaluators of Quaid-e-Azam University in the interest of justice.

Any other relief which this Honourable Court deem fit and proper may also be awarded."

2. Mr. Hassan Raza Pasha, ASC submits that the Petitioner being brilliant student appeared in the National Medical & Dental Colleges Admission Test (the "MDCAT") 2021, on 23.09.2021 having roll No.1050035 and received his result card showing 132 Marks out of 210. He adds that the aforesaid marks are absolutely not matched with the paper conducted by the Petitioner in English Subject because as per result card he secured 39 marks out of 20, which created serious doubt upon the veracity of the entire process of MDCAT. He adds that the Petitioner filed review against the said error by depositing Rs.5000/- as fee, whereupon the Respondent No.3 on 09.11.2021, shared result of review through email while mentioning "*there has been no change in your final result.*". Hence, this Petition.

3. Sardar Taimoor Aslam, ASC for the Respondent/PMC objects to the maintainability of this Petition by stating that the Petitioner's review was dismissed, therefore, he can avail remedy of appeal under Section 37 of the Pakistan Medical Commission Act, 2020 (the "PMC Act") read with Section 6(11) of the Medical Tribunal Act, 2020 (the "MT Act") before the Medical Tribunal, which is functional.

W.P. No.4146 of 2021

4. In response thereof, Mr. Hassan Raza Pasha, ASC submits that the Petitioner had filed review before the Respondent No.3 in the light of the judgment reported as "Rida Fatima v. Pakistan Medical Commission, etc." (2021 LHC 5524), wherein it has been held that:

"23. Since the matter relates to the future of the Medical Students, therefore, the Petitioners, if so advised, may file their review(s) before the PMC for redressal of their grievance under the Terms and Conditions as mentioned in Paragraph No.10, for which the deadline has been extended till 29.10.2021. It is directed that if the Petitioners apply for Review, the PMC shall decide the same strictly in accordance with law within a period of one (01) week from its filing." (underline is mine)

The said Review was, however, dismissed. He further submits that Article 4 of the Constitution clearly states that it is his inalienable right to be treated in accordance with law by the Respondents and no action detrimental to the reputation, life, and liberty shall be taken except as per law. He lastly submits that Article 10-A of the Constitution provides right of fair trial and due process for determination of rights and obligations of the citizens of Pakistan, therefore, if the Petitioner is not given proper right of hearing, he will suffer an irreparable loss and injury.

5. **Arguments heard. Record Perused.**

6. From bare perusal of MDCAT result sheet it reveals that the Petitioner got 39 marks out of 20 in English Subject, therefore, the submissions made by the Petitioner seem to be correct. Needless to mention here that this Court in the judgment reported as "ABWA Knowledge Pvt. Ltd. v. Federation of Pakistan, etc." (P L D 2021 Lahore 436) has already declared the Pakistan Medical Commission (PMC) as a Regulatory Body to regulate the process of admissions

W.P. No.4146 of 2021

to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT. The relevant paragraph of the judgment is reproduced as under:

“22. Although, the term ‘medical profession’ is not provided in the Act yet the preamble of the Act provides for establishment of a uniform minimum standard of basic and higher medical education. The function of the PMC under the Act is of Regulator, which is being regulated by (i) Council (ii) Authority and (iii) Board. So, the word ‘uniform’ clearly shows the intent and purpose of regulator i.e. PMC which can regulate the admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT. The language of Section 18(1) of the Act clearly demonstrates that the Authority shall conduct annually on a date approved by the Council as per standards approved by the Board a single admission test which shall be mandatory requirement for all students seeking admission to medical or dental under-graduate program. The Commission is formed with its Authority, Board and Council as defined under Section 2 and powers and functions are given under Section 8 of the Act. Sections 10 and 15 of the Act deals with the Board and the Authority and if they are read together, the purpose of Commission to regulate the medical profession through its Council, Board and Authority is achieved for the sole purpose as mentioned in the Preamble.”

T

W.P. No.4146 of 2021

This judgment has been **upheld** by the learned Division Bench of this Court vide judgment reported as "ABWA Knowledge Pvt. Ltd. through Director and another v. Federation of Pakistan, through Secretary, National Health Services and another" (2021 MLD 1455) and subsequently, **upheld** by the Hon'ble Supreme Court of Pakistan in C.M.A.No.5777/2021 in C.P.Nil/2021 and Civil Petition No.4944 of 2021, vide order dated 27.09.2021 by holding (in Paragraph-7) that:-

"In light of the above, we see no reason to take a view different from the one taken by the High Court in the impugned judgment and in the judgment of the learned single judge. These petitions are, therefore, dismissed and leave refused."

T
7. Furthermore, this Court in the judgment of Rida Fatima (2021 LHC 5524) (mentioned supra) has held that the Petitioners may apply for Review before the PMC, which has also been **upheld** by the Hon'ble Supreme Court of Pakistan in C.P. No.5815 of 2021 on 06.12.2021. The Hon'ble Supreme Court of Pakistan has further strengthened this view in C.P.No.6077 of 2020 on 11.02.2022 by **upholding** the judgment of Rida Fatima (mentioned above). Therefore, the Respondents are bound to decide the fate of the result by examining the same. For this purpose, the only remedy available to the Petitioner is an "Appeal" before Medical Tribunal under Section 37 of the PMC Act. For ready reference Section 37 is reads as follows:

37. Appeals to the Medical Tribunal. – (1) Any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or disciplinary committee, under any provision of the Act, or rules or regulations may prefer an appeal

before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction.

(2) An appeal to the Medical Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

8. Moreover, the Section 3 of the MT Act also provides right of an appeal to a person aggrieved by an act or order before the Medical Tribunal. Section 3 *ibid* reads as follows:

3. Cognizance of offences.— *(1) No court shall take cognizance in any matter to which jurisdiction of the Tribunal extends.*

(2) Any person or entity aggrieved by an act which is an offence under any law for the time being in force triable by the Tribunal or by an order or act which is appealable before the Tribunal may institute a complaint or claim or appeal as the case may be before the Tribunal.

↑

The Medical Tribunal (the “Tribunal”) is constituted under Section 4 of the MT Act and its powers are defined under Section 6 of the MT Act. Section 6(11) explains that the Tribunal shall hear and decide all the appeals within one hundred twenty days without exception. Section 6(11) reads as follows:

6. Jurisdiction and powers of Medical Tribunal.—

.....

.....

(11) The Tribunal shall hear and decide all appeals, complaints or claims instituted before it within one hundred twenty days without exception and shall refuse all requests for adjournments if sought by any party if such adjournment would lead to the Tribunal not being able to decide a case within the stipulated period.

9. Since the PMC has not decided the matter as to securing of 39 marks out of 20 in English Subject by the

W.P. No.4146 of 2021

Petitioner instead informed that there has been no change in his final result, which should be decided by the Medical Tribunal as per the PMC Act, MT Act and the Pakistan Medical Commission Admission Regulations 2020-2021 (the “PMC Admission Regulations”).

10. This Court has already passed judgment reported as Shaheen Merchant v. Federation of Pakistan/National Tariff Commission and others (2021 PTD 2126 Lahore) that the matter should be decided by at least one independent forum. It has also been discussed therein the functioning of Tribunals with time-bound mechanism to decide the matters as per the time frame/limit given under the relevant Law under Article 37(d) of the Constitution. This Court in the judgment (2021 PTD 2126 Lahore) discussed the (i) Anatomy of a Regulator; (ii) Jurisprudential Anthology regarding duty of State to provide expeditious and inexpensive justice; (iii) Legal Anthropology of Tribunal; (iv) Pathology regarding “time” specific Tribunal with “time” bound mandate to decide appeals under the Act; and (v) Aetiology for the Doctrine of Stopgap. The relevant paragraph is reproduced as under:

“The coined maxim Interest Reipublicae Ut Sit Finis Litium means that it is in the interest of the state that there should be an end to litigation. The law of limitation provides and controls the time-duration as a legally permissible span to bring a justiable lis before a court of law in order to bring certainty and conclusiveness to right of action and to avoid the probability of an indefinite threat of exasperation. Similarly, the Courts are also expected to decide the disputes brought before them by the parties within a

W.P. No.4146 of 2021

reasonable time and in an expeditious manner. The celebrated maxim 'Justice delayed is justice denied' also highlight the significance of dispensation of justice in a timely manner and laid stress on the responsibilities of the Court to decide cases in an expeditious manner. However, considering the nature and signification of a particular subject-matter which requires swift and speedy resolution of Writ Petition No.62992 of 20217 disputes by the judicial forums, the legislature has always incorporated a time-bound mechanism not only for preferring a dispute or appeal to the judicial forum or Appellate Tribunal, as the case may be, but also specifically prescribe and lays down a definite time limit to give decision thereon to meet the ends of expeditious justice, which is a command of Constitution under Article 37(d) wherein the State is duty bound to ensure inexpensive and expeditious justice to the citizens."

It has been further observed that:

"24. The accumulative effect of this discussion is that when the statute has provided specific remedies of appeal to the Petitioner against Final Determination, already impugned before the Appellate Tribunal and when right of another appeal is still available after the decision of the Appellate Tribunal, then in such a situation, the impugned Final Determination cannot be given effect because doing so will not only frustrate the pending appeal before the Tribunal but it will also jeopardize the whole purpose of provision of remedy of Appeal under the Act. Needless to emphasize that making the process of hearing appeal by the Tribunal

W.P. No.4146 of 2021

and also by the High Court in a specific time-bound manner within a definite period of 45 days and 90 days respectively, was also to streamline the whole process of ascertaining the correctness of the decisions of the Commission in a timely fashion, so that if found justified under the law, it can be given effect to or if not affirmed can be rectified in a timely manner, so that both the parties may have a definite decision to pursue their course of action within a reasonable and specific time.”

11. For what has been discussed above, since Section 6(11) of the MT Act clearly empowers the Tribunal to hear and decide all the appeals within **stipulated period** without exception, therefore, the Petitioner, if so advised, can file an Appeal under Section 37 of the PMC Act read with Section 6(11) of the MT Act before the Tribunal.

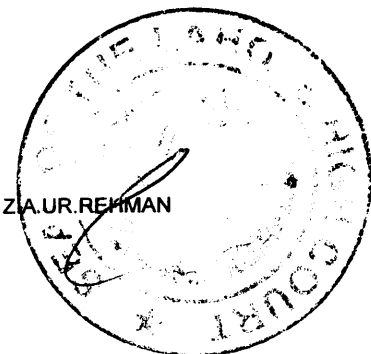
12. It is also directed that if the Petitioner file an appeal before the Medical Tribunal, the same will be decided by the Tribunal strictly in accordance with law by providing proper hearing to all concerned including the Petitioner within a period of one (01) month. However, the intervening period consumed before this Court will not be considered as an impediment in decision of the said Appeal, relying on the judgment (2021 PTD 2126 Lahore) (mentioned supra).

13. **Disposed of** accordingly.

sd
(JAWAD HASSAN)
JUDGE

Approved for Reporting.

sd
JUDGE



TRUE COPY
25/01/21
Lawrence Road Section
Lahore High Court
Rawalpindi Bench