

LAHORE HIGH COURT RAWALPINDI BENCH RAWALPINDI

No 700 /Writ

Dated 10-1-2022

From

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

To

1. The Secretary Ministry of National Health Services, Regulations & Coordination Kohsar Block Pak Secretariat Islamabad
2. The President Pakistan Medical Commission (PMC) 4-Service Road South Mauve Area, G-10/4 Islamabad
- ✓ 3. The SOAR Testing & Evaluation Platform (SMC-PVT) Ltd Plot No.134, Street No.9 Sector 1-10/3 Islamabad
4. The President Pakistan Medical Association PMA House, 2nd Floor, 66-Ferozpur Lahore

**Subject: Writ Petition-No. 3171 of 2021
Hamna Razzaq Vs Federation of Pakistan etc**

**Writ Petition-No. 3034 of 2021
Aaliyan Malik etc Vs Pakistan Medical Commission etc**

**Writ Petition-No. 3105 of 2021
Raja Haseeb Sultan Vs Pakistan Medical Commission**

**Writ Petition-No. 3252 of 2021
Bisma Sulaman Vs Pakistan Medical Commission etc**

Memo:

I am directed to forward herewith Copy of Order dated **14.12.2021** passed by Hon'ble Division Bench comprising Mr. Justice **Mirza Viqas Rauf** Mr. Justice **Raheel Kamran**, for information and immediate compliance in the above noted case

D# 438
dated 11/1/22.

Member Legal
Bashir
Khalid
11/1/22

Zalim R.
Assistant Registrar (Writ)
For Deputy Registrar (Judl)
08.01.2022 *A 08.01.22*

D-123
2

Form No. HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

W.P.No.3171 of 2021

Hamna Razzaq

Vs Federation of Pakistan etc.

S. No. of order / Proceeding	Date of Order / Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	14.12.2021	Mr. Hassan Raza Pasha, Advocate for the petitioner. Sardar Abdul Raziq Khan, Advocate for the petitioners in W.P.No.3034 of 2021. Sh. Muhammad Suleman, Advocate for the petitioner (in W.P.No.3252/2021). M/s Malik Asif Taufeeq Awan, Kalim-ud-Din Malik and Faheem Ahmed Chaudhry, Advocates (in W.P.No.3105/21) Mr. Tariq Mehmood Khokhar, Additional Attorney General, Mr. Haroon Irshad Janjua, Deputy Attorney General and Mr. Saqlain Haider Awan, Assistant Attorney General for Pakistan. Mr. Mujeeb-ur-Rehman Kiyani, Additional Advocate General, Punjab. Barrister Taimoor Aslam Khan, Advocate for respondent No.3.

Through this single order we intend to dispose of the titled writ petition along with W.P.Nos.3034, 3105 and 3252 of 2021 as common questions of law and fact are involved in these petitions.

2. The petitioners being candidates for the entry test for the purpose of admission in Medical and Dental Colleges are aggrieved of the manner of conducting the examination by the respondents have, *inter alia*, thrown a challenge to Pakistan Medical Commission Conduct of Examinations Regulations, 2021 (hereinafter referred to as "Regulations, 2021") framed by PMC for being *ultra vires* the provisions of section 18(1) of the Pakistan Medical Commission Act, 2020 (hereinafter referred as "Act, 2020") and Articles 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as "Constitution"). These petitions were resisted

MR/S

by the respondents mainly on the ground that in a similar situation, this Court in Writ Petition No.56763/2021 titled, "Rida Fatima v. Pakistan Medical Commission, etc." has already decided the issue while declaring the provisions of statute as *intra vires* with the observations that since the matter relates to the future of medical students, therefore, the petitioners, if so advised, may file their review(s) before the Pakistan Medical Commission for redressal of their grievance under the terms and conditions as mentioned in paragraph No.10 and 26.

3. These writ petitions were initially fixed for hearing before a Single Bench comprising one of us (Mirza Viqas Rauf, J.),- however, in view of the submission made by learned counsels for the petitioners to the effect that the judgment in the case of Rida Fatima *supra* appeared to be the outcome of lack of proper assistance, in which the learned Single Bench found weight, the matter was placed before the Hon'ble Chief Justice vide order dated 3.11.2021 for the constitution of a larger Bench for adjudication of the matter and accordingly this Bench was constituted by the orders of the Hon'ble Chief Justice.

4. By order dated 24.11.2021, notice under Order XXVII-A of the Code of Civil Procedure (V of 1908) was issued to the learned Attorney General for Pakistan in the light of law enunciated in the case of Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 SC 723). Thereafter these cases were fixed

for 1.12.2021, 2.12.2021, 6.12.2021, 9.12.2021 and 14.12.2021 to hear the learned Attorney General for Pakistan, but despite extending every possible opportunity, he did not turn up on account of his service exigencies. We thus having no other option proceeded with the case accordingly.

5. Learned counsels for the petitioners, inter alia, contended that the entry test was conducted in oblivion to the mandate of section 18 of the "Act, 2020" whereunder it is specifically provided that 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. While going through Section 20 of the "Act,2020" and regulations No.5 & 6 of "Regulations, 2021" learned counsels emphasized that the respondents have completely failed to adhere to the mandatory provisions in conducting the admission tests which renders the whole process nullity in the eye of law. It is contended with vehemence that "Act,2020" was promulgated 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. Learned counsels, while making reference to the results announced by the respondents in pursuance of the admission tests submitted that whole process is lacking transparency. They added that this aspect is even affirmed by the press release issued by the Punjab Medical Commission. Learned counsels

submitted that remedy of appeal, review, revision is a creation of statute. They further added that constitutional jurisdiction cannot be abridged merely on the ground that some other remedy is available. Learned counsels argued that even otherwise, there is no remedy available to the candidates appearing in the examination and the respondents, in order to frustrate the process of law, have taken a stance that the remedy of review is available to the candidates in the light of which in the case of Rida Fatima supra, the petitioner was directed to file review, which was never permissible under the law. Learned counsels contended that in view of glaring illegalities and irregularities committed by the respondents in the process of admission tests, future of thousands of students has been put at stake and this is a classic case, which requires judicial review and scrutiny by this Court in exercise of constitutional jurisdiction.

6. Learned counsel for respondent No.3 contended that section 18(1) of the "Act, 2020" does not restrict or prohibit the entry test to be computerised so the Council has acted with lawful authority in approving the same and the Regulations, 2001 are *intra vires*. He added that these writ petitions are not maintainable in view of decision of the learned Division Bench of this Court dated 8.11.2021 passed in ICA No.68369 of 2021. He also emphasized that the judgment in the case of Rida Fatima supra which was assailed in Civil Petition No.5815 of 2021 before the Hon'ble Supreme Court of Pakistan, was upheld in that leave was not granted and the petitioner therein

was allowed to withdraw the same in order to enable him to avail the review as ordered by the High Court in para No.23 of the impugned judgment.

7. Learned counsels for the petitioners, in rebuttal, have contended that by order dated 06.12.2021 Civil Petition No.5815 of 2021 has only been dismissed as withdrawn on the statement of learned counsel for the petitioner to avail the remedy of review as ordered by the High Court in para No.23 of the judgment impugned therein and as such there is no order passed by the Hon'ble Supreme Court of Pakistan refusing to grant leave or otherwise upholding the judgment in the case of Rida Fatima supra.

8. Heard. Record perused.

9. The petitioners, in order to get the admission in the Medical & Dental Colleges, participated in the entry tests conducted by respondent No.3 with the collaboration of respondent No.4. While feeling aggrieved from the manner of conducting the examination, they have challenged the process of examination as well as vires of "Act, 2020" and "Regulations, 2021". A similar petition i.e. W.P.No.56763 of 2021 titled "Rida Fatima v. Pakistan Medical Commission, etc." was placed before a learned Single Bench of this Court at Lahore, who decided the same vide order dated 20th October, 2021. These petitions, however, when were placed before one of us (Mirza Viqas Rauf J.) through order dated 3rd November, 2021, while making

MR/KE

following observations, the matter was referred to the Hon'ble Chief Justice: -

"The petitioner being candidate for the entry test for the purpose of admission in medical and dental college is aggrieved of not only the manner of conducting the examination by the respondents but she also throws a challenge to the provisions of Pakistan Medical Commission Act, 2020 (hereinafter referred as "Act, 2020") as well as Pakistan Medical Commission Conduct of Examinations Regulations, 2021 (hereinafter referred as "Regulations, 2021").

2. This petition is resisted by the respondents mainly on the ground that in a similar situation, this Court in W.P.No.56763 of 2021 titled "Rida Fatima v. Pakistan Medical Commission, etc." has already decided the issue while declaring the provisions of statute as intra vires with the observations that since the matter relates to the future of medical students, therefore, the petitioners, if so advised, may file their review (s) before the Pakistan Medical Commission for redressal of their grievance under the terms and conditions as mentioned in Paragraph No.10, for which the deadline has been extended till 29th October, 2021.

3. Learned counsel for the petitioner, however, submitted that judgment in the case of Rida Fatima supra appears to be the outcome of lack of proper assistance. It is contended that entry test was conducted in oblivion of mandate of Section 18 of the "Act, 2020" whereunder it is specifically provided that 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. While going through Section 20 of the "Act, 2020" and regulations No.5 and 6 of "Regulations, 2021", learned counsel emphasized that the respondents have completely failed to adhere the mandatory provisions while conducting the admission test which renders the whole process nullity in the eye of law. It is contended with vehemence that "Act, 2020" was promulgated 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. Learned counsel, while making reference to the results announced by the respondents in pursuance to the admission tests submitted that the whole process is depicting non-transparency. He added that this aspect is even affirmed by the press release issued by the Punjab Medical Commission. Learned counsel submitted that remedy of appeal, review, revision is a creation of statute. He further added that constitutional jurisdiction cannot be abridged merely on the ground that some other remedy is available. Learned counsel argued that even otherwise, there is no remedy

available to the candidates appearing in the examination and the respondents, in order to frustrate the process of law, have taken a stance that the remedy of review is available to the candidates in the light of which in the case of Rida Fatima supra, the petitioner was directed to file review, which was never permissible under the law. Learned counsel contended that in view of glaring illegalities and irregularities committed by the respondents in the process of admission tests, future of thousands of students has been put at stake and this is a classic case, which requires judicial review and scrutiny by this Court in exercise of constitutional jurisdiction.

4. After having heard respective contentions of learned counsel for the parties, I do find reasonable weight in the contentions raised at the Bar by learned counsel for the petitioner. It appears that above noted aspects were not properly brought in the notice of Court in the case of Rida Fatima supra. It would, thus, be apt to place this matter before the Hon'ble Chief Justice for constitution of larger Bench for the resolution of matter in issue.

5. Office to proceed accordingly."

10. We are mindful of the fact that during the pendency of these petitions before us, certain further developments have taken place, which cannot be ignored. The judgment in the case of Rida Fatima case supra was assailed in I.C.A.No.68369 of 2021 before the learned Division Bench of this Court, who proceeded to dismiss the same being not maintainable vide order dated 8th November, 2021. The relevant extract from the same is reproduced below: -

"4. At the outset, learned counsel representing the Federation has submitted that the instant ICA and the connected ICA are not maintainable. He has further submitted that any order or direction passed by the Commission including the Council, Authority or Disciplinary Committee under the provisions of Pakistan Medical Commission Act, 2020 are appealable through an appeal before the Medical Tribunal as provided under Section 37 of Pakistan Medical Commission Act, 2020. In response, learned counsel for the appellants could not satisfy us with regards to the stance taken up by the learned law officer. Therefore, in such eventuality, when the appellants have an alternate and efficacious remedy of appeal before the Medical Tribunal, their grievance through the constitutional jurisdiction cannot be met out.

6. In this view of the matter, this appeal and the connected appeal i.e. I.C.A. No. 69124 of 2021 being not maintainable are dismissed, accordingly.”

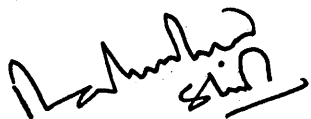
11. We have also noticed that in the meanwhile, C.P.No.5815 of 2021 was also filed before the Hon'ble Supreme Court of Pakistan against the judgment passed in Rida Fatima's case supra. The petition was, however, withdrawn vide order dated 16th December, 2021, which is reproduced below for ready reference and convenience:-

“In order to avail the review as recorded by the High Court in para No.23 of the impugned judgment, learned counsel for the petitioners wants to withdraw this petition. Consequently, this petition is dismissed as withdrawn.”

12. We thus are constrained to observe that in the light of above developments, we have no other option except to follow the principles laid down therein as is held in MULTILINE ASSOCIATES v. ARDESHIR COWASJEE AND OTHERS (1995 SCMR 362).

13. For the foregoing reasons, this petition as well as connected W.P.Nos. 3034, 3105 and 3252 of 2021 are dismissed. The petitioners may, however, avail the alternate remedy in accordance with law.


(Mirza Viqas Rauf)
Judge


(Raheel Kamran)
Judge

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

W.P.No.3252 of 2021

Bisma Sulaman Vs Pakistan Medical Commission
etc.

S. No. of order / Proceeding	Date of Order / Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	14.12.2021	Sh. Muhammad Suleman, Advocate for the petitioner. Mr. Tariq Mehmood Khokhar, Additional Attorney General, Mr. Haroon Irshad Janjua, Deputy Attorney General and Mr. Saqlain Haider Awan, Assistant Attorney General for Pakistan. Mr. Mujeeb-ur-Rehman Kiyani, Additional Advocate General, Punjab. Barrister Taimoor Aslam Khan, Advocate for respondent No.1.

For the reasons recorded in our order of even
date passed in W.P.No.3171/2021, this petition is
dismissed.

Sd. Mirza Viqas Rauf
(Mirza Viqas Rauf)
Judge

Sd. Raheel Kamran
(Raheel Kamran)
Judge

*Rafiq**



TRUE COPY
* 08.01.21
Examiner copy Section
Lahore High Court
Rawalpindi Bench

**ORDER SHEET
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

W.P.No.3105 of 2021

Raja Haseeb Sultan etc. Vs Pakistan Medical Commission
etc.

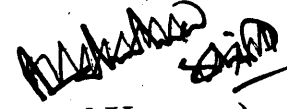
S. No. of order / Proceeding	Date of Order / Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
------------------------------	----------------------------	--

14.12.2021

Malik Asif Taufeeq Awan, Advocate for the petitioners.
Mr. Tariq Mehmood Khokhar, Additional Attorney General,
Mr. Haroon Irshad Janjua, Deputy Attorney General and
Mr. Saqlain Haider Awan, Assistant Attorney General for
Pakistan.
Mr. Mujeeb-ur-Rehman Kiyani, Additional Advocate General,
Punjab.
Barrister Taimoor Aslam Khan, Advocate for respondent No.1.

For the reasons recorded in our order of even
date passed in W.P.No.3171/2021, this petition is
dismissed.

Sd. 
(Mirza Viqas Rauf)
Judge

Sd. 
(Raheel Kamran)
Judge

Rafiq*





TRUE COPY
* 08.01.21
Examiner copy Section
Lahore High Court
Rawalpindi Bench


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

Aaliyan Malik etc. **W.P.No.3034 of 2021**
Vs Pakistan Medical Commission
etc.

S. No. of order / Proceeding	Date of Order / Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	14.12.2021	Sardar Abdul Raziq Khan, Advocate for the petitioners. Mr. Tariq Mehmood Khokhar, Additional Attorney General, Mr. Haroon Irshad Janjua, Deputy Attorney General and Mr. Saqlain Haider Awan, Assistant Attorney General for Pakistan. Mr. Mujeeb-ur-Rehman Kiyani, Additional Advocate General, Punjab. Barrister Taimoor Aslam Khan, Advocate for respondent No.1.

For the reasons recorded in our order of
even date passed in W.P.No.3171/2021, this
petition is dismissed.

Sd 
(Mirza Viqas Rauf)
Judge

Sd 
(Raheel Kamran)
Judge

Rafiq*



TRUE COPY
28.01.21
Examiner copy Section
Lahore High Court
Rawalpindi Bench