

REGISTERED POST

IN THE LAHORE HIGH COURT, LAHORE

JIS WRIT

No. 47093

Dated 13/11

From,

**The Additional Registrar (Judicial),
Lahore High Court, Lahore**

To,



1. PAKISTAN MEDICAL COMMISSION
through its Chairman, Islamabad.
2. Vice Chancellor, University of Health
Sciences, Lahore.
3. Chairman, Admission Committee,
University of Health Science, Lahore.

DEPENDENTS

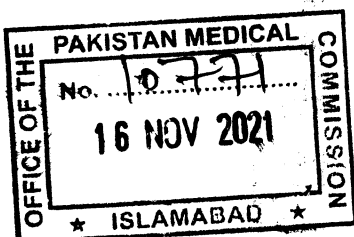
Subject:- WRIT PETITION/ICA/CRL.ORG.NO. 68191-21

VS

Memo,

In continuation of this Court's Letter No. _____

**Dated _____ I am directed to say that the case cited on the
subject has been disposed of. A copy of order dated 02-11-21 is
enclosed herewith for necessary action. A copy of Petition on which the
order has been passed is also enclosed herewith.**



[Signature]
**Assistant Registrar (Writ-I)
Additional Registrar (Judicial)**

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.68191 of 2021

Zainab Ashraf Versus Pakistan Medical Commission, etc.

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
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02.11.2021 Mr. Shahid Mehmood Ashraf, Advocate for the Petitioner.
Ms. Sadia Malik, Assistant Attorney General for Pakistan on Court's call.
Barrister Ch. Muhammad Umar, Advocate for PMC assisted by Mufti Ahtsham-ud-Din Haider, Advocate on Court's call.
Mr. Imran Muhammad Sarwar, Advocate for the Respondent No.3/UHS on Court's call.

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

"In view of the above said submissions, it is most respectfully prayed that the instant writ petition may kindly be accepted and the policy announced by the Respondent No.1 for the reduction of 10% marks by the candidates qualified in the Test of MDCAT-2020 may kindly be declared as illegal, unlawful, malafide, without any lawful authority, legal justification and against the fundamental rights of the Petitioner/students, in the interest of justice.

It is further prayed that during the pendency of the titled writ Petition, operation of the impugned policy may kindly be suspended and the Petitioner be allowed provisionally to participate in the admission process with the actual result of MDCAT Test-2020 with original obtained 181/200 marks.

Any other appropriate relief which this honorable court deem fit and proper in the circumstances of the case may also be awarded."

W.P. No.68191 of 2021

2. Learned counsel for the Petitioner submits that the Petitioner participated in National Medical & Dental Colleges Admission Test (the "MDCAT") 2020 and obtained 90.5% (181/200) marks but could not succeed to get admission in the MBBS Program 2020. He adds that the aforesaid result was valid for two years but the Respondents have changed the policy and reduced 10% of her total marks (from 181 to 165) pursuant to MDCAT Equivalency Policy (MDCAT 2021 V/s. 2020) (the "impugned policy"). Further submits that the aforesaid policy announced by the Respondent No.1/PMC regarding reduction of 10% marks of the candidates qualified in the Test of MDCAT-2020 for admission in MBBS program for the year 2021 is illegal, unlawful, without lawful authority and legal justification. He adds that no intimation has been made to the Petitioner prior to making of this policy. He further submits that the Petitioner is fully qualified but due to the impugned policy she has been discriminated by reducing her marks. He lastly prayed that the impugned policy be set aside and the Petitioner be allowed to participate in the admission for MBBS Program, 2021.

3. Learned Law Officer and learned counsel for the Respondent/PMC at the outset objected to the maintainability of this writ Petition on the ground that the Pakistan Medical Commission Conduct of Examinations Regulations, 2021 (the "Examination Regulations") published in June 2021 with the condition that equivalency for previous test will be provided with 10% reduction because the MDCAT 2021 is 10% difficult than that of MDCAT 2020. He further objected qua maintainability of this Petition under the doctrine of laches in light of law laid down by the Hon'ble Supreme Court of Pakistan in the

cases of Jawad Mir Muhammad and others versus Haroon Mirza and others (PLD 2007 SC 472) and Member (S&R)/Chief Settlement Commissioner, Board of Revenue, Punjab, Lahore and another versus Syed Ashfaq Ali and others (PLD 2003 SC 132) because the Petitioner has filed this Petition after about 4 months of the publication of Examination Regulations. He lastly states that this Court has already passed the judgment in W.P.No.56763 of 2021 titled as "Rida Fatima v. Pakistan Medical Commission, etc." (2021 LHC 5524) contending to be identical to it.

4. When confronted why the Petitioner has knocked the door of this Court after considerable period of about 4 months of publication of Examination Regulation and why she did not challenge the impugned policy at the relevant time, learned counsel for the Petitioner could not give any plausible explanation regarding the intervening period of delay and just reiterates the submissions made in this petition.

5. The Hon'ble Supreme Court of Pakistan in "CIVIL AVIATION AUTHORITY through Director General and 3 others Versus Mir ZULFIQAR ALI and another" (2016 SCMR 183) has held as under:

"The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such."

In "STATE BANK OF PAKISTAN through Governor and another Versus IMTIAZ ALI KHAN and others" (2012 SCMR 280) it has been held as under:

"laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its

enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party”.

It was further held by Hon’ble Supreme Court of Pakistan in (P L D 2003 Supreme Court 132) as under:

“On account of Laches in setting the machinery of law into motion they have indeed disentitled themselves to the exercise of discretionary and equitable jurisdiction, which in all cases must be exercised in order to foster the ends of justice and to right a wrong. Writ jurisdiction is undoubtedly discretionary and extraordinary in nature which may not be invoked by a party who demonstrates a style of slackness and laxity on his part. Furthermore, if a party does not choose legal remedy available under the Statute strictly speaking Constitutional jurisdiction of the High Court cannot be exercised in his favour. Law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief. One who seeks equity must show that equities lean in his favour. In the facts and circumstances of the appeal we are, therefore, in no manner of doubt that the High Court was not competent to exercise its writ jurisdiction conferred under Article 199 of the Constitution”.

6. Moreover the law favours the vigilantes and not the indolent. If the Petitioner had any grievance against the impugned policy of MDCAT 2021, she should have

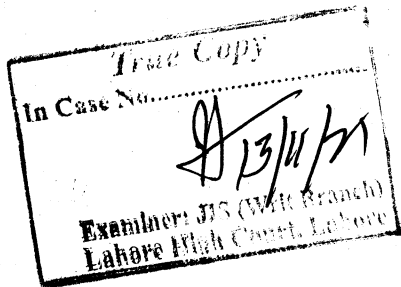
W.P. No.68191 of 2021

challenged it much before the exam but she failed to do so.

7. Consequently this Petition is not maintainable at this belated stage, which is accordingly dismissed in limine.


(JAWAD HASSAN)
JUDGE

ZIA.UR.REHMAN



IN THE LAHORE HIGH COURT LAHORE.

W.P. No. 68191 /2021

ZAINAB ASHRAF daughter of Khalid
Mehmood Ashraf, resident of Mohallah
Chokhandi, District Narowal.

PETITIONER

VERSUS

1. **PAKISTAN MEDICAL COMMISSION**
through its Chairman, Islamabad.
2. Vice Chancellor, University of Health
Sciences, Lahore.
3. Chairman, Admission Committee,
University of Health Science, Lahore.

RESPONDENTS

* * *

WRIT PETITION:

Under Article 199 of the Constitution of Islamic
Republic of Pakistan, 1973.

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