

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

W.P.No. 5710-P/2020

Javeria

Vs

**Ministry of National Health Services,
Regulation and Coordination,
through its Secretary, Pak Secretariat,
Islamabad and others**

Date of hearing 21.01.2021

Petitioner (by) Mr. Bilal-ud-Din. Advocate

Respondents (by) Mr. Shumail Ahmad Butt. Advocate General
for the Provincial Government

Mr. Aamir Javed. DAG. for the Federation.

Mr. Saqib Raza. Advocate alongwith Dr.
Qazi Tahir-ud-Din. Member. Examination.
for PMC

JUDGMENT

MUHAMMAD NASIR MAHFOOZ, J. Through this

single judgment, we intend to dispose off Twenty Five

connected matters, having common question of law and

facts involved therein. The particulars of the same are as

under:-


- i. *W.P.No. 5710-P/2020 (Javeria .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- ii. *W.P.No. 5697-P/2020 (Aisha Saddiqa and others .Vs. Federation of Pakistan through Secretary National Health Services, Islamabad and others).*



- iii. *W.P.No. 5711-P/2020 (Ayesha Khan .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- iv. *W.P.No. 5746-P/2020 (Faryal Zaman .Vs. Federation of Pakistan through Secretary National Health Services, Islamabad and others).*
- v. *W.P.No. 5747-P/2020 (Arooba Afroz .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- vi. *W.P.No. 5748-P/2020 (Wasiq Maqsood .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- vii. *W.P.No. 5770-P/2020 (Noman Nazir .Vs. Government of Pakistan through its Secretary, Establishment Division, Islamabad and others).*
- viii. *W.P.No. 5795-P/2020 (Mst. Uzma Khan .Vs. Ministry of National Health services, Islamabad and others).*
- ix. *W.P.No. 07-P/2021 (Maryum Summayyah .Vs. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others).*
- x. *W.P.No. 08-P/2021 (Faizan Ahmad .Vs. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others).*
- xi. *W.P.No. 09-P/2021 (Mst. Asma Khan .Vs. Federation of Pakistan through Secretary Health, Islamabad and another).*
- xii. *W.P.No. 28-P/2021 (Mst. Sapna Zaman .Vs. Pakistan Medical Commission through Secretary, Islamabad and others).*
- xiii. *W.P.No. 30-P/2021 (Mst. Maryam Jehan and others .Vs. Ministry of National Health Services, Regulation and*



Coordination, through its Secretary, Pak Secretariat, Islamabad and others).

- xiv. *W.P.No. 32-M/2021 (Faisal Khan and others .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- xv. *W.P.No. 38-P/2021 (Zia-ul-Hassan .Vs. Federation of Pakistan through Ministry of Health, Islamabad and others).*
- xvi. *W.P.No. 54-P/2021 (Muhammad Uzair .Vs. Federation of Pakistan through its Secretary of State Parliament House, Islamabad and others).*
- xvii. *W.P.No. 61-P/2021 (Abdul Haseeb and another .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- xviii. *W.P.No. 87-P/2021 (Zahaib Taus .Vs. Government of Pakistan through Ministry of Health & Sciences, Islamabad and others).*
- xix. *W.P.No. 122-P/2021 (Muhammad Nouman and another .Vs. Ministry of National Health Services, Regulation and Coordination, through its Secretary, Pak Secretariat, Islamabad and others).*
- xx. *W.P.No. 147-P/2021 (Hafiza Shabana .Vs. Federation of Pakistan through Secretary Ministry of Health, Islamabad and others).*
- xxi. *W.P.No. 155-P/2021 (Maleeha and another .Vs. Federation of Pakistan through Secretary National Health Services, Islamabad and others).*
- xxii. *W.P.No. 159-P/2021 (Syed Ahmed Abdul Basit and others .Vs. Government of Pakistan through Ministry of Health & Sciences, Islamabad and others).*
-  xxiii. *W.P.No. 239-P/2021 (Fahad Aziz Khan Khattak .Vs. Federation of Pakistan through Secretary Ministry of Health, Islamabad and others).*

xxiv. *W.P.No. 255-P/2021 (Muhammad Abdullah Khan .Vs. Government of Pakistan through Ministry of Health & Sciences, Islamabad and others).*

xxv. *W.P.No. 265-P/2021 (Ali Abdur Rehman .Vs. Government of Pakistan through Secretary Establishment Division, Pak Secretariat, Islamabad and others).*

2. Petitioners in all the petitions have sought similar prayer in terms that the respondents may be directed to award correct marks to the petitioners in the test in accordance with correct answers and for this purpose, the paper of the petitioners be rechecked.

3. In essence, stance of the petitioners is that 30 Multiple Choice Questions (*MCQs*) were out of Syllabus and the same fact was also admitted by the respondents and displayed on their website. It is also alleged that the question paper was also leaked out a day before the test and in this respect, FIR was lodged against the concerned by the FIA. The petitioners approached the respondents for redressal of their grievances but in vain; hence, the instant writ petitions.

4. Mr. Waseem-ud-Din Khattak, learned counsel for the petitioner in the connected writ petition argued the case at detailed length. He submitted that the

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petitioners have good academic background and were declared qualified in the Medical and Dental Colleges Admissions Tests (hereinafter referred to as "*MDCAT*") conducted by Pakistan Medical Commission (hereinafter referred to as "*PMC*") which was then cancelled on 29.11.2020 and conducted on 16.12.2020 with 200 MCQs type questions having one mark each, so the petitioner was sure that he/she had given correct answers while 30 MCQs were out of syllabus. He added that one day prior to the test, the question paper was leaked out and in this respect, FIR was also lodged by the Federal Investigation Agency (*FIA*). He also submitted that after deletion of 14 out of syllabus questions, the percentage was to be calculated from 186 questions and not the overall 200 questions, furthermore, the syllabus throughout Pakistan is not the same and differ in different Provinces but asking the same type questions from all the students throughout the country could not meet the uniform minimum standard as required for the Medical Colleges. The ambiguity in the questions asked and the keys of answers was largely proved after the 14 questions



were deleted from the paper. He further submitted that disputed bubble sheets may be requisitioned and rechecked through a proper examiner or in this respect an inquiry committee be constituted to probe into the matter.

The other learned counsels for the petitioners also adopted the same arguments of Mr. Waseem-ud-din Khattak, Advocate.

5. Mr. Aamir Javed, learned DAG addressed the arguments on behalf of the respondents and tried to submit detailed threadbare answers to the arguments of learned counsel for the petitioner. He urged that any anomaly in the result uploaded on the website of PMC was due to the reason that certain students had made some marks at more than one bubble of a single question which was later on remedied by rechecking the whole paper within 24 hours and then re-uploaded on the website. In this respect, he produced a copy of minutes of the meeting dated 21.12.2020 pursuant to the orders of Lahore High Court, Lahore, where the same matter agitated by different candidates. He added that the petitioner before the Lahore High Court and Islamabad



High Court had raised the same grounds as in the present as well as in the connected writ petitions but the same were dismissed and were not challenged before the Hon'ble Supreme Court of Pakistan, and thus, attained finality. He further gave detailed data that 1216300 candidates appeared in the MDCAT on 29.12.2020 and 67907 candidates passed the exam. About 230 candidates were patients / affectees of COVID-19 but could not appear on the said date, so a separate test was arranged for them on 13.12.2020. There are 19150 seats in Government and Private Sector Colleges with a ratio of four students for one seat that are to be filled. In the Province of Khyber Pakhtunkhwa, 15507 candidates passed the exam and only 76 petitioners have challenged the result. He further submitted that if the writ petitions are allowed, the minority candidates before the Court would be defeating the rights of majority of the candidates whose figure runs into thousands. The process for finalization of admission is around the corner and the merit list will be displayed in the last week of January, 2021. He further submitted that there is no provision for



rechecking of paper in the Pakistan Medical Commission Act, 2020 and the 14 ambiguous or out of syllabus questions were removed from the question paper and each student throughout the country was given 14 marks, so there was no occasion to adversely affect their final results as they were treated similarly. He placed reliance on the judgments of Lahore High Court and Islamabad High Court, besides **1996 SCMR 676, 2002 SCMR 504, 1999 SCMR 2405.**

6. We have heard arguments of learned counsel for the parties and have perused the documents available on the file.

7. In addition to hearing learned counsel for the parties, Dr. Qazi Tahir-ud-Din, Member, Examination of the PMC, appeared in Court who was specially deputed during the Court hours to consider the grievances of each and every candidates / petitioners in the presence of their Advocates, and look into their matter for its redressal. This exercise was undertaken and later on, he also addressed the Court by submitting that the computer generated results had anomalies due to



the extra pen marks on the bubble sheets made by the respective candidates and a committee consisting of experts re-examined the paper, including him.


8. The subject matter of the instant petition mainly revolves around the wrong marking of papers / bubble sheets resulting into contradictions and anomalies in the result displayed on the website, therefore, we had to summon concerned expert to look into the matter as mentioned above. The technical expertise in such like matters could not be undertaken by the Court itself, unless some question of law is agitated before the Court.

9. The erstwhile Pakistan Medical and Dental Council Ordinance, 1962 was repealed by the Pakistan Medical Commission Act, 2020 under Section 50 of the said Act of 2020. A council has been formed under Section 4 and under Section 18, the MDCAT test is mandatory requirement for student seeking admission, whereunder 50% weightage is given to the test for the purpose of admission in Public Sector Colleges as per policy of the Provincial Government.



10. The conditions are laid down in the advertisement for admission in accordance with the *ibid* Act as well Admission Regulations (Amended), 2020-21 framed under Section 8(2)(f) of the *ibid* Act of 2020.

National Medical Authority is formed under Section 15 of the said Act of 2020 consisting of seven members and under Section 16(1)(f), the authority is empowered to conduct all exams provided for under this Act. We may observe that so long as *ibid* Act and the Admission Regulations (Amended) 2020-21 remains in the field, the respondents are duty bound to follow a general principle, that if a law provide to do something in certain manner, it has to be done in the same manner. Learned counsels for the petitioners have informed that the vires of the *ibid* Act have also been challenged through separate writ petitions, so we would not comment upon anyone of the provisions to avoid circumventing the domain of those writ petitions.

11. The minutes of the meeting as well as the sealed bubble sheets were produced before the Court.  The minutes of the meeting dated 21.12.2020 reveals that

three basic questions agitated by the candidates were addressed therein as mentioned below:-

- a) *Why they were not provided a carbon copy of their answer sheet or alternatively allowed have their paper rechecked in their presence.*
- b) *14 grace marks were not provided to them.*
- c) *In some cases the result in the gazette did not match the result in the online result issued by PMC.*

The answers to the said questions reveal detailed analysis of the matter including the removal of 14 out of syllabus questions, besides the entire examination paper was evaluated to determine *Cronbach's alpha* score which represents an exam internal consistency. It further reveals that to differentiate the level of Intermediate examination from the MDCAT examination, the test was based on cognitive learning levels of students instead of *rote* learning ability that is considered basically essential for a medical student. There is no human intervention in scoring at the initial stage or during recounting that is done through an OCR machine on Optical Marks Recognition (OMR) basis. The computer software automatically counts the dots placed on the answer sheets by a student and scores it against the answer keys.



At one time the computer scanner machine counts hundreds of papers simultaneously and hence physical presence is not only impractical but is of no consequence as the recounting of the score is done by computers.

It further reveals as under:-

“It was also explained that some students pointed out mistakes in their names or roll numbers which were corrected by the Commission after checking their CNIC and other material. These errors did not have any effect on their scores and were caused due to the errors made at the time of registration when entering their names etc. A similar issue had occurred when the result was initially announced and a few hundred complaints were received from students that they were present but their scores showed they were absent. As abundant precaution the entire result was reverified by the Commission. It was found that these few hundred students had unfortunately written a wrong roll number on their answer sheet which had caused a duplicate result for the same roll number while their own result was shown as absent by the computer system. This was corrected after manual verification of these students answer sheets to ensure their scores were provided”.

12. We may note, that the apprehensions of petitioners have been properly addressed by not only in the minutes of the meeting but the personal hearing given

E. Q. A.

to them by this Court before Dr. Qazi Tahir-ud-Din, Member, Examination of the PMC, who has resolved the issue before us. The bubble sheets produced in sealed form before us were, therefore, not opened keeping in view the past ratio contained in the judgments relied upon by the learned DAG. In case reported as *1996 SCMR 676*, Hon'ble Supreme Court held as under:-

“We have heard the learned counsel for the parties and are of the view that the High Court while exercising jurisdiction under Article 199 of the Constitution was not justified in summoning the answer books of whole lot of the examinees in order to evaluate and find out whether, the examiner had carried out the marking of numbers in the case of respondent/examinee correctly or not? The marking of numbers on answer book is a technical job performed by experts which the High Court is not expected to undertake in exercise of its power of judicial review under Article 199 of the Constitution. The jurisdiction of High Court under Article 199 of the Constitution is principally meant for correcting the jurisdictional error in the order and proceedings of tribunals and executive-authorities. This jurisdiction cannot be invoked for obtaining decisions on merit which the functionaries alone are entitled to take under the law. Similarly, the plea of discrimination raised by the respondent in her petition before the High Court has to be decided by the Court on the basis of admitted and proved facts brought before it without entering into the process of roving enquiry into disputed facts by the Court.”

Likewise, in case reported as *1999 SCMR 2405*,

the Apex Court held as under:-

S. J. J.

“8. It is well-settled that marking of answer-books is a job to be performed by the experts in the subject concerned and the High Court in the exercise of its

Constitutional jurisdiction is not required to evaluate the papers in any other manner. It is not the case of the petitioner that any one of the examiners was inimically disposed towards him. The parental jurisdiction exercised by the respondent-Board, was rightly not interfered with by the High Court. No ground for interference has been made out”.

We also seek wisdom from the judgment reported as 2002 SCMR 504, the Hon’ble Supreme Court held as under:-

5. Under Rule 7(viii) of the Rules of the Competitive Examination, 1999, answer papers are secret documents and cannot be seen by the candidates or their representatives nor re-examination of answer books is allowed in any circumstances. The said rule is reproduced hereunder:--

“Answer papers in all the subjects of examination are secret documents and cannot, therefore, be permitted to be seen by the candidates or their representatives nor re-examination of answer books/scrips is allowed under any circumstances. A candidate desirous of getting of his/her marks, awarded by the examiners recounted may submit his request for the purpose within one month from the date of issue of result card/marks sheet alongwith a Treasury Challan of Rs.50 per paper as fee for re-checking/recounting of marks only. Thereafter no such request will be entertained ”.

The summoning of answer books by the High Court in its Constitutional jurisdiction has been disapproved by this Court in case of Board of Intermediate and Secondary Education, Lahore v. Saima Azad (1996 SCMR 676) and it has been further observed that marking of numbers on the answer book is a technical job which the High Court is not expected to undertake in exercise of its powers of judicial review under Article 199 of the Constitution. Regarding re-examination / re-evaluating of the answer books through panel of examiners, this Court in case of Tahir Saeed Qureshi v. Board of Intermediate and Secondary

S. Qureshi

Education, Sargodha and others (1996 SCMR 1872) has laid down that the High Court cannot go beyond the scope of the prescribed Rules in Constitutional jurisdiction. Consequently, we find no merit in this petition which is accordingly dismissed and leave refused.

13. We have anxiously considered the arguments advanced by learned counsel for the parties and made every possible effort to dig out the truth in the matter. We proceeded to determine to the extent up to which we could proceed in the matter and when we found that the relief asked for rechecking of the papers or reevaluating the answer sheets in any manner would amount to travelling beyond the mandate as laid down in Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and the reported case laws, referred to above, we restrained our hands.

14. In nutshell, we feel that the relief asked for by the petitioners would not only affect the large number of candidates running into thousands who have qualified the exam in this Province but would operate as a *judgment in rem* setting a different precedent other than prescribed when two Superior Courts of different Provinces of the country have also ruled on the matter.



Hence, the instant writ petition as well as the connected writ petitions stands dismissed with no order as to costs.

However, we may observe that the Pakistan Medical Commission shall maintain foolproof system of examination to avoid substantial loss to the deserving students in future.



CHIEF JUSTICE

Announced
21.01.2021



JUDGE

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan, Chief Justice
Hon'ble Mr. Justice Muhammad Nasir Mahfooz

Noor Shah