

Form No:HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

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Examiner
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LAHORE HIGH COURT, LAHORE

27/7/21

Case No. W.P No.42872/2021

Arslan Asif etc. Vs Federation of Pakistan & others

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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19.07.2021

Mr. Nadeem Iqbal Zahid, Advocate for the petitioners.
Ch. Muhammad Umer, Advocate for respondent
No.4/PMC.
Mr. Asad Ali Bajwa, D.A.G.

This constitutional petition seeks a direction that the advertisement published by respondent No.4, Pakistan Medical Commission (PMC) offends the rights of the petitioners, in that, it requires the taking of National Licensing Examination (NLE) by an advertisement published in the newspapers.

2. The facts are undisputed. The petitioner was admitted to a medical college in 2015. Admittedly, he has completed his medical education in May, 2021. According to the petitioner, he was governed by the Pakistan Medical & Dental Council Ordinance, 1962 and more particularly MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018. According to Regulation 16, every student on completion of his degree of MBBS shall be required to undergo one year house job or internship before full registration of the Council. Admittedly, these regulations were enacted under Section 33 of the PMDC Ordinance, 1962. The

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Ordinance, 1962 was repealed by the PMC Act, 2020 and by section 20 of the new Act, the following requirement was provided for obtaining a full license:

"20. National licensing examination (NLE).- (1) The Authority shall at least twice a year as per schedule approved by the Council conduct the NLE. Passing the NLE shall be mandatory for obtaining a full license. The NLE shall be substantially based on objective computer based multiple choice questions and a practical component if determined by the Council."

3. The above provision makes it mandatory for NLE to be conducted by the Authority and for each candidate intending to obtain a full license to pass the NLE which was made a mandatory requirement. The petitioner's case is that he is not required to undergo the test of NLE. This argument is flawed and has no basis in law.

4. It is admitted on all hands that the petitioner passed the final examination for an MBBS degree in May, 2021. The Act of 2020 had already been promulgated on 23rd September, 2020 and governed all future matters relating to obtaining a full license by any intending medical practitioner. The definition of full license given in section 2 also provides that full license shall mean a permanent license to practice under this Act. There is no doubt that subsequent to the promulgation of the Act, 2020, all matters for the grant of full license were governed by that statute and it would be unreasonable for any

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candidate who has passed the examination subsequent to its promulgation to allege that he or she was not governed by the provisions of the Act, 2020 which is applicable to all such students who passed the examination subsequent to the date of its promulgation. There is no doubt that upon the promulgation of the Act, 2020 that is the only law which governs such matters as by section 50 the Ordinance of 1962 has been repealed. The effect of the repealed ordinance is that the Medical and Dental Council constituted under the Ordinance, 1962 is also replaced by the PMC Act 2020 which grants licenses in terms of section 20 read with all enabling provisions of the Act, 2020. The learned counsel for the petitioner refers to the announcement regarding licenses issued by PMC in which an exception was created in respect of students who had completed their house jobs as on 25 September, 2020 who were not required to take the NLE for grant of full license. This exception was created to cater for a category of students who had complied with the terms for the grant of full license under the repealed Ordinance, 1962. This could not be extended to the students such as the petitioner who was still studying for his medical degree and has not even embarked upon his house job of one year. The question here is not regarding the prospectivity or retrospectivity of the

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Section 50
PMC Act 2020

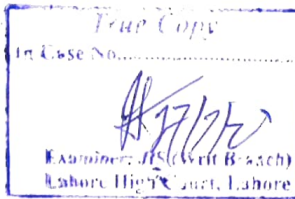
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Act, 2020 but the real issue is the applicability of the law on the date when the petitioner completed his medical education. If the law applicable on that date was the Act, 2020 then the petitioner cannot be heard to say that he should be governed by the repealed Ordinance, 1962.

5. In view of the above, this petition is without merit and is dismissed.


(SHAHID KARIM)
JUDGE

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Rafaqat Ali



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Writ Petition No. 42872 of 2021

1. **Arslan Asif** son of Asif Ali, R/o Opposite Govt Middle School, Circular Road, Sharaqpur Sharif, District Sheikhpura.
2. **Young Doctors Association (YDA)**, Lahore through Dr. Salman Kazmi, General Secretary, Fakkhar Plaza, Kacha Ravi Road, Lahore.

.... Petitioners

Versus

1. Federation of Pakistan (FOP) through Secretary Ministry of Law & Justice Division, Pakistan, Islamabad.
2. Ministry of Inter Provincial Coordination Division through its Secretary, Government of Pakistan, Islamabad.
3. Ministry of National Health Services, Regulation & Coordination through its Secretary, Government of Pakistan, Islamabad.
4. **Pakistan Medical Commission**, Through its Secretary, Mauve Area, G-10/4, Islamabad.
5. The Province of the Punjab, through Chief Secretary, Civil Secretariat, Lahore.
6. Secretary Specialized Healthcare & Medical Education (SH&ME) Government of the Punjab, Lahore.
7. Secretary Primary & Secondary Healthcare (P&SHC), Government of the Punjab, Lahore.
8. University of Health Sciences (UHS) through its Vice Chancellor, Lahore.
9. Shalamar Medical & Dental College through its Principal, Opposite Govt Middle School, Circular Road, Sharaqpur Sharif, District Sheikhpura.

.... Respondents

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

Respectfully Sheweth: -

1. That addresses of parties have been correctly given in the heading of petition, which are presumably sufficient for the purposes of their service through notice/summons etc. which may be time to time issued by this Hon'ble Court.