

IN THE LAHORE HIGH COURT, LAHORE

75998

17/12

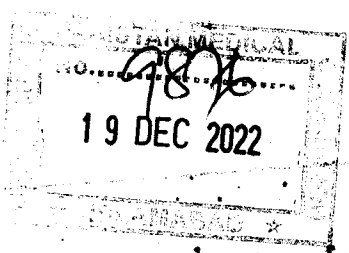
From

The Addl. Registrar (Judl)
Lahore High Court, Lahore.

To



1. Pakistan Medical Commission through its Chairman, National Medical Authority, Mauve Area, G-10/4, Islamabad.
2. Incharge Regional Office, Pakistan Medical Commission, National Medical Authority, 2nd Floor, FGPGMI Building, Shaikh Zayed Hospital, Lahore.



SUBJECT: - WRIT PETITION NO-

75998-22

Sir,

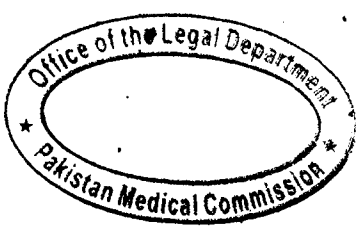
In continuation of this Court letter No _____ date _____

I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 14-12-22 passed in the above noted case.

Your's faithfully

ASSISTANT REGISTRAR (JUDL)
FOR ADDL. REGISTRAR (JUDL)

17/12/22



19/12/22
3:10p-

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.75998 of 2022

Aina Bano Versus Pakistan Medical Commission and others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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14.12.2022 Mr. Amjad Ali, Advocate for petitioner.
Mr. Waqar Mushtaq Toor, Legal Advisor PMC for respondents.

Through the instant Constitutional petition a Public Notice issued by Pakistan Medical Commission ("PMC") has been called into question which is to the effect that candidates who passed their F.Sc (Pre-Medical)/HSSC or equivalent exam last year (2021) and are now applying for admission in medical/dental colleges for the session 2022-23, are informed that only their elective subject marks and percentage will be considered for merit calculation for admission in medical & dental colleges for the session 2022-23.

2. . Learned counsel for the petitioner states that as per regulations of PMC the admission process in medical education is based on prescribed weightage formula in which MDCAT holds 50% weightage; F.Sc (Pre-Medical)/HSSC/Equivalent holds 40% weightage and SSC/Matriculation/Equivalent holds 10% weightage and that the F.Sc score of the petitioner, as contained in Provisional Result Intimation dated 14.10.2021 includes 100% score each for Urdu, English, Islamic Education and Pakistan Studies which score was required to be factored in while considering the 40% weightage given to her F.Sc score for purposes of determination of her merit for the admission this year which will not be done

as the score in the said subjects has been excluded by PMC as confirmed in the Public Notice which is unjustified and calls for interference.

3. Report and parawise comments were requisitioned from respondent Nos.2 & 3 in which the stance taken is that on 30.6.2021 PMC in its Meeting held on 25.6.2021 approved a policy for calculation of merit for the admissions in medical and dental colleges in line with the Government policy due to covid-19 pandemic whereby the marks obtained by the students in science-elective subjects only shall be used for calculating the merit and that the policy shall apply to all students who had completed their F.Sc in 2020 and 2021. In elaboration of the stance learned Legal Advisor PMC submits that due to the covid-19 pandemic related safety measures F.Sc examinations were only held for the elective subjects i.e. Physics, Chemistry and Biology whereas the subjects of Urdu, English, Islamic Education and Pakistan Studies were calculated on the basis of the aggregate/percentage of marks in the elective subjects for all candidates of 2021 as examinations in these subjects were not held. It is further submitted that the admissions in medical and dental colleges for the Academic Year 2021-22 were carried out on the basis of score in the elective subjects only i.e. Physics, Chemistry and Biology and the marks in the compulsory subjects being fictive necessitated by covid-19 related exigency were excluded being unearned marks as no examinations in these subjects were held.

4. From perusal of the documents on the file it is revealed that the petitioner passed her F.Sc in 2021 and was, as such, eligible to apply for admission in session

of 2021-22. This apparently was not done by her as she took the MDCAT at some particular point and now wants to apply for session 2022-23. Learned counsel for the petitioner has taken the stance that in processing her candidature for admission by non-inclusion of her marks for the compulsory subjects would be discriminatory as the candidates who took F.Sc in 2022 will get their marks in Urdu, English, Islamic Education and Pakistan Studies also reflected in calculation of 40% weightage being given to F.Sc as per regulations whereas in her case as well as other students who did F.Sc in 2021 this will not be done and score in elective subjects only will be taken which is unfair.

5. This argument on the face of it is fallacious. In fact if accepted it will create a case of discrimination for the applicants who are intending to be considered for admission on the basis of F.Sc held in 2022 when the covid-19 pandemic policy was no longer in vogue and papers were actually held and taken for the subjects of Urdu, English, Islamic Education and Pakistan Studies and marks are based on performance of these students in the examination in those subjects whereas in the case of petitioner marks were given in all these subjects on the basis of covid-19 pandemic and she did not actually take these papers.

6. It is observed that the petitioner was eligible to apply last year for admission in session 2021-22 which she had not done due to her own reasons. It has been informed that all admissions with respect to candidates of F.Sc in 2021 were processed strictly on the basis of elective subjects only and the score policy applies to all candidates from that year who will be seeking admission in session 2022-23 which is a separate and distinctive

category as no examinations were held in the compulsory subjects in their case which is applied across the board within that category and no instance of exception is claimed or alleged by the petitioner in this regard. As to the objection that the regulations required 40% weightage qua the F.Sc score and that the policy is violative thereof, it is observed that the regulation is couched in general terms and does not specify as to how that weightage of F.Sc score will be actually calculated. By notification dated 30.6.2021 this calculation of merit qua the F.Sc score was specifically limited to only the elective subjects as they were the only subjects in which examinations were actually held and taken and the petitioner falls in the same category which is covered by the said notification. The expectation that the Constitutional jurisdiction may be pressed into service as expressed is not admissible which will have the effect of reshaping the modality structured by the regulatory body in its statutory role to equitably and reasonably attend to the subject-matter in given circumstances that squarely fell in its regulatory domain.

7. Calculation of merit is a very serious matter in general and goes to the heart of informing the basis of proper distribution of limited resources in terms of goods and services, in this case entry/seats in medical education, and its observance is all the more pivotal to professional education as eventually the products thereof are required to deal with sensitive matters having potentially farreaching effects on human lives and society. This determination is best made on the basis of actual performance of the candidates and no undue advantage would be accorded to any person to the exclusion of others in such process without offending

settled principles of good governance. In the instant case the score of the petitioner in the subjects of Urdu, English, Islamic Education and Pakistan Studies insisted to be included would clearly put the petitioner at an unfair advantage and the applicants with F.Sc done in 2022 at an unfair disadvantage as the score of the latter category is based on a result of actual examinations held whereas the petitioner's result is based on fictional score. At this point learned counsel for the petitioner has attempted to canvass a vague argument to the effect that such criteria shall also be made in the case of matriculation which is not being done. This submission is entirely extraneous to the controversy at hand as petitioner's insistence is on inclusion of unearned score of F.Sc in consideration of her merit for session 2022-23 whereas she took her matriculation well before covid-19 and qua her case matriculation examination has no material bearing.

8. The policy-decision of PMC to the extent represented by the Public Notice as such fully stands to reason and suffers from no inherent or illegal discriminatory feature being based on tenable classification and, therefore, warrants no interference in extraordinary Constitutional and discretionary jurisdiction of this Court. The Constitutional petition being without substance is **dismissed**.

sd/-
 (RASAAL HASAN SYED)
 JUDGE

Approved for reporting

sd/-
 (RASAAL HASAN SYED)
 JUDGE

TRUE COPY
[Signature]
 Examiner J.C.B (Copy Branch)
 Lahore High Court Lahore

Imran*
[Signature]

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 75998 /2022

Aina Bano daughter of Muhammad Aslam, Resident of House No.535, Street No.29, Block Gulbahar, Sector-C, Bahria Town, Tehsil Raiwind, District Lahore.

.....**Petitioner**

Vs.

1. Pakistan Medical Commission through its Chairman, National Medical Authority, Mauve Area, G-10/4, Islamabad.
2. Incharge Regional Office, Pakistan Medical Commission, National Medical Authority, 2nd Floor, FGPGMI Building, Shaikh Zayed Hospital, Lahore.

.....**Respondents**

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

Respectfully Sheweth:

1. That under section 3(2) of the Pakistan Medical Commission Act, 2020, the respondents Pakistan Medical Commission (PMC) is a body corporate / statutory body and can sue and be sued by its own name. Under section 1(2) it extends to whole of Pakistan, therefore, this Hon'ble Court has the jurisdiction under Article 199(1) (a) and (5) of the Constitution of Pakistan, 1973; copy of relevant pages of the Pakistan Medical Commission Act, 2020 is attached as **Annexure-A.**
2. That the petitioner passed annual Matriculation Examination in 2019 with Science Subjects securing 1044 marks out of 1100 (A+grade) @ 94.909%; copy of the Result Card is attached as **Annexure-B.** She passed F.Sc (Pre-Medical) annual examination in 2021 securing 1089 marks out of 1100 (A+ grade) @ 99%; copy of the Result Card is attached as **Annexure-C.** Thereafter, the petitioner passed MDCAT (Medical & Dental Council Admission Test) in year 2022 securing 166 out of 200 (valid for admission in session 2022-2023) @ 83%; copy of the Result Card is attached as **Annexure-D.**
3. That under Regulation / Rule 4 (2) of the Pakistan Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations 2022, the Government / admitting University shall formulate the merit and admission criteria for the public colleges as under:-

MDCAT	50% weightage
F.Sc (Pre-Medical/HSSC/Equivalent	40% weightage
SSC/Matriculation/Equivalent	10%