

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR. JUDICIAL DEPARTMENT.

JUDGMENT

Writ Petition No.6015-P/2023.

Date of hearing 25.01.2024.

Mst. Areej Ali

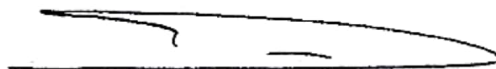
Vs

Khyber Medical University, Peshawar etc.

Petitioner (s) by: Mr. Amin ur Rehman Yousafzai
Advocate.

Respondent(s) by: M/s Abdul Muncem Khan, Sardar
Saadat Advocates and Kamran
Murtaza AAG.

WIQAR AHMAD, J:- Vide out detailed judgment of even date rendered in connected Writ Petition No.5980-P/2023, titled, "Etisam Mukhlis and others Vs Khyber Medical University Peshawar and others" instant writ petition is dismissed.



JUDGE



JUDGE

Date of hearing & announcement
of judgment... 25.01.2024.

Date of preparation and
signing of judgment 26.01.2024.

"A.Qayum PS" (DB) Hon'ble Mr. Justice S M Atique Shah & Mr. Justice Wiqar Ahmad.

WP No.6015-P/2023

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 6, 7 of
the Oath and Shahadat Act 1984

03 FEB 2024

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR. JUDICIAL DEPARTMENT.

JUDGMENT

Writ Petition No.5980-P/2023.

Date of hearing 25.01.2024.

Etisam Mukhlis and others

Vs

Khyber Medical University, Peshawar etc.



Petitioner (s) by: M/s Waseem ud Din Khattak & Zia
ur Rehman Tajik Advocates.

Respondent(s) by: M/s Abdul Muneem Khan, Sardar
Saadat Advocates and Kamran
Murtaza AAG.

WIQAR AHMAD, J:-This single judgment shall dispose of instant Writ Petition No.5980-P/2023, titled, "Etisam Mukhlis and others Vs Khyber Medical University Peshawar and others" alongwith connected Writ Petition No.6015-P/2023 titled, "Areej Ali Vs Khyber Medical University Peshawar and others" and Writ Petition No.6310-P/2015, titled, "Sudais Shaheer Versus Vice Chancellor, Khyber Medical University Peshawar and others" as facts and law points involved in all these petitions are same.

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

Particular facts of each petition are briefly given hereunder for understanding the controversy:-

WP No.5980-P/2023.

As per contents of instant petition, petitioner had passed F.Sc examination in the year 2021 and as per the examination policy introduced by PMC due to pandemic of Covid-19 (at that time), the examinations were held only in elective subjects and according to equivalency formula, proportionate marks were given in compulsory subjects. In the year 2023, Government of Khyber Pakhtunkhwa issued admission policy in line with policy of PMDC for admission in MBBS/BDS for the year 2023-24. In the year 2023, petitioner applied online for admission in medical college and requested for application of the current policy for counting marks of all the subjects including compulsory subject, but same was denied by the respondents.

WP No.6015-P/2023.

As per instant petition, petitioner had attempted SSC examination in the year 2019 and F.Sc examination in the year 2021. She applied for

WP No. 5980-P/2023

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

admission in the year 2023 but as per her contention, her aggregate marks were wrongly calculated in derogation of the admission policy of 2023 therefore, she has filed instant petition for treating her in accordance with the current policy.

WP No.6310-P/2024.

As per instant petition, petitioner had attempted SSC examination in the year 2019 and F.Sc examination in the year 2021 and applied for admission in MBBS in the year 2023, who was not treated in accordance with policy of 2023. Petitioner prays for application of the current policy. Feeling aggrieved, petitioner has filed instant petition.

2. Respondents submitted their parawise comments in the cases denying stances of petitioners and raising legal and factual objections.

3. Learned counsel for petitioners in all the cases have raised similar arguments. Their main contention was that petitioners and other similar candidates of the Session 2020-21 had previously been treated in a manner that their marks for elective subjects had only been calculated for the purpose of

WP No. 5989-1/2023

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

admission in medical and dental colleges but this time (the Session 2023-24), admission policy of PMC had not been providing that marks obtained by petitioners in elective subjects should only be considered for the purpose of admission in medical colleges. And that when the criteria of all students was to the effect that marks obtained in all subjects in F.Sc should have been counted then petitioners should not have been differentiated in such respect and such a methodology for preparing merit list had been violative of their fundamental rights.

4. Learned counsel for respondents contended that petitioners were belonging to batch of 2020-21 and they had never taken examination in compulsory subjects but were allotted marks with reference to percentage obtained by them in the elective subjects. He contended that it was the reason that PMC had originally given a policy for counting their marks obtained in elective subjects, which policy had been kept continued for all subsequent sessions and that vires of the policy had also been tested during various rounds of adjudication (of writ

WP No. 5980-P/2021

ATTESTED
EXAMINER
Jharkhand High Court

petitions) before this Court as well as Hon'ble Lahore High Court. He placed reliance on said judgments, copies of which are also annexed with their comments. He contended that petitioners could not be treated similar to those candidates who had actually attempted compulsory papers and that while dealing their cases differently, respondents have not violated the doctrine of equality as enshrined in Article 25 of Constitution of Islamic Republic of Pakistan 1973.

5. Learned counsel representing PMC, also supported arguments of learned counsel representing Admission Committee of KMU.

6. We have heard arguments of learned counsel for the parties and perused record.

7. Perusal of record reveals that petitioner had qualified their F.Sc examination in 2020-21. Due to prevalence of corona virus pandemic (at that time), petitioner and other students had been allowed a concession to attempt examination in elective subjects only and proportionate marks had been assigned to them in compulsory subjects. It was for

WP No. 5280-P/2022

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

this reason that PMC had given a policy for those students in the first year of their admission i.e, Session of 2021-22 where-under marks obtained by respective students in elective subjects were to be considered for the purpose of compiling merit list for admission in Medical and Dental Colleges. Said policy may be found in letter dated 11.10.2021 of Pakistan Medical Commission and same is also reproduced hereunder for ready reference:-

“Public Notice-Merit Calculation for 2021-22 Medical and Dental College Admissions.

Pursuant to the decision of the Ministry of Education, the PMC Council decision (dated 25th June 2021) related to the Ministry of Education’s decision and the memorandum of 16th August 2021, NO. F.4-Sec. PMC-2020/ Merit calculation/034, it is reiterated all colleges/ universities when calculating the merit for admissions must ensure that for purposes of F.Sc, or A-level or any equivalent HSSC qualification results only the marks obtained in the science electives of Biology, Chemistry and Physics/ Mathematics be used.

Institutions must note that for merit calculation, the actual marks obtained in the elective subjects by the applicants in their F.Sc or A-level or any equivalent HSSC qualifications result must be used. Institutions must not consider any grace marks added by any provincial authority to the over all marks obtained in F.Sc, by the student.

W.P. No. 5980-P/2022

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

Notwithstanding the use of only electives for preparation of merit, the applying student must have obtained 65% or more aggregate score (in all subjects cumulatively) in their F.Sc, A-level or any equivalent HSSC qualification as prescribed by regulations”

8. Same policy had also been kept continued in next session i.e, 2022-23. All the students who had qualified their F.Sc examination in 2020-21 had accordingly been treated for the purpose of getting admission in Medical and Dental Colleges. All these petitioners before us could not get admission in public sector medical colleges in the first year i.e, Session of 2021-22 nor in subsequent session 2022-23 that's why they applied for current session of 2023-24. Earlier this issue of counting all the marks of F.Sc had been agitated before this Court as well as Hon'ble Lahore High Court as well as Hon'ble Islamabad High Court and all the cases had been decided in favour of validity of the policy providing for counting marks of elective subjects only. In this respect some excerpts from judgment of Hon'ble Lahore High Court rendered in case of "Aina Bano Versus Pakistan Medical Commission

W.P. No. 5980-P/2023

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

through its Chairman etc"(ICA No.81041/2022), are also reproduced hereunder for ready reference:-

"4. *Learned counsel submits that appellant is the victim of apparent discrimination, whose marks in non-elective subjects were not given due credit for weightage purpose, unlike other candidates.*

5. *Submissions are misconceived. Appellant fails to appreciate the rational of the instructions conveyed through the Public Notice Simply put, no prejudice or discrimination was intended to those candidates which took F.Sc (pre-Medical/HSSC/Equivalent Examination 2022 and were also examined for the non-elective subjects. Appellant undertook F.Sc (pre-medical)(under Covid-19 policy regime, whereby performance based marks were awarded qua non-elective subjects. Appellant intended to take advantage of Covid-19 policy for computing for weightage under normal examination regime. This claim is unfair and per se discriminatory. It is noticeable that she had not applied for admissions for the Session 2021-22, where candidates were evaluated for wheitage purposes under Covid policy. No premium could be allowed upon opting for a gap year. This session of 2022-23 is different and benefit of Covid Policy cannot be extended of fresh candidates. No illegality is pointed or found. This appeal is meritless and same is, therefore, dismissed."*

WP No. 5980-P/2023

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

Learned counsel for petitioners tried to differentiate cases of petitioners from the one treated in above cited judgments by raising a plea that in the current year a specific policy for counting marks of elective subjects had not been provided by PMDC and therefore, joint Admission Committee of KMU was divested of the powers to make any changes in admission criteria and count the marks obtained by these petitioners in elective subjects only. Before advertng to this contention of learned counsel for petitioners, we analyzed the policy and found it to be just, equitable and reasonable. The policy envisaged by PMC for Session 2020-21 has been given contiguity for same class of students i.e, those students who have passed their examination of F.Sc in session in 2020-21. It was a well reasoned policy and its vires had also been upheld by Constitutional Courts of country in a number of cases. If the earlier candidates, who had applied for admission in earlier sessions (i.e. admission session 2021/2022 and 2022/2023) have been treated under same policy then other members of same class i.e, petitioners should

WP No. 5980-P/2023

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

not have been treated differently. Counting their marks for compulsory subjects for those papers which they have never attempted may also have given them an extra edge (unjustified) over those subsequent students who have actually attempted those papers. Besides, petitioners have been applying for admission again and again and it is due to said repetition that the matter has come to the year 2023-24. Non giving of specific policy by PMDC for current year, appears to be due to reason that PMDC might not have expected earlier students to have again applied for admission. But in any case they had never discontinued the policy given for regulating admission of those students who had qualified the F.Sc in same period of Covid-19.

9. The conclusion of our discussion is that we find the policy of admission applied to cases of these petitioners to be just, reasonable and legitimate, even in absence of any specific policy of PMDC for the current year. When this was the situation we would not like to intervene in the internal matters of educational institutions to the extent of

WP No. 5980-P/2021

ATTESTED
EXAMINER
Peshawar High Co
Peshawar

micromanaging their process of admission. Reliance in this respect is also placed on the judgment of Hon'ble Supreme Court of Pakistan rendered in case of "Aina Haya Vs Principal Peshawar Model Girls High School-I, Peshawar and others" reported as 2023 SCMR 198.

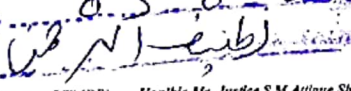
10. In light of what has been discussed above, all these petitions were found lacking substance and same are accordingly dismissed.


JUDGE

JUDGE

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Date of preparation and signing of judgment 26.01.2024.

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the Qanoon-e-Shahadat Act 1984
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WP No. 1980-P/2023