

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.1132 of 2023

MUHAMMAD USMAN FAROOQ.

Versus.

**RAWALPINDI MEDICAL UNIVERSITY, RAWALPINDI &
ONE OTHER.**

JUDGMENT.

Date of hearing: **19.04.2023**

Petitioner by: **Mr. Mujeeb-ur-Rehman Kiyani, Advocate.**

Respondent No.1 **Mr. Tariq Mahmood, Advocate.**
by:

Respondent No.2 **Mr. Amjad Iqbal Ghauri, Advocate.**
by:

Mirza Viqas Rauf, J. *The petitioner namely Muhammad Usman Farooq having lustrous educational record after completing his higher secondary school education from Army Public School & College, Ordinance Road, Rawalpindi obtaining 1066 marks out of total 1100 with Grade A-1 appeared in the Medical & Dental College Admission Test (hereinafter referred to as “MDCAT”) for Bachelor of Medicine and Bachelor of Surgery (MBBS). In the test, the petitioner secured 188 marks out of 200 and was ranked overall 95th in the merit list and was placed at serial No.45 in the list of Rawalpindi Medical University on merit list with an aggregate percentage of 95.7182. The petitioner thus chose Rawalpindi Medical University on his priority and deposited admission fee for first year MBBS sessions 2022-23 on 28th December, 2022. The grievance of the petitioner is that Rawalpindi Medical University issued call letter to him on 25th January, 2023 whereby he was directed to report on 24th January, 2023. The petitioner though reported but he was not allowed admission and was replaced with other students, who were below in the merit. To this*

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effect, a representation was moved by the petitioner to the Vice Chancellor of the Rawalpindi Medical University but of no avail. Through instant petition, the petitioner is now seeking a direction to the respondents to give him admission in the first year of MBBS Session 2022-23 in Rawalpindi Medical University against open merit list.

2. *This petition was admitted for regular hearing vide order dated 29th March, 2023. In response thereof, the respondents submitted their written statements wherein it is stance of respondent No.1 that after the start of admission process, a list of 322 candidates was received by the Rawalpindi Medical University from the University of Health Sciences, Lahore/respondent No.2. On 13th January, 2023 the information of all the selected candidates for admission in Rawalpindi Medical University, Rawalpindi was uploaded on University's Website, regarding instructions for admission process/prerequisites/list of original documents to be presented for admission. On 21st January, 2023, respondent No.1 also issued call letters to those students who had not reported till 21st January, 2023 as per instructions contained in prospectus for the sessions 2022-23 by University of Health Sciences wherein the students were directed to report to Rawalpindi Medical University with their original documents latest by 24th January, 2023. It is stance of respondent No.1 that the petitioner was also intimated through letter dated 21st January, 2023. On 26th January, 2023, University of Health Sciences, Lahore directed the Rawalpindi Medical University to submit the list of unreported students till closing hours, which was forwarded accordingly on the same date depicting the name of the petitioner as well.*

3. *On the other hand, stance of the University of Health Sciences, Lahore (respondent No.2) is that the petitioner since failed to report to the concerned University and deposit the original documents in accordance with the provisions of the prospectus for admission, thus he was excluded from the admission process.*

4. *I have heard learned counsel for the petitioner as well as learned counsel for the respondents universities at considerable length and perused the record.*

5. *There is no denial to the fact that the petitioner has earned distinctions in his short educational career and after completing his higher secondary school education with overwhelming aggregate of 96.90 %, he appeared in the “MDCAT” and obtained 188 marks out of 200. The petitioner, in view thereof, was placed at serial No.95 on open merit category test list by the University of Health Sciences and 45 in Rawalpindi Medical University open merit list with an aggregate percentage of 95.7182. As per his ranking, the petitioner opted for his admission in Rawalpindi Medical University and deposited admission fee for the first year MBBS Session 2022-23 on 28th December, 2022. All these facts are not in dispute. The petitioner is denied the admission solely on the ground that on the target date, he failed to produce all the original documents himself as was required under the MBBS & BDS Prospectus for admission to Government Medical & Dental Institutions of Punjab issued by the University of Health Sciences, Lahore for session 2002-23 and instead his father presented photocopies of the required documents.*

6. *In the prospectus, a detailed procedure and conditions of admission are enumerated. Serial No.5 of the procedure and conditions of admission deals with joining of selected candidates, which is reproduced below: -*

5. Joining of Selected Candidates:

- i. *Candidates selected for admission shall be informed through SMS/Email. The candidates are advised to be vigilant and carefully check their email messages.*
- ii. *Selected candidates will be required to download their college fee challan from the application portal generated by the BOP. They will be required to deposit the college fee in the nearest branch of BOP by due date mentioned on their fee challan. They can deposit the fee manually as well through online transaction. The*

candidates are not required to visit their respective colleges to deposit their fee.

- ii. *Those who fail to deposit their college fee within due date shall be excluded from the admission/upgradation process and shall have no right of admission into the said programme in the current session.*

Bare perusal of the clause-i clearly manifests that a candidate who is selected for admission shall be informed through short message service (SMS)/Email. In compliance of the above condition, the petitioner was informed through letter dated 21st March, 2023, which was actually letter dated 21st January, 2023 whereby target date was also wrongly mentioned as 24th January, 2022, which was actually 24th January, 2023. This letter was dispatched on 25th January, 2023 and delivered on 26th January, 2023. A SMS was though conveyed to the petitioner on 24th January, 2023 at 12:58 pm as is evident from page 21 of the petition, which was even not seriously refuted by the respondents. It is thus evident without any hint of doubt that the petitioner was informed at the last moment and apparently it was impossible for him to meet with the requirements for the admission. Apparently, there was no fault on the part of petitioner but he was penalized stringently.

7. *There is no cavil that ordinarily courts exercise restraint in interfering with the internal governance and affairs of the educational institutions and keep their hands-off educational matters and avoid dislodging decision of the university authorities but this is not a rule of universal application though it may be followed generally. Reference to this effect can be made to YASIR NAWAZ and others v. HIGHER EDUCATION COMMISSION and others (PLD 2021 Supreme Court 745).*

Relevant extract from the same is reproduced below: -

“9. Beside, the decision taken by the HEC is a policy one, and by now it is settled law in various jurisdictions that Courts should generally refrain from interfering in policy decisions taken by statutory bodies and authorities tasked with running the affairs of educational institutions and students, like the HEC. The rationale for the same is that matters of an academic nature necessitate the need for technical and professional expertise which may only be attained as a result

of specialization and the experience of working with and in educational institutions. Courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such matters. However, it does not mean that the Courts would not step in at the request of the parties to ensure and ascertain whether or not minimum requirements of natural justice and principles of law have been complied with and whether a case of grave injustice has been made out. Also in cases where a principle of law has to be interpreted, applied or enforced with reference to or connected with education, the Courts would not hesitate in stepping in. Reference can readily be made to the cases of Muhammad Ilyas v. Bahauddin Zakariya University (2005 SCMR 961), Noor Muhammad Khan Marwat v. Vice-Chancellor (PLD 2001 SC 219) and Maharashtra State Board v. Paritosh Bhupeshkumar Sheth and others (AIR 1984 SC 1543)."

8. To this effect, case of FAKHERYAR KHAN v. AGRICULTURE UNIVERSITY, PESHAWAR through Vice Chancellor and 6 others (PLD 2016 Peshawar 266) is also relevant wherein a Division Bench of Peshawar High Court held as under: -

"5. The Prospectus framed by public educational institutions is essentially administrative policy statement of the respective institution. The settled judicial trend is to exercise judicial restraint in interfering with matters dealing with such policy decisions of educational institutions. Some of the leading cases in this regard are Rana Aamer Raza Ashfaq's case (2012 SCMR 6), Government College University Lahore's case (2015 SCMR 445), Amna Sharif's case (2015 MLD 220) and Muhammad Abdullah Riaz's case (PLD 2011 Lahore 555).

6. This general rule of judicial restraint cannot be held to be absolute. Exceptions are always there, especially, when the impugned action or inaction of the education institutions is 'ultra vires, mala fide' or against the fundamental rights of a citizen or even when the same offends the principle of reasonability."

Reliance can also be placed on FATIMA NADEEM V. PROVINCE OF THE PUNJAB and others (2022 MLD 1922) and TARIQ MAHMOOD v. VICE-CHANCELLOR, UNIVERSITY OF THE PUNJAB, LAHORE and another (2022 MLD 155).

9. In the present case, the petitioner duly qualified the "MDCAT" and was on open merit list but due to late intimation by the University itself, he was deprived of his fundamental right to education as guaranteed

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under article 25-A of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioner has thus duly made his case for issuance of writ to the respondents. Resultantly, this petition is allowed and respondents are directed to give admission to the petitioner in first year of MBBS sessions 2022-23. No order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting.

JUDGE

Zeeshan