

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.2072-2019**

**Muhammad Ismail**

**Vs.**

**Pakistan Medical & Dental Council through its President &  
Another**

**CASE NO. : W.P. NO.1757-2016**

**Dr. Shaista Faisal**

**Vs.**

**Pakistan Medical & Dental Council through its President etc.**

**CASE NO. : W.P. NO.2254-2019**

**Dr. Shaista Faisal**

**Vs.**

**Pakistan Medical & Dental Council through its President etc.**

**CASE NO. : W.P. NO.2255-2019**

**Dr. Shaista Faisal**

**Vs.**

**Pakistan Medical & Dental Council through its President &  
Another**

**Petitioners by : Mr. Abdul Rehman Khan, Advocate**  
**Respondents by : M/s. Malik Qamar Afzal & Sidra Hussain,**  
**Advocates.**  
**Date of decision : 23.06.2021**

**AAMER FAROOQ J.** Through this consolidated judgment, above mentioned writ petitions are being decided, as they involve common questions of law and facts.

2. Muhammad Ismail (the petitioner in W.P. No.2072-2019) was appointed as Steno typist in the erstwhile Pakistan Medical & Dental Council (PM&DC) in 1995; in 2001, he was posted as Accountant and in the year 2009, he was the incharge of National Examination Board; in the same year, a complaint was filed with respect to some verifications conducted by the petitioner. The referred complaint though later on was withdrawn yet PM&DC on the basis of the same, issued a show cause notice on 25.01.2010 to the petitioner; on 06.02.2010, the petitioner was dismissed from service; he filed appeal before the competent authority under Removal from Service (Special Powers)

Ordinance, 2000 and during pendency of the same, a writ petition was filed before this Court i.e. W.P. No.2031-2010; in an application filed in the referred writ petition, which was taken up on 21.05.2013, Acting Registrar of PM&DC Dr. Shaista Faisal (the petitioner in W.P. No.1757-2016, W.P. No.2254-2019 & W.P. No.2255-2019) entered appearance and contended that Muhammad Ismail's case shall be taken up in light of inquiry report conducted within the department; the writ petition was disposed of and pursuant thereto, on 03.06.2013, the petitioner was reinstated in service. On 26.04.2016, the petitioner was transferred to Quetta, which transfer order was challenged by him through W.P. No.1854-2016. Since the petitioner did not join the place of posting, he was terminated from service on 16.05.2016, against which, he filed W.P. No.2389-2016, which petition was initially allowed but in the Intra Court Appeal filed, the matter was remanded to Single Bench of this Court to be heard again. Meanwhile, on 16.01.2017, appeal filed under Removal from Service (Special Powers) Ordinance, 2000, was dismissed. On 28.08.2017, W.P. No.2389-2016 was allowed and pursuant thereto, disciplinary actions and dismissal from service against the petitioner was recalled on 06.12.2017, however, the petitioner received a show cause notice on 30.04.2019, which has been assailed in W.P. No.2072-2019.

3. Dr. Shaista Faisal (the petitioner in W.P. No.1757-2016, W.P. No.2254-2019 & W.P.2255-2019) was an employee of erstwhile Pakistan Medical and Dental Council (PM&DC); she appeared before this Court in writ petition filed by Muhammad Ismail (W.P. No.2031-2010) and on 21.05.2013, made a statement that petitioner shall be accommodated in light of recommendation of the inquiry conducted by the inquiry committee and on the basis thereof, on 03.06.2013, Muhammad Ismail was reinstated into service. Subsequently, as noted above, Muhammad Ismail was terminated from service again and reinstated and now again has been served show cause notice dated 30.04.2019. Dr. Shaista Faisal also was served show cause notice for making a wrong statement before the court of law to facilitate Muhammad Ismail; she filed reply thereto but her services were

terminated vide the impugned notification dated 29.05.2019; she was also proceeded against with respect to another case and was served a show cause notice dated 30.04.2019 on the following allegations: -

- “1. That you as the head of the Registration Section present the case for grant of permission in lieu of drop out at the Ad-Hoc Council meeting of 17<sup>th</sup> July 2018 and withheld certain critical information as communicated by the Hamdard College and failed to disclose the same to the Council;
2. That you presented a false recommendation to the Ad-Hoc Council on 17<sup>th</sup> July 2018 to grant permission to Hamdard College for accommodating two students in lieu of drop outs;
3. That you by your conduct, acts and omissions provided an otherwise unavailable and illegal benefit to an affiliated college;
4. That you acted grossly negligently and failed to act responsibly and in pursuance of your official duties”.

The petitioner responded to the said allegations but through a separate letter/order, was terminated from service on 29.05.2019 and the same is the subject matter of W.P. No.2254-2019. It is pertinent to point out that Dr. Shaista Faisal was also proceeded against previously and her contract was declared null and void on the basis of her conduct in Muhammad Ismail's case vide notification dated 07.04.2016, but on account of the fact that case against Muhammad Ismail was dropped in 2017, she was also reinstated into service; notification dated 07.04.2016 is the subject matter of W.P. No.1757-2016.

4. Mr. Abdul Rehman Khan, learned counsel for the petitioner in W.P. No.2072-2019 *inter alia* contended that impugned action of PM&DC amounts to double jeopardy; in this behalf, it was contended that petitioner was reinstated in service in 2017 and all charges against him were dropped and despite the same in 2019 almost one and half year, he was issued a show cause notice on the same subject matter. It was contended that impugned action of PM&DC is without lawful authority. In support of his contentions, he placed reliance on cases reported as 'The Director-General (Field), Agricultural Department, Lahore and another Vs. Haji Abdul Rehman' (1989 SCMR 1224), 'Tauqeer Elahi Vs. Director General, MDA and others' [(2004 PLC (CS) 1517], 'Secretary, Local Government and Rural Development, Government of Punjab, Lahore and another Vs. Ahmad Yar Khan' (2010

SCMR 861), 'Pir Buksh represented by his legal heirs and others Vs. The Chairman, Allotment Committee and others' (PLD 1987 Supreme Court 145), 'Karachi Watch Vs. Imran Fasihi and another' (2008 CLC 222) and 'Sarfraz Saleem Vs. Federation of Pakistan and others' (PLD 2014 Supreme Court 232).

5. Learned counsel for the petitioner, arguing the case for Dr. Shaista Faisal, *inter alia* contended that even she had been exonerated in the case of Muhammad Ismail; again, she has been issued a show cause notice and her services have been terminated. It was contended that allegations leveled against her, which are the subject matter of W.P. No.2254-2019, are baseless and without any justification.

6. At the very outset, learned counsel for PM&DC *inter alia* contended that instant petition is not maintainable in light of the fact that even under Pakistan Medical and Dental Council Ordinance, 2019, right of appeal had been provided to the Medical Tribunal constituted under the law. It was contended that referred law though has been repealed and now has been replaced by Pakistan Medical Commission Act, 2020 and Medical Tribunal Act, 2020, under which, any order passed by erstwhile PM&DC, is to be challenged by way of appeal before the Medical Tribunal. Learned counsel further contended that the Hon'ble Supreme Court of Pakistan in case reported as 'Pakistan Medical and Dental Council through President and 3-others Vs. Muhammad Fahad Malik and 10-others' (2018 SCMR 1956) has declared that upon lapse of the Ordinances, amendments made in Pakistan Medical and Dental Council Ordinance, 1962 through various Ordinances in 2015 & 2016 lapsed, hence any action taken on the basis thereof, can be modified and reviewed, hence PM&DC pursuant thereto, re-visited the exoneration of petitioners and passed the impugned orders.

7. Responding to the objection as to the maintainability of writ petition, Mr. Abdul Rehman Khan, ASC *inter alia* contended that the Tribunal created under Pakistan Medical and Dental Council Ordinance, 2019 never became functional. It was contended that under Medical Tribunal Act, 2020, the Tribunal has the jurisdiction to hear

appeals against the orders passed pursuant to *inter alia* PM&DC Ordinance, 1962 but does not provide for any action taken under Pakistan Medical and Dental Council Ordinance, 2019, hence remedy of appeal is not available to the petitioners.

8. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

9. The factual background, leading to the controversy in hand, has been mentioned with brevity in the preceding paragraphs, therefore, need not be reproduced.

10. Since an objection regarding jurisdiction of this Court has been raised, hence it would be appropriate to address said question first.

11. Pakistan Medical and Dental Council Ordinance, 2019 was promulgated on 09.01.2019 and was re-promulgated. Under section 34 of the referred Ordinance, the Tribunal was created however it is an admitted position that Tribunal never became functional. On lapse of referred Ordinance, Pakistan Medical and Dental Council was abolished and new entity i.e. Pakistan Medical Commission was created under Pakistan Medical Commission Act, 2020. The forum, for providing remedy against any action taken by Pakistan Medical Commission, was the Medical Tribunal under Medical Tribunal Act, 2020. Section 6 of the referred Act of 2020 provides for jurisdiction and powers of the Medical Tribunal. The bare perusal of said section shows that no reference is made to Pakistan Medical & Dental Council Ordinance, 2019, hence any action taken or order passed by erstwhile Pakistan Medical and Dental Council, under the Ordinance of 2019, does not fall within the purview of section 6 *ibid* and hence Medical Tribunal does not have jurisdiction in the matter.

12. Now adverting to the merit of the case, the controversy revolves around actions taken under the amendments made in the repealed Pakistan Medical and Dental Council Ordinance, 1962. The amendments made in the Ordinance of 1962 through various Ordinances in 2014, 2015 & 2016 have been dealt with in detail in the judgment of this Court dated 28.08.2017 passed in case of

'Muhammad Ismail Vs. Pakistan Medical and Dental Council (PM&DC) through its Registrar etc. (W.P. No.1854-2016 etc.). Paragraph-10 of the referred judgment, for ease of convenience, is reproduced below:-

10. *The Pakistan Medical & Dental Council (PM&DC) was created through Medical & Dental Council Ordinance, 1962. Under section 3, the Council is to be constituted by the Federal Government and the composition whereof, is mentioned in the same. Under subsection (2), the President is to be elected by the Members of the Council from amongst themselves. In this regard the Council, so elected, is a Body Corporate and the President elected is also for a term of four years. Section 10 ibid provides for the creation of the Executive Committee. Amendment was made in 1962 Ordinance through Medical & Dental Council Amendment Act, 2012 and section 3 was substituted by virtue of section 4 of the same. In the amended/substituted Section 3, the composition of the Council was changed. Similarly, under section 8, Section 7 of 1962 Ordinance was substituted and the term of the President was reduced to four years. Likewise, by virtue of Section 7, Section 10 of 1962 Ordinance was substituted. The Act of 2012 provides the transitory provision, whereby the then Council was dissolved and the President, Vice President and the Executive Committee of the Council was to continue till the new Council was constituted. Further amendment was made in the law through Medical and Dental Council Amendment Ordinance, 2013. By virtue of the referred Ordinance, section 36B was substituted and under the same, powers were provided to the Federal Government to appoint an Administrator and the Executive Committee was to exercise powers of the Council till constitution of new Council and conduct of elections for membership of the Council within 90-days. The elections were accordingly held and the result of the same was published in the Official Gazette on 22.05.2013. In pursuance of the elections of the Council, the petitioner in W.P. No.2975-2016 was appointed as its President on 30.04.2013. The law was amended again through Pakistan Medical & Dental Council Amendment Ordinance, 2014; section 2 of the referred Ordinance substituted section 36(B) of the 1962 Ordinance whereby, the Members of the Council were denotified and ceased to have effect as Members of the Council or the Executive Committee. Moreover, under subsection (2), a Management Committee, consisting of seven professionals, was constituted to hold free and fair elections of the Council within 120-days from the commencement of the Ordinance. The Management Committee also had a task to examine, investigate and fix responsibility for mismanagement, mal-administration and wrong doings in the affair of the Council. Under subsection (6) of substituted section 36(B), the Management Committee had the power to review any decision already taken by the Council or the Executive Committee. The Ordinance promulgated on 19.03.2014 was not approved by the Senate therefore lapsed/repealed. In this behalf, Senate Secretariat issued a Notification dated 23.04.2014. The Hon'ble Supreme Court of Pakistan, while hearing a matter in case titled 'Dr. Ahmad Nadeem Akbar Vs. Pakistan Medical & Dental Council and others' (CP. No.10 of 2014), took note of the developments going on in PM&DC and adjourned the matter to 25.08.2015. On the said date, the Secretary Ministry of Health appeared before the august Apex Court along with the Attorney General for Pakistan, who apprised the Court that some legislation is in the offing. On 28.08.2015, the Ordinance was promulgated i.e.*

*Pakistan Medical & Dental Council Ordinance, 2015, whereby Section 3 of 1962 Ordinance was again substituted. Likewise, section 3 of the Ordinance substituted Section 4 of 1962 Ordinance along with Sections 5, 10, & 33. Moreover, Section 7 of 2015 Ordinance substituted section 36(B) of 1962 Ordinance, whereby the Federal Government was to notify a Management Committee for the interim period and also notify the Members of the Council when the election results are ready to be announced. The elections were to be held within 120-days of the commencement of the Ordinance. The said Ordinance of 2015 was also not passed by the Parliament within the prescribed time period however on its lapse, was re-promulgated for another 120-days.*

The consolidated judgment handed down by this Court in the referred case was not challenged by PM&DC in the case of Muhammad Ismail but was assailed before the Supreme Court of Pakistan in the case of Prof. Muhammad Hameed Khan, who was petitioner in W.P. No.2975-2016 which was decided through consolidated judgment dated 28.08.2017. The Hon'ble Supreme Court of Pakistan set aside the judgment of this Court in W.P. No.2975-2016 dated 28.08.2017 in the case of 'Pakistan Medical and Dental Council through President and 3-others Vs. Muhammad Fahad Malik and 10-others' (2018 SCMR 1956). While holding that the amendments made in Pakistan Medical and Dental Council Ordinance, 1962 through various Ordinances lapsed on expiry of referred Ordinances, it was observed that actions taken there-under though are saved under the *de facto* Ordinance but could be reviewed, amended or modified by the new Council. For ease of convenience, relevant portion of the judgment, is reproduced below:-

*"Para-24(n) However, in the facts and circumstances, the various actions/activities/orders/decisions etc. taken in the ordinary day-to-day business of the earlier Council, are protected under the de facto doctrine, until reviewed, revised, amended or modified by the new Council to be constituted after fresh elections are conducted".*

13. As noted above, disciplinary proceedings against the petitioners and their exoneration took place in December, 2017 and it was undertaken by the Management/Council, which had come in existence through the amendments. Since the show cause notice and the order regarding termination of services was passed pursuant to the observations made by the Hon'ble Supreme Court of Pakistan, which

had set aside the Management and the Council working under the amendments and it was observed that actions taken by the then Council could be modified and reviewed hence issuance of show cause notice to Muhammad Ismail and termination of Dr. Shaista Faisal do not suffer from double jeopardy.

14. There is no cavil with the principles laid down in the judgments relied upon by learned counsel for the petitioners, however, they are not applicable in the facts and circumstances of instant case.

15. Even-otherwise, as was observed by this Court while deciding W.P. No.1854-2016 & W.P. No.2389-2016 (the judgment to that extent was never assailed before the Hon'ble Supreme Court of Pakistan) that the termination orders to the extent of Muhammad Ismail stood finalized and could not have been revoked. The relevant portion of the judgment is reproduced below:-

*“26. As is clear that the petitioner was dismissed from service by the competent authority and the referred order was acted upon and even the matter was decided by the appellate authority against the petitioner which attained finality.*

*27. Despite queries from the Court, learned counsels for the petitioner were unable to show any law on the basis of which, after the implementation of the dismissal order, second inquiry could have been ordered and dismissal from service could be withdrawn.*

*28. Under section 10 of RSO, the appeal against the order in representation lies before Federal Service Tribunal. The petitioner argued vehemently that the remedy of appeal before Federal Service Tribunal was not available to the petitioner in light of the decision of the Hon'ble Supreme Court of Pakistan in Mubeen-ul-Islam's case reported as (PLD 2006 SC 602) & 'Muhammad Idrees Vs. Federation of Pakistan' (PLD 2007 SC 681). Be that as it may, the order passed in representation was challenged through petition under Article 199 of the Constitution, but that petition was subsequently withdrawn and the order was passed accordingly. The order of removal from service was not set aside by this Court but was only withdrawn by the then Council/Executive Committee of PM&DC. It is an established principle that authority, which passes the order, has the power to withdraw the same as well till such time same is acted upon. In case reported as 'The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another Vs. Jalaluddin' (PLD 1992 Supreme Court 207), it was observed as follows: -*

*“Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted*



*Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field”*

*The order of dismissal from service was acted upon and could not have been withdrawn by the then Council, as it has become functus officio, especially when the issued was also decided by the appellate authority. Reliance is placed on cases reported as ‘Peer Mukaram-ul-Haq Vs. Federation of Pakistan and others’ (2014 SCMR 1457) & ‘Muhammad Sharif through legal heirs and 4-others Vs. Sultan Humayun and others’ (2003 SCMR 1221), wherein the august Apex Court observed that needless to say that the right of a party to claim a review of final judgment or order of a Court, judicial or quasi-judicial Tribunal, in a substantive matter, is not available in the absence of a provision in the relevant statute except in cases of fraud, malafide or defect of jurisdiction. Since the Council had no power to pass order of reinstatement of petitioner into service, the same was without lawful authority and could be withdrawn by the competent authority”.*

As noted above, Muhammad Ismail was terminated from service on 06.02.2010, against which, he had preferred appeal before the competent authority. Appeal of Muhammad Ismail was dismissed on 16.01.2017. Erstwhile PM&DC had no authority to reinstate Muhammad Ismail in service, as it had become *functus officio* and was not the appellate forum. Reinstatement in service of Muhammad Ismail on 03.06.2013 was without lawful authority. The termination order dated 16.05.2016 by former PM&DC was set aside only for the reason that opportunity of hearing had not been afforded to him. It was specifically observed in judgment of this Court dated 28.08.2017 supra that opportunity of hearing shall be afforded to Muhammad Ismail; his termination orders were recalled on 06.12.2017 again without lawful authority. It is pertinent to observe that termination in 2010 was due to disciplinary reasons, whereas termination in 2016 was due to non-compliance of transfer orders.

16. Moreover, the petitioner Muhammad Ismail has also challenged show cause notice. It is trite law that show cause notice is not an adverse order hence it cannot form basis for assailing the same unless the same is without jurisdiction. On the basis of discussion of law hereinabove, show- cause notice is not without jurisdiction.

17. The case of Dr. Shaista Faisal partly hinges with Muhammad Ismail; no reasoning was provided by the learned counsel for the petitioners for setting aside termination orders, the referred orders do not suffer from any jurisdictional error or illegality. In case of termination order flowing from the fact that she made a statement before this Court, the same reasoning shall be applicable as to the plea of double jeopardy, as noted hereinabove. In case of other termination order, which is the subject matter of W.P. No.2254-2019, no argument was advanced for attacking the legality of the same. This Court cannot act as a court of appeal and hear the matters on the basis of which termination orders have been passed. W.P. No.1757-2016 has become infructuous, as subsequent to notification dated 07.04.2016, Dr. Shaista Faisal was reinstated and fresh action against her has been taken on two separate counts as stated hereinabove.

18. Another aspect of the matter is that under section 9(3) of Pakistan Medical and Dental Council Ordinance, 2019, the Council could call for and examine the record of any proceedings, in which, any order has been passed by any official. For ease of convenience, the relevant portion is as follows:-

*"9(3) The Council may, of its own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any officer, committee or authority of the Council for the purpose of satisfying itself as to the correctness, legality or propriety of any findings or order and may pass such orders as it may deem fit".*

The petitioners had an alternate and efficacious remedy before the Council, which they did not avail.

19. For what has been stated above, W.P. No.1757-2016 is disposed of as having become infructuous, whereas all other petitions mentioned hereinabove, are without merit and are dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

Announced in Open Court on 21.09.2021

**JUDGE**

