

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3447 of 2023

Mst. Liaba Rauf

Versus

Pakistan Medical & Dental Council and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
05.	08.12.2023	Mr. Khaliq-ur-Rehman Saifi, Advocate for the petitioner. Ms. Kashifa Niaz Awan, Advocate for PM&DC.

Through the instant writ petition, the petitioner, Mst. Liaba Rauf, has assailed public announcement regarding Medical and Dental Colleges' Admission Test ("MDCAT")-2023 dated 14.07.2023 issued by the Pakistan Medical and Dental Council ("PM&DC") in which it is mentioned that the results of MDCAT-2022 are no longer valid for seeking admission in Session-2023. She has also sought a direction to the effect that her application for admission should be allowed to be submitted online.

2. Learned counsel for the petitioner submitted that the petitioner participated in the MDCAT-2022 and passed by obtaining 170 out of 200 marks; that Regulation 10(5) of the Pakistan Medical Commission Conduct of Examinations Regulations, 2021 ("the 2021 Regulations") provided that a person's MDCAT result shall be valid for a period of two years from the date of the exam, and that if a person retakes the MDCAT exam during this period, the person may use the better result for applying to the Medical or Dental College for admission; that the petitioner did not apply for admission in MBBS soon after passing MDCAT-2022 because she wanted to improve her marks by retaking F.Sc examination; that Section 17(4) of the Pakistan Medical and Dental Council Act, 2022 ("the 2022 Act") provided *inter alia* that

MDCAT shall be valid for a period of three years; and that the impugned public announcement is violative of Regulation 10(5) of the 2021 Regulations.

3. Learned counsel for the petitioner further submitted that Section 51(1) of the 2022 Act makes the repeal of the Pakistan Medical Commission Act, 2020 (“the PMC Act”) subject to Section 6 of the General Clauses Act, 1897 which gives finality to actions already undertaken under the repealed enactment; and that an executive order cannot be given retrospective effect. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In support of his submissions, learned counsel for the petitioner placed reliance on the cases reported as PLD 2007 SC 52, 2015 CLC 500, 2017 SCMR 1787, 2018 SCMR 1885 and 2012 MLD 1635.

4. On the other hand, learned counsel for PM&DC submits that it was clearly written on the result for the petitioner’s MDCAT-2022 that the said result will be valid only for admissions in session 2022-2023; that the PMC Act did not provide for the validity period of MDCAT result; that second proviso to Section 51(2) also provides that Regulations made under the PMC Act cannot be enforced; that the impugned public announcement was issued under the administrative policy of the PM&DC which is neither arbitrary nor violates the fundamental rights; and that such a policy decision having been made applicable across the board may not be interfered with in the process of judicial review. Learned counsel for PM&DC prayed for the writ petition to be dismissed. In support of her submissions, learned counsel for PM&DC relied

on an unreported judgment dated 11.10.2023 passed by the Hon'ble Peshawar High Court in W.P.No.3094-P/2023.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The essence of the petitioner's claim is that at the time when she took MDCAT, the 2021 Regulations were in the field under which her result was to remain valid for two years and such a right could not have been taken away through a subsequent repeal of the said Regulations or through an administrative policy. The 2021 Regulations were made by the PM&DC in exercise of powers conferred upon it under Section 40 and sub-Section 2(f) of Section 8 of the PMC Act.

7. Regulation 10(5) of the said 2021 Regulations provided as follows:-

“(5) A person's MDCAT result shall be valid for a period of two years from the date of the exam. If a person re takes the MDCAT exam during this period, the person may use the highest attained result to apply to medical or dental college.”

8. The petitioner appeared in the MDCAT-2022 on 13.11.2022. Subsequent to her passing the MDCAT, the 2022 Act was enacted on 16.01.2023. The object and purpose of the said enactment mentioned in its preamble which reads as follows:-

*“An Act to reconstitute the Medical and Dental Council in Pakistan
WHEREAS it is expedient to consolidate the law relating to the registration of medical practitioners and dentists and reconstitute the Medical and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry;”*

9. Section 17(4) of the 2022 Act *inter alia* provides that the MDCAT result shall be valid for three years. Moreover, the PMC Act was repealed under Section 51 of the 2022 Act. The said

Section 51 is titled as 'Repeals and Savings' and its sub-sections 1, 2 and 3 provide as follows:-

"51. Repeals and Savings.—(1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Pakistan Medical Commission Act, 2020 (XXXIII of 2020) hereinafter referred to as the repealed Act, shall stand repealed.

(2) Notwithstanding the repeal of the repealed Act or anything contrary contained herein, all decisions taken, regulations made or amended and disciplinary actions taken by the Commission of the dissolved Pakistan Medical Commission pursuant to the repealed Act and by the Pakistan Medical Commission pursuant the shall be deemed to have been validity made:

Provided that all regulations made and promulgated pursuant to the repealed Act, stand repealed and shall not be enforceable:

Provided further that the Council shall have the exclusive power to review and modify saved decision taken, regulation made or amended and disciplinary action taken.

(3) The dissolved Pakistan Medical Commission as formed pursuant to the repealed Act stands dissolved upon the commencement of this Act."

10. A bare reading of Section 51(1) of the 2022 Act shows that the repeal of the PMC Act is subject to Section 6 of the General Clauses Act, 1897. In this regard, Section 6(c) of the General Clauses Act reads as follows:-

6. Effect of repeal. Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a)...

(b)...

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or..."

11. It appears that Section 51(1) of the 2022 Act by legislative reference provides for the saving of the rights and liabilities which existed at the time of the repeal of the PMC Act. Section 51(2) *inter alia* provides for savings and validates all

decisions taken and the regulations made pursuant to the PMC Act by the PM&DC.

12. In the cases of F.B. Ali Vs. State (PLD 1975 SC 506), Sutlej Cotton Mills Ltd. Vs. Industrial Court (PLD 1966 SC 472) Shohrat Bano Vs. Imsail (1968 SCMR 574), P.I.A. Corporation Vs. Pak Saaf Dry Cleaners (PLD 1981 SC 553) and Muhammad Ibrahim Vs. Surrayia-un-Nisa (PLD 1992 SC 637), the Hon'ble Supreme Court laid down the principle of interpretation of statutes that in the absence of a stipulation to the contrary, any change in law affecting vested rights is to have prospective effect.

13. It is thus to be seen what constitutes a vested right. The term vested right has been explained in the case of Messrs Mardan Industries Ltd. Vs. Government of Pakistan (PLD 1965 (W.P.) Pesh. 47) as under:-

"It must be a title to the present or future enjoyment of property, or to the present or future enforcement of a demand or a legal exemption from a demand made by another."

14. Admittedly, the petitioner appeared in MDCAT exam held in November, 2022 when the 2021 Regulations were still in the field and under Regulation 10(5) of the said Regulations, result of MDCAT was valid for two years. The said 2021 Regulations having been made in exercise of power conferred under the statute were binding and could not have been given go-bye pursuant to an administrative decision. Therefore, *sans* the amendment in Regulation 10(5) of the 2021 Regulations, the validity period of the MDCAT result could not have been reduced from two years to one session.

15. After having passed the MDCAT a right had accrued in favour of the petitioner for the MDCAT result to be valid for two years and since the said

right was the creation of Regulations made under the statute it was a substantive and vested right which could not have been taken away without an express sanction of law. In the case of Shahida Bibi Vs. Habib Bank Limited (2016 CLD 2025), the Hon'ble Supreme Court held that *"in any event, it is indeed settled law, in line with section 6 of the General Clauses Act, 1897, that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall in so far as it is not inconsistent with the provisions of new Act, be deemed to have been done or taken under the corresponding provisions of the new Act."*

16. As has already been mentioned, Section 17(4) of the 2022 Act also holds the MDCAT result to be valid for three years. Therefore, no inconsistency in this regard can be inferred between Regulation 10(5) of the 2021 Regulations and Section 17(4) of the 2022 Act. Therefore, the right of the petitioner that her MDCAT result to remain valid for two years under the 2021 Regulations was a substantive right which is deemed to be saved under Section 6 of the General Clauses Act, 1897 and could not have been taken away by the device of an administrative decision.

17. In view of the above, the instant petition is allowed. Consequently, the petitioner's MDCAT-2022 result is declared to be valid for two years from 13.11.2022. The PM&DC should bear the petitioner's costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**