SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

1. Civil Appeal No. 253/ 2020

(PLA filed on 25.4.2020)

Pharmacy Council of Pakistan through its President, Pharmacy Council Secretariat, 14-D West, 1st Floor, Feroz Center, Blue Area, Islamabad.

(APPELLANT)

VERSUS

1. Faraz Latif s/o Abdul Latif r/o House No. Ch. 100, Street No. 10, Shah Khalid Colony, Tehsil and District Rawalakot.
2. Samina Parveen d/o Sheir Ahmed Khan, r/o House No. D-185, Housing Scheme Rawalakot, District poonch.
3. Iqra Maqsood d/o Maqsood Hussain r/o Cheroti, Pachot Gharbi, Tehsil Rawalakot, District Poonch.
4. Noreen Nawaz d/o Mohammad Nawaz r/o Hurnamara, Tehsil Rawalakot, District Poonch.
5. Huma Javed d/o Mohammad Javid Khan r/o Banjos, Tehsil Rawalakot District Poonch.
6. Amna Imtiaz d/o Mohammad Imtiaz Khan r/o Kanchri p/o Mango, Tehsil Mang, District Sudhnoti.
7. Rida Tahir d/o Tahir Khan r/o Housing Scheme Rawalakot, District Poonch.
8. Javeria Shaoukat d/o Shaukat Hussain Abbasi r/o House No. 344-0, St. No. 72, Sector G-11/2, Islamabad.
9. Javeria Bashir d/o Bashir Ahmed Tariq r/o Tehsil and District Palandri.

10. Kiran Firdous d/o Mumtaz Hussain Khan r/o Khaigla, Tehsil Rawalakot, District Poonch.
11. Sadia Ilyas d/o Mohammad Ilyas Kayani, r/o Pachot, Junobi, p/o Datof, Tehsil Rawalakot, District Poonch.
12. Roba Kamal d/o Mohammad Kamal Khan, r/o Thorar Khas, Tehsil Rawalakot, District Poonch.
13. Anum Razzaq d/o Mohammad Razaq Khan r/o Chack Dhombni, Tehsil Rawalakot, District Poonch.
14. Andleeb Aftab d/o Raja Aftab Ahmed r/o Topi Janobi, Tehsil and District Bagh.
15. Rizwan Saleem s/o Mohammad Saleem Khan r/o Kharick, Tehsil and District Bagh.
16. Rizwan Saleem s/o Mohammad Saleem Khan r/o Kharick Tehsil Rawalakot, District Poonch.
17. Government of Azad Jammu and Kashmir through its Chief Secretary having its office at new Secretariat Muzaffarabad, Azad Kashmir.
18. University of Poonch Rawalakot (UPR), through its Vice Chancellor/Chairman Department of Pharmacy, University of Poonch, Rawalakot.
19. Higher Education Commission of Pakistan, through its Chairman HEC, Head Office Islamabad.
20. Mohi-u-Din Islamic Institute Pharmaceutical Sciences Sector D-4, New Industrial Area Mirpur AJ&K.
21. Akson College of Pharmacy 52, 53-A, Sector D-1, old Industrial Estate Mirpur AJ&K.

(RESPONDENTS)

[On appeal from the judgment of the High Court dated 26.02.2020 in Writ Petitions No. 2170/2018 & 805/2019]

APPEARANCES:

FOR THE APPELLANT: Nemo.

FOR THE RESPONDENTS: Mr. Muhammad Hanif Khan Minhas & Barrister Hamayun Nawaz Khan, Advocates.

2. Civil Appeal No.254/ 2020
(PLA filed on 25.4.2020)

Pharmacy Council of Pakistan through its President, Pharmacy Council Secretariat, 14-D West, 1st Floor, Feroz Center, Blue Area, Islamabad.

(APPELLANT)

VERSUS

1. Rizwan Tariq s/o Sharif Tariq, r/o Near Post Office Hajira District Poonch.
2. Urooj Naseer d/o Naseer Ahmed Khan, r/o Kharick p/o Rawalakot, District Poonch.
3. Iqra Hamid d/o Abdul Hamid Khan, r/o Trar, p/o Trar Rawalakot District Poonch.
4. Yashab Jazba d/o Niaz Ali, r/o Dehra Kharick, p/o Rawalakot District Poonch.
5. Ridda Sajjad d/o Sajjad Ashraf r/o Pothi Bala Rawalakot District Poonch.
6. Syeda Aneela Azad d/o Syed Azad Hussain Shah/ r/o P/o Mohri Farman Shah District Poonch.
7. Tajwar Naeem d/o Naeem Ashraf, r/o Green Town Rawalakot District Poonch.
8. Maria Khalid d/o Khalid Mehmood, r/o Habib Abad p/o Trar Khal, District Sudhnoti.
9. Amna Zubair d/o Raja Muhammad Zubair, r/o Farooq-e-Azam Road, Khanna Kakri Raod, Rawalpindi.

10. Razia Masbah d/o Allah Ditta r/o Chack No. 132 NB p/o Slanawali District Sargodha.
11. Waqar un Nisa d/o Allah Ditta r/o Chack No. 132 NB p/o Slanawali Districrt Sargodha.
12. Sadia Zahid d/o Zahid Hussain, r/o Kotera Huranamera Sherqi p/o Mujahidabad District Poonch.
13. Wasam Maqbool s/o Maqbool Hussain, r/o Barma Khurd r/o Khaigla District Poonch.
14. Monobish Javed s/o Mohammad Javed Iqbal, r/o Bokra Mandhol District Poonch.
15. Saad Bin Abid s/o Abid Hussain, r/o Dahmni p/o Rawalakot District Poonch.
16. Kashif Mansha s/o Mohammad Mansha Khan, r/o Trarkhal Narool, District Poonch.
17. Hamza Arif Kayani s/o Mohammad Arif Khan, r/o Parati Paniola, District Poonch.
18. Ammar Anwar s/o Mohammad Anwar, r/o Mansehra, District Mansehra.
19. Faisal naseer s/o Mohammad naseer r/o Dhok Mehboobnan District Islamabad Wahari.
20. Mohammad Younas s/o Abdul Rasheed r/o near A-ene School Jella Jeem District Wahari.
21. Usman Ghani s/o Abdul Ghani, r/o Jatta Khor p/o Khor Rachala, Tehsil Khui Ratta District Kotli.
22. Mohammad Ammar Khan s/o Musadiq Hussain Khan r/o Natha Gala Trarkhal, District Poonch.
23. Arshad Hussain s/o Ghulam Mohammad, r/o Yaum Boband p/o Gadni District Astoor.
24. Zeeshan Ali s/o Amir Khan, r/o Thang p.o Kachora B agordo District Skardo.
25. Arif Taseer s/o Taseer Ahmed Khan r/o Kakota p/o Dhar Bazar District Poonch.
26. Qador Bashir s/o Mohammad Bashir Khan r/o Kokot p/o Khaigala District Poonch.
27. Adeel Tariq s/o Tariq Mehmood Khan, r/o Panjal Dhan Rawalakot, District Poonch.

28. Ehsan Fida s/o Fida Hussain r/o Tarala, Tehsil Sehnsa, District Kotli.
29. Ammad Rahim s/o Rahim Hussain Khan r/o Bhagiana p/o Pachoit Rawalakot, District Poonch.
30. Kashif Bilal s/o Allah Ditta Bilal, r/o Tehsil Tonsa, District Dara Ghazi Khan.
31. Soneed Maqbool s/o Maqbool Hussain Shaheen, r/o Kotera Post Office Trarkhal, District Sudhnoti.
32. Ch. Mohammad Ishaq s/o Ch. Akbar Hussain Akbar r/o Habib Abad p/o Trarkhal District Sudhnoti.
33. Sara Mumtaz d/o Khawaja Mumtaz Kashmiri Village Pallandri.
34. Gulzareen Aziz d/o Mohammad Aziz Khan, r/o Narrian Hillan Jajira, District Poonch.
35. Sehrish Fayyaz d/o Fayyaz Hussain r/o Baral District Sudhnuti.
36. Mohammad Naveed Riaz s/o Raja Mohammad Riaz Kiyani, r/o Ward No. 4, Jamia Masjid Kotli.
37. Government of Azad Jammu and Kashmir through its Chief Secretary having its office at New Secretariat Muzaffarabad, Azad Kashmir.
38. University of Poonch Rawalakot (UPR), through its Vice Chancellor/Chairman, Department of Pharmacy, University of Poonch, Rawalakot.
39. Higher Education Commission of Pakistan, through its Chairman HEC, Head Office Islamabad.
40. Open Testing Service, through its Chief Executive Manager Office No. 1, Crescent Mall Commercial, Central Avenue Road, Phase 6, Bahria Town Islamabad.
41. Mohi-u-Din Islamic Institute of Pharmaceutical Sciences, Sector D-4, New Industrial Area Mirpur AJ&K.
42. Akson College of Pharmacy 523, 53-A, Sector D-1, old Industrial Estate.

.....(RESPONDENTS)

[On appeal from the judgment of the High Court dated 26.02.2020 in Writ Petitions No. 2170/2018 & 805/2019]

APPEARANCES:

FOR THE APPELLANT: Nemo.

FOR THE RESPONDENTS: Mr. Muhammad Hanif Khan Minhas & Barrister Hamayun Nawaz Khan, Advocates.

Date of hearing: 30.8.2021

JUDGMENT:

Raza Ali Khan, J.— The captioned appeals by leave of the Court arise out of the judgment dated 26.2.2020, passed by the learned High Court of Azad Jammu & Kashmir in writ petition No. 2170 of 2018 & 805 of 2019. As both the appeals are outcome of the same judgment of the learned High Court, hence, were heard together and are decided as such.

2. The brief facts forming the background of the captioned appeals are that respondents, herein, in both the captioned appeals,

challenged the condition for pre-registration examination for the registration as D-Pharmacists with the Pakistan Pharmacy Council, by filing two separate writ petitions before the learned High Court, on the ground that the said condition has been imposed without any legal backing. It was averred that the said condition has been imposed by the Pakistan Pharmacy Council and the Council has now issued a schedule for examination of students for their registration as Pharmacists. It was further averred that the Sindh High Court has set aside the condition for pre-registration examination and has directed the Council to grant registration to the petitioners, therein, within 60 days. A direction was also sought to the Pharmacy Council, appellant, herein, to register the petitioner-respondents as qualified Pharmacists on the basis of Pharm-D degrees granted by the University of Poonch. The learned High Court, after necessary proceedings, has accepted the writ petitions with a direction to

the Pharmacy Council to register the respondents, herein, as qualified Pharmacists on the basis of Pharm-D Degrees granted by the University of Poonch. Feeling aggrieved from the said judgment of the learned High Court, the appellant, herein, has approached this Court for redressal of his grievance.

3. Mr. Sajid Hussain Abbasi, the learned Advocate for the appellants in both the appeals was directed to file written arguments, who has filed the same in compliance of the Court order. It was stated in the written arguments that the Pharmacy Council of Pakistan, has been established under section 3 of the Pharmacy Act, 1967, and under section 17 & 18 of the said Act, it is mandatory for any institution desirous of starting Pharmacy Education to obtain N.O.C. from the Pharmacy Council of Pakistan but respondent No.18 (University of Poonch Rawalakot) unlawfully started pharmacy education without seeking the requisite N.O.C. It was further stated that the requisite N.O.C. was

sought by the said University after initiating Pharm. D. Program, which was granted to it on the condition that the students admitted in the University prior to N.O.C. shall get registered through a pre-registration examination and the Institution has to pay the fine. It was further stated that respondents No.1 to 11, 14 and 16, in appeal No. 253 of 2020 and respondents No. 1 to 36, in appeal No. 254 of 2020 participated in the examination and on their failure, they filed the writ petition before the High Court with mala-fide intention, therefore, their writ petitions before the High Court were not competent. It is further stated that the writ petitions of the respondents, herein, before the High Court were also not maintainable on the ground that they have an alternate and efficacious remedy as they have further four chances to pass OTS examination and without availing the same they could not legally knock the extraordinary jurisdiction of the learned High Court. It was further stated that the

Pharmacy Council is not performing any function in connection with the affairs of the Azad Jammu & Kashmir, therefore, according to the Constitution, the learned High Court had no jurisdiction to entertain the writ petition and pass any order against the Pharmacy Council of Pakistan as well. The learned Advocate further stated that the judgment of the learned Sindh High Court which has been relied upon by the learned High Court of Azad Jammu & Kashmir is not applicable to the case in hand as the same has its own peculiar facts and circumstances, but the learned High Court has erroneously accepted the writ petition while placing reliance on the said judgment. It was further stated that the objection raised on behalf of the respondents that Mohi-ud-Din Islamic Institute of Pharmaceutical Sciences, Mirpur, AJK and Akson college of Pharmacy Mirpur, AJ&K were given exemption to the students for pre-registration examination is not tenable as all the said Institutions have been written letters for

payment of penalty fee, examination fee and date of the students for pre-registration examination. It was lastly prayed that while accepting the appeal the impugned judgment of the learned High Court dated 26.2.2020, may be set aside.

4. Conversely, Barrister Humayun Nawaz Khan & Muhammad Hanif Khan Minhas, the learned Advocates appearing for the respondents forcefully defended the impugned judgment of the learned High Court and argued with vehemence that the condition of pre-registration examination imposed by the Pharmacy Council Pakistan is without any statutory backing as well as in derogation of the judgment of the Supreme Court of Pakistan rendered in Civil Petition No. 596-K of 2018 dated 17.12.2018, hence, the same has rightly been set aside by the learned High Court through the impugned judgment. The learned Advocates further argued that the argument of the learned counsel for the appellant that the learned High Court had no jurisdiction to entertain the writ petition filed by

the respondents, herein, is without any substance because the Pharmacy Council is running its business in the State and directly granting N.O.C. to Colleges and Universities in Azad Jammu & Kashmir, which directly affects the rights of the State Subjects of the Azad Jammu & Kashmir, therefore, the learned High Court is vested with jurisdiction conferred by the Interim Constitution, 1974, which has rightly been exercised by the learned High Court while handing down the impugned judgment. They further argued that some of the private respondents have got their admission in MS and near to complete their M.Phil degrees, but could not get jobs as the Pharmacy Council of Pakistan has not registered them so far without any legal justification, as such they have been deprived of their legal rights, therefore, the impugned judgment is quite in accordance with law, which warrants no interference by this Court. The learned Advocates further argued that the appellant has failed to point out any

illegality or legal infirmity in the impugned judgment, therefore, the appeals filed by the appellants may be dismissed.

6. Mr. Babar Ali Khan, the learned Advocate for the Akson College of Pharmacy was also directed to file written arguments, who through an application has requested to treat the concise statement filed on behalf of Akson College as the written arguments.

7. We have heard the learned Advocates representing the parties and have gone through the record of the case made available along with the impugned judgment of the learned High Court. A perusal of the record reveals that the respondents, herein, in both the appeals, filed two separate writ petitions before the High Court of Azad Jammu & Kashmir for setting aside the condition imposed by the Pakistan Pharmacy Council in relation to pre-registration examination for registration as D-Pharmacists with the Pakistan Pharmacy Council. The learned High Court consolidated both the writ

petitions and through the impugned judgment dated 26.2.2020, while placing reliance on the judgment of the learned Supreme Court of Pakistan has accepted both the writ petitions and declared the condition as illegal and without any lawful authority and also directed the respondents, therein, to register the petitioners as qualified Pharmacists on the basis of Pharm-D Degrees granted by the University of Poonch, Rawalakot. The main argument of the counsel for the appellant is that the learned High Court has accepted the writ petition relying on such a judgment, which is not attracted to the case in hand because the facts and circumstances in the cited case are quite different than one in hand. The attested copy of the judgment relied upon by the learned High Court is available in the file. To clarify the situation, we have ourselves gone through the whole judgment of the learned Sindh High Court as well as that of the Supreme Court of Pakistan titled *Pharmacy Council of Pakistan through its Secretary vs.*

Zakir Khan and others (Civil Appeal No. 596-K of 2018 dated 17.12.2018). The controversy involved in the case was that the Federal Urdu University of Arts, Science and Technology, introduced Degree "D" Pharmacy (five years course) as a morning programme. Later on, the said University, on its own, started the same Degree course as an evening programme without obtaining N.O.C. from the Pharmacy Council of Pakistan. The Pharmacy Council took notice, however, finally the matter was resolved, as a result whereof, the University had to pay 4.8 million as fine and after the payment of the fine amount on behalf of the University, the students who had completed their 'D' Pharmacy course, were issued degrees, as such to this extent the matter was unanimously settled between the University and the Pharmacy Council. Subsequently, the Pharmacy Council while filing further comments in the High Court imposed condition of taking pre-registration/exit test from the students, which was struck down by

the Sindh High Court vide judgment, dated 20.2.2018. This very judgment of the Sindh High Court was challenged before the Supreme Court of Pakistan through a petition for leave to appeal, which was dismissed and the judgment of the Sindh High Court was upheld. A perusal of the judgment of the learned Supreme Court of Pakistan reveals that the learned Supreme Court made a query to Advocate Supreme Court (ASC) for the petitioner that under what specific provision of Pharmacy Act of 1967, or the rules or regulations made thereunder, the Pharmacy Council is authorized to take pre-registration/exit test from the students, who have completed their course of "D" Pharmacy in the evening programee to which learned ASC could not satisfy the Court. The relevant portion of the referred judgment is reproduced as under:-

> "...We have asked the learned ASC for the petitioner to show any specific provision of law that of Pharmacy Act of 1967 or rules or regulations made thereunder authorizing the petitioner to obtain

> from the students, who have completed "D" Pharmacy Course such tests, the learned ASC while going through various papers and the law, could not cite before us any specific provision authorizing the petitioner to take pre-registration/exit test from the students, who have completed the course of "D" Pharmacy in the evening programme. In absence of any provision in the law authorizing the petitioner to take pre-registration/exit test, the condition imposed by he petitioner upon the students, who have completed their "D: Pharmacy Course in evening programme from the said University appears to be based upon no authority of law and obviously of no legal effect…"

The above reproduced paragraph clearly reveals that, the moot point before the Courts was relating to the condition of pre-registration test from the students. In the case in hand the University of Poonch Rawalakot was imposed penalty for not obtaining the N.O.C. from the Pharmacy Council before initiating the programme, which was paid by the said University in form of instalments. Later on, the Pharmacy Council imposed a further condition of pre-registration examination for registration as D-Pharmacists, which was challenged by the

respondents, herein, before the learned High Court and the learned High Court vide impugned judgment while accepting the writ petition has declared the said condition illegal. In our considered view, the facts and circumstances of the case in hand and that of the case relied upon by the learned High Court of the Azad Jammu & Kashmir while delivering the impugned judgment, are of similar nature. It may be observed here that Order XIII, Rule 2 and Order XVIII, Rule 6 of the Azad Jammu & Kashmir Supreme Court Rules, 1978 recognize the judgments of the Supreme Court of Pakistan, hence, the principle of law enunciated by the Supreme Court of Pakistan shall be followed keeping in view the facts and circumstances of the case. This Court in the case reported as *Riaz Ahmed v/s Amin Beg etc* [PLD 1978 SC (AJ&K) 161], observed as under:-

> "These observations of the Lordships of the Supreme Court of Pakistan apply to the facts of the present case with equal force. High Court of Azad Jammu & Kashmir in its judgment has often observed that the decisions of the

> Supreme Court have binding force on Courts in Azad Kashmir but it is regretted that some of the observations of their lordships of the Supreme Court of Pakistan have not been receiving due attention by the Azad Jammu & Kashmir High Court, which, on question of procedure, are very much Illuminative and provide a correct guidance."

The same view was reiterated by this Court in the case reported as *Ch. Muhammad Aziz vs. Faisal Mumtaz Rathore & 15 others* (2015 SCR 159) Thus, we are of the opinion that the ratio decidendi of the case referred to and relied upon by the learned High Court of Azad Jammu & Kashmir is fully applicable to the case in hand and the learned High Court while placing reliance on the same has committed no illegality or legal infirmity.

8. The contention of the learned counsel for the appellant that the learned High Court has no jurisdiction to entertain the writ petition and pass any order against the Pharmacy Council of Pakistan as the Pharmacy Council of Pakistan is not performing any function in connection with the affairs of the Azad Jammu &

Kashmir, has no substance, as the proposition has already been resolved by this Court in the case reported as *Ministry of Kashmir Affairs and Gilgit Baltistan & another vs. M/s ZK Associates (Pvt) Limited & 4 others* (2020 SCR 659), wherein in para No. 8 of the report, it has been held as under:-

> "8. Before proceedings further, we would like to take up the question of jurisdiction of the High Court of Azad Jammu & Kashmir, as has been raised by the learned Additional Attorney General. He submitted that the Federal Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan is not performing functions in connection with the affairs of Azad Jammu & Kashmir, therefore, the High Court of Azad Jammu & Kashmir has got no jurisdiction to issue writ to him under article 144 of the Azad Jammu & Kashmir Interim Constitution. 1974. This argument, in view of the scheme of the constitution, in our considered view, has no substance in it. The question of jurisdiction has been considered by the superior Courts with regard to the issuance of writ to the Federal Government or the authorities located beyond the territories of Azad Jammu & Kashmir in various cases and it was resolved that the order passed by the Federation or the authorities even located beyond the territory of Azad Jammu & Kashmir which perform functions in connection with the affairs of the Azad Govt. of the

> State of Jammu & Kashmir or Council are amendable to the jurisdiction of the High Court of Azad Jammu & Kashmir."

As the Pharmacy Council of Pakistan is a regulatory body in connection with affairs of education of D.Pharma programme at University of Poonch, Rawalakot, hence, the learned High Court has got the jurisdiction to entertain the writ petition and to issue direction to the Pharmacy Council of Pakistan as well in light of the case law reproduced above, hence, the argument of the learned counsel for the appellant is hereby repelled.

8. The appellants in both the appeals have failed to point out any illegality or legal infirmity in the impugned judgment of the learned High Court. The findings recorded by the learned High Court in the impugned judgment are quite in accordance with law, which warrants no interference by this Court.

The upshot of the above discussion is that finding no force in these appeals, the same are hereby dismissed. No order as to costs.

JUDGE JUDGE.

Muzaffarabad.
13.9.2021.

Pharmacy Council of Pakistan vs. Faraz Latif & others
Pharmacy Council of Pakistan vs. Rizwan Tariq & others

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

JUDGE JUDGE

Muzaffarabad.
13.9.2021