IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Khawaja Muhammad Nasim, J.
Raza Ali Khan, J.

Civil Appeal No. 104 of 2024
[Against the judgment dated 20.03.2023 passed by the High Court in Writ Petition No. 93/2023]

Pakistan Medical & Dental Council having its office in G-10/4, Mauve Area, Islamabad through its Registrar duly authorized representative, Saira Rubab Nasir, Chief Legal Officer.

... Appellant(s)

VERSUS

Umair Sarwar s/o Mohammad Sarwar Khan r/o Village Rangla, Tehsil Dhirkot District Bagh, Azad Jammu & Kashmir.

…Respondent(s)

Joint Admission Committee through Chairman Principal Medical College Muzaffarabad & 8 others.

… Pro-forma Respondent(s)

Appearances:

For the appellant(s):	Ch. Zaffar Mahmood, Advocate.
For the respondent:	Ex-parte.
For pro-forma respondent No. 2:	Sheikh Masood Iqbal, Advocate General.
Date of hearing:	12.02.2025.

JUDGMENT:

***Raza Ali Khan, J*:-** The captioned appeal, with the leave of the Court, has been directed against the judgment dated 20.03.2023, passed by the High Court in Writ Petition No. 93/2023.

2. The background leading to the filing of the instant appeal is that Umair Sarwar, the respondent herein, filed a writ petition before the High Court, asserting himself as a 1st Class State Subject of Azad Jammu and Kashmir, originally from Village Rangla, Tehsil Dhirkot, District Bagh, presently residing in Denmark with his family. It was asserted that the Joint Admission Committee, through proclamation dated November 23/24, 2022, invited applications for admission from MDCAT qualified candidates for various medical colleges. The admission schedule stipulated a commencement date for online applications as December 5, 2022, with a closing date of December 31, 2022. A subsequent corrigendum dated November 26, 2022, amended the closing date for applications to December 11, 2022, and specified December 23, 2022 as the date for publishing the provisional merit list. The respondent applied for MBBS admission under the Overseas Pakistani quota. Pro-forma respondent No. 2 compiled the initial merit list, placing respondent No. 1 at Serial No. 2. However, following a change in criteria by the Pakistan Medical Commission (PMC) regarding admissions against reserved seats for Overseas Pakistanis, a revised merit list was issued, including private respondents. The writ petition was contested by the other side with a written

statement denying respondent's claims entirely. Consequently, the High Court adjudicated on the matter and disposed of the writ petition through the impugned judgment dated March 20, 2023, in the following manner:

> *"In light of what has been discussed above, the writ petition is disposed off with the direction to the official respondents to nominate the petitioner as per first merit list in MBBS Medical College Mirpur."*

3. On July 02, 2024, the learned counsel for the appellant filed an application seeking to include respondents No. 2 to 10 as proforma respondents. The application has been placed before the Court today for appropriate orders. It states that that respondents No. 2 to 10, were in fact proforma respondents, however, they were mistakenly entered as real respondents. It further clarifies that these respondents are identified as proforma respondents in paragraph 11 of the grounds of appeal and that no relief has been sought against them. Upon consideration, we find that respondents No. 2 to 10 appear to have been inadvertently categorized as real respondents instead of proforma respondents. Accordingly, the application is allowed, and respondents No. 2 to 10 shall now be treated as pro-forma respondents.

4. Ch. Zaffar Mahmood, the learned Advocate representing the appellant, submitted that the impugned judgment of the High Court is contrary to law, relevant rules, and the facts of the case. He contended that if the respondent was aggrieved by the Policy of the Council and the order passed by the PMC, he had an alternate forum

of filing an appeal before the Medical Tribunal under section 37 of the Pakistan Medical Commission Act, 2020. However, this important aspect of the case was not considered by the High Court. He further contended that the final merit list was prepared in accordance with the instructions and regulations issued by PMC/PM&DC, and no illegality has been committed by the concerned Authority in this regard. The respondent was not eligible for admission and had no vested legal right to claim admission to the MBBS program based on a tentative document, which was temporary in nature and not final. He further contended that the respondent had previously accepted the PM&DC Policy and Regulations without objection. By participating in the admission process without challenging the policy at that stage, he is now barred from doing so under the legal principles of *estoppel* and *acquiescence*. He asserted that now the regulations of 2023, called the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations, 2023, have now come into force. According to Regulation 7 of these regulations, no candidate shall be eligible for foreign quota seats in public and private medical and dental institutions unless he holds a permanent foreign nationality or is an overseas Pakistani (being a Pakistan citizen permanently resident in a foreign country) and who has passed HSSC 12th grade examination or equivalent from outside Pakistan. In support of his arguments, the learned Advocate placed reliance on the case reported as [2020 SCR 348].

5. Despite the service of notice, no one appeared on behalf of the respondent; therefore, he was proceeded against ex parte on November 28, 2024.

6. Sheikh Masood Iqbal, the learned Advocate General representing proforma respondent No. 2, fully supported the arguments advanced on behalf of the appellants.

7. We have heard the arguments of the learned counsel for the appellants as well as the learned Advocate General and examined the record. A perusal of the record reveals that the Joint Admission Committee, vide proclamation dated November 23/24, 2022, invited applications for admission from all the MDCAT qualified candidates to different medical colleges. The respondent applied for admission in MBBS for the 2022-23 Session against the reserved seats for the overseas quota. His name was included at serial No. 2 in the first merit list issued by the Joint Admission Committee; however, he was excluded from the subsequent/final merit list. The respondent asserted before the High Court that since his name was included in the first merit list for admission under the overseas quota, a right had accrued in his favour and he could not be excluded in the subsequent merit list.

8. It is pertinent to note that on December 23, 2022, the Pakistan Medical Commission (PMC) issued a letter to the Principals of all Medical and Dental Colleges, outlining the admission criteria for the 10% overseas quota in addition to the MDCAT requirement. The letter

explicitly stipulated that candidates seeking admission under the 10% overseas quota must meet the following mandatory criteria, in addition to MDCAT:

> *"No candidate shall be eligible for foreign quota seats in public and private medical and dental institutions under sub-regulations (1) and (2) unless he holds a permanent foreign nationality or dual nationality or overseas Pakistani student who has studies and passed HSSC 12th grade examination or equivalent from outside Pakistan and has stayed in the foreign country for the whole duration of the above-mentioned course on a Permanent Residence Permit"*

The first merit list issued by the Joint Admission Committee on December 30, 2022, did not conform to the instructions and regulations prescribed by the PMC in its letter dated December 23, 2022. However, the subsequent/ final merit list for MBBS admissions under the overseas quota was prepared in compliance with the said instructions and regulations. Notably, the respondent explicitly admitted before the High Court that he did not meet the requisite qualifications as set forth in the PMC's letter dated December 23, 2022. Furthermore, the respondent failed to appear before this Court and was consequently proceeded against ex-parte. Additionally, he did not apply for admission to MBBS at Medical College Mirpur, thereby waiving his right to consideration.

9. Moreover, the dispute pertains to the academic session 2022-2023, whereas the current year is 2025. The learned counsel for the appellant has placed on record the new regulations, titled the ***Medical and Dental Undergraduate Education (Admissions, Curriculum, and Conduct) Policy and Regulations,***

2023. As these regulations came into force in 2023, the Joint Admission Committee is now obligated to adhere to these regulations. Henceforth, the Joint Admission Committee shall follow the 2023 regulations in all future admissions, till any further change in the policy by the authority.

In light of these observations, this appeal stands disposed of.

JUDGE (JII) JUDGE (JI)

Muzaffarabad,
12.02.2025.