

- d) *To direct the respondent No.1 and 2, to include the name of the petitioner namely Asma Nawab as recommended and eligible candidate having 76.18 percentage in accordance with the policy laid down by the board of directors in respect of reserved seats in Ziauddin Medical University.*
- e) *Cost of the petition.*
- f) *Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.*

2. In brief the facts of the case are that the petitioner is daughter of a worker / labourer who is member of Collective Bargaining Agent, (Respondent No.3) in the establishment of Respondent No.1 namely the Karachi Dock Labour Board, (KDLB). Respondent No.1 has entered into an agreement with Respondent No.7 i.e Dr. Ziauddin Medical University (the University) for allocation of quota of eight seats for admission of children of workers / labourers, who are members of Respondent No.3, in three different medical discipline offered by the university with a ratio of seats as under:-

i.	MBBS	04 seats
ii.	BDS	02 seats
iii.	Pharm-D	02 seats

3. The petitioner applied for admission in the MBBS class firstly in the year 2013. Her case was not considered on merits for the admission, therefore she filed a constitution petition bearing CP No.D-4021/2013 before this Court. However, pending her petition, admissions for the year 2013 were completed and unfortunately her petition for admission in MBBS class for the session of 2013 was also dismissed by judgment dated 07.12.2015.

4. On **18.8.2015**, the petitioner feeling frustrated with pendency of her petition again filed an application for admission in the academic session 2015 (annexure D) in the university and this time she applied for selection in any of the three programs offered by the university to the children of respondent No.3. Respondent No.1 again discriminated with her and on **08.10.2015** issued a merit list annexure 'F' at page 47 of the File in which her name has been shown at Sr.

No.10 with remarks in column No.5 which reads as “*not eligible for consideration*”. Therefore, she again filed instant constitution petition with the prayer mentioned in para-1 above.

5. Respondent No.1 has filed counter affidavit through one Nasir Khan, Personnel & Admin Officer in the Establishment of Respondent No.1. In their counter affidavit an explanation has been given that there is a gap of three years therefore, she was not found eligible for consideration and also on the ground mentioned on annexure ‘F’ i.e merit list issued by Respondent No.1. According to annexure-F first, five students were fresh students with no gap and they were in the first priority, however, students at **Sr. No.6 & 7** were shown in 2nd priority and student at **Sr.8** was shown in 3rd priority. Students at **Sr. No.9 & 10** including petitioner were not assigned any priority and instead it was mentioned in the last column of the merit list that they were “*not eligible for consideration*”. The observations about the petitioner mentioned in column No.4 were that there is “*ONE YEAR*” gap in 1st and 2nd year. No record of 2012, deposited copy of admit card of 2013 (No marksheet deposited till finalization of process) Respondent No.7 has also filed comments. In their comments it has been categorically stated by Respondent No.7 that it is the recommendation and policy decision of KDLB which the university follows and grant admission to the candidates whoever are recommended by the KDLB. Therefore, whatever orders, directions passed by this Court will be complied with by Respondent No.7. Thus the burden was squarely on the respondent No.1 (KDLB) to fairly assess the credentials of the students and place them in respective priority for admission on the basis of marks and other criteria given in the policy document.

6. In view of the above facts and circumstances the only question for consideration before us is that whether the recommendation sent by KDLB dated 8.10.2015 (annexure ‘F’) through letter dated 20.10.2015 (annexure ‘G’) to the University were on merits in accordance with the policy and / or the petitioner has been malafidely / unlawfully discriminated by the KDLB.

7. Learned counsel for the petitioner has contended that the petitioner could not apply for admission in the year 2014 because her earlier petition was pending and there was no bar in applying for admission in 2015. Respondent No.1 has accepted / admitted her admission form and even mentioned her name in the merit list. He has contended that the observations of Personnel & Admin Officer on the merit list annexure 'F' is malafide, contrary to the record and it is not in accordance with the policy for admission in the university. Learned counsel has demonstrated by referring to the admitted policy available as annexure C & C/1 that the KDLB has categorized children of the members of CBA into three categories and the fourth category is for the children of staff and officers as detailed below:-

1st category:- students who have passed matric and intermediate examination without any gap in their academic career (**Fresh** student);

2nd category:- students who have gap in their academic studies and have appeared in the exams for improvement in their results (**none fresh** student); and

3rd category:- students whose brother and / or sister are already studying in the university on the reserved seat of workmen and such students shall be considered after the students of category 1 & 2 have been considered.

4th category:- Children of staff and officers subject to availability of seat after the admission of children of workmen on the reserved seats in the university.

8. Learned counsel for Respondent No.1 has contended that the petitioner was not found eligible for admission in the year 2013, amongst other, on the ground that she had applied only for MBBS program and she has not offered to be selected in the two other discipline namely BDS and Pharm-D. Then she did not apply for the admission in the academic session of 2014 and therefore now there is a gap of three years since her intermediate examination. Therefore, she was not qualified according to the policy for admission under the agreement with the university.

9. The application of admission policy with reference to the students mentioned at Sr. No.6 to 10 on the face of merit list was illegal and improper. Therefore, we feel it imperative to mention the "OBSERVATIONS" of the Recommending Authority (Respondent No.1) in the cases of candidates at Sr. No.6 to 10 in column No.4 and their remarks in column No.5 of the merit list.

KARACHI DOCK LABOUR BOARDMERIT LIST OF STUDENTS APPLIED FOR ADMISSION IN MEDICAL DISCIPLINE
IN ZIAUDDIN MEDICAL UNIVERSITY AGAINST RESERVED SEATS FOR KDLB:

- MBBS ... 04 Seats
- BDS ... 02 Seats
- Pharm-D ... 02 Seats

S #	Name of Student with Father Name, Card No.& date of App:	Enrollm ent No.	Result 2 nd Year	Observations	Remarks
1	-----				
2	-----				
3	-----				
4	-----				
5	-----				
6	Mr. Naseer Khan S/o Zafar Khan, Card No.WD- 1261	737486	67.82% Karachi	One Year Gap	Eligible for Consideration (Second Priority)
7	Ms. Mavra D/o Muhammad Roshan, Medical Officer (22.08.2015)	47508	76.54% (Mirpur Khas)	One Year Gap	Eligible for Consideration (Second Priority)
8	Ms. Nayab Jehanzeb D/o Jehanzeb Khan, Card No.WN-809 (24.08.2015)	750962	80.09% (Karachi)	One Year Gap plus improvement case plus one daughter (Ayesha) was granted admission in MBBS in 2012-2013.	Eligible for Consideration (Third Priority)
9	Ms. Sadaf D/o Muhammad Aslam, Card No.WN-855 (12.08.2015)	745627	75% (Karachi)	One Year Gap plus one daughter (Zar Nigah) was granted Admission in MBBS in 2004-2005)	Not Eligible for consideration
10	Ms. Asma Nawab D/o Nawab Khan, Card No.W-1266 (22.07.2013)	473475	76.18% (Improvement)	One Year gap in between 1 st Year & 2 nd Year. (Matric 2010, 1 st Year 2011- NO record of 2012, deposited copy of Admit Card of 2013. (No marks sheet deposited till finalization of process)	Not Eligible for consideration

Sd/-
Personal & Admin Officer

10. The perusal of the merit list reproduced above shows that:-

- a. Son of workman Zafar Khan namely Naseer Khan at **Sr. No.6** had obtained **67.82%** marks with one year gap and he was assigned 2nd priority as compared to the petitioner, Mst. Asma Nawab daughter of workman Nawab Khan. She has obtained **76.18%** marks with one year gap and reappeared in examination for improvement in her performance. Both Zafar Khan and the petitioner fall in second priority in terms of **clause No.3** of the policy which reads as under:-

(۳) ایسے طلباء / امیدوار جنہوں نے میٹرک اور انٹر کے امتحانات تعلیمی سالوں میں کسی وقفہ کے بغیر پاس کئے ہونگے (یعنی فریش طا لبعلم) انہیں داخلہ کیلئے ترجیح دی جائیگی اور انکے داخلہ ہونے کے بعد مخصوص نشستیں بچنے کی صورت میں ان طلباء / امیدواران کی درخواستوں پر غور ہوگا جنہوں نے اپنے مندرجہ بالا امتحانات کسی تعلیمی سال کے وقفہ کے ساتھ یا امپروومنٹ کے بعد پاس کئے ہوں گے۔ (یعنی نان فریش طا لبعلم)

The petitioner was not assigned any priority in the merit list though on the basis of higher marks she was to be placed above the name of Naseer Khan on merit as envisaged in **clause 5** of the policy that is

(۵) مخصوص نشستوں پر داخلہ میرٹ کی بنیاد پر ہوگا یعنی کے سب سے پہلے سب سے زائد نمبر حاصل کرنے والے امیدوار اور اسی طرح باقی امیدواران کو داخلہ دیا جائیگا یہی میرٹ کے معیار کا طریقہ کار فریش اور نان فریش امیدواران پر ہوگا۔

- b. Likewise daughter of Medical Officer Muhammad Roshan, mentioned at **Sr. No.7** was wrongly assigned third priority. She being daughter of Medical Officer and not of a workman, was not supposed to be given priority for admission over the children of workmen against the reserved seats in the university in terms of **clause 2** of the policy whereby:-

(۲) ڈاک لیبر بورڈ کیلئے کی گئی مخصوص نشستوں پر داخلہ کیلئے پہلی ترجیح ڈاک ورکرز کے بچوں کو دی جائیگی اسکے بعد اسٹاف اور آفیسرز کے بچوں کو بلترتیب داخلہ کا موقع دیا جائیگا۔

It was categorically mentioned in clause-2 of the policy that the priority to the child of an Officer or any other staff comes after the admission of children of workman and that is the 4th priority.

- c. Similarly daughter of workman Jehanzeb Khan namely Mst. Nayab Jehanzeb at **Sr. No.8** has been shown in the 3rd priority because she has one year gap and appeared in exams for improvement and one daughter of Jehanzeb Khan and sister of Ms. Nayab (Ayesha) was already admitted in MBBS in the session of 2012-2013. She was assigned third priority in terms of the following amendment introduced in the policy on **18.09.2014**

(۶) ایسے فریش طلباء/امیدوار جنکے بھائی یا بہن پہلے ڈاکٹر ضیاءالدین یونیورسٹی میں بورڈ کیلئے مخصوص نشستوں پر داخلہ حاصل کرچکے ہیں انکی درخواست پر غور فریش اور نان فریش طالبعلموں کے داخلے کے بعد مخصوص نشستیں بچنے کی صورت میں کیا جائیگا۔

11. Probably the recommending authority to accommodate daughters of Medical Officer and workman of their liking at **Sr. No.7 and 8** in the merit list declared that the candidates mentioned at **Sr. No.8 & 9** were “not eligible for

admission". The case of **Ms. Sadaf** at **Sr. 9** daughter of workman Muhammad Aslam was on better footings than the case of Nayab Jehanzeb at **Sr. No.8**. Her sister (Zar Nigah) was student of the university way-back in **2004-2005** when even the policy of reserved quota for the children of workman had not been introduced. There is one year gap in her studies like the case of Ms. Nayab and if we count admission of her sister in the year 2004 as one of the factors to determine her priority then she should have been given 3rd priority like Ms. Nayab but she has been strangely declared "*not eligible for consideration*". It is an admitted position that the admission policy was amended in **September 2014** with reference to the admission of student whose brother and sister are already studying in the university on reserved quota for the children of respondent No.3 (CBA). Therefore only Ms. Nayab daughter of Jehenzeb at **Sr. No.8** was hit by this amendment to be placed in 3rd priority and not the student whose sister had even completed her education before the policy was so amended.

12. It is pertinent to mention here that during the course of arguments, learned counsel for the petitioner has also referred to another case of admission of one Amina daughter of workman Hasan Ali who had filed constitution petition No.D-5279/2014 challenging similar discrimination by respondent No.1 & 3. Her petition was allowed by consent of the official respondents and her name was forwarded by respondent No.1 in the year 2014. In her case Respondents No.1 & 3, had agreed to ignore the agreement / policy amended on **30.9.2014**. The policy in question in the case of Amina was the effect of brothers and sisters of a candidate who are already studying in the university. It has also been brought to our notice that out of 8 recommendations for the year 2015 one of the candidate at **Sr. 7** has chosen not to avail the admission and Respondents No.1 & 3 had let the seat go vacant. This fact coupled with the observation of Respondents in the case of petitioner and student at serial No.9 in the merit list that they were '**not eligible for consideration**' has in fact blocked the possibility of admission of a child of workman against the reserved seat even in case of availability of a reserved seat on non-acceptance of the admission by

any student. The university in the case of not availing the admission by anyone of the student was under contractual obligation to accommodate the next eligible student in the merit list. According to the policy 08 admissions ought to have been given by the university under the agreement with Respondent No.1 in consultation with Respondent No.3 and the respondent No.3 has not consented to the case of the students at **Sr. No.9 and 10** even for consideration, which amounts to victimizing workman for obvious reason.

13. The perusal of record shows that the petitioner falls in 2nd category because she is daughter of a workman and there is one year gap in her studies. The petitioner has explained the gap in her studies for the year 2012 as she has appeared in intermediate combined exams to improve her academic score from **58% to 76%**. The policy does not say that gap in studies or in filing the admission form would render a candidate "*not eligible for consideration*". The very fact that Respondents 1 & 3 have not assigned any priority to the children of workmen mentioned at **Sr. No.9 & 10** is their willful and deliberate failure to apply policy in the cases of these students. Had the policy been fairly, honestly and liberally interpreted / applied the name of petitioner Asma Nawab daughter of workman Nawab Khan should have been placed above the name of Naseer Khan son of workman Zafar Khan, who had obtained **67.82%** with one year gap. It is pertinent to mention here that Respondent No.1 has not given any observation about the year of gap in the case of Zafar Khan, whereas the gap of one year and improvement case have been very elaborately mentioned in the cases of candidates at Sr. 8, 9 & 10. In any case on perusal of the policy we did not find any duration of gap in the studies which is natural in improvement case to render a candidate "*not eligible for consideration*". The effect of gap is only that candidates with gap in studies would not fall in the first priority for **fresh** students and he/she shall be in 2nd priority for **non-fresh** students. Therefore like Naseer Khan at **Sr. No.6**. the petitioner should have been assigned 2nd priority and on the basis of her percentage in the result being **8%** higher to Naseer Khan, she should have been placed before the name of Naseer Khan. The

2nd priority assigned to the daughter of Medical Officer, Muhammad Roshan namely Ms. Mavra was a case of 4th priority since her father was not a workman. However, she had also been given 2nd priority by the recommending authority without any justification. We have also noticed that in the case of daughter of Muhammad Aslam namely **Sadaf** the remarks of the recommending authority that she was also “*not eligible for consideration*” was also contrary to the record and policy. Her case was also a case of 2nd priority since there was only one year gap and the name of her sister Zar Nigah in column No.4 to claim that her sister was given admission in the university was out of context. Her sister had studied in the university way back in 2004 when there was no such policy in vogue. Particularly the policy about sisters and brothers of children of workman was introduced in **September, 2014**. Therefore, the case of Ms. Sadaf at **Sr.No.9** was better than the case of Ms. Nayab at **Sr. No.8** who was assigned 3rd priority because Nayab’s sisters was admitted in 2012 and she was still studying in MBBS class on the quota reserved for workman.

14. The above discussion clearly indicates that Respondent No.1 under the influence of Respondent No.3 ignored the policy or deliberately misapplied it by accommodating non-deserving children of a particular workman, and/or in bargain agreed to give away one seat of member of CBA to the Medical Officer of Respondent No.1. In their counter affidavit Respondent No.1 has categorically stated that the admissions are finalized with the consent of Respondent No.3. The question is why **consent** of CBA and why not merit alone? Merit need no consent. The CBA (Respondent No.3) generally acts on the basis of their political needs and the administration of KDLB (Respondent No.1) instead of following the merit according to the policy followed the consent of the CBA. It is responsibility of Respondent No.1 to thoroughly examine the merit of each student and assign a priority to the candidates for fair and transparent admission process in accordance with the policy. It cannot be ruled out that certain workmen who belong to the opposite group in CBA could have been victimized or effective member of CBA were able to influence

the process of finalization of merit list. In the case in hand, we were unable to appreciate the method of preferring and assigning a priority to the child of Medical Officer of KDLB over children of member of CBA. The improper application of the policy in the case of petitioner and others as discussed above is highly deplorable. The KDLB was not supposed to read anything adverse to the interest of child of workmen in the policy which was not mentioned in the policy itself. The cardinal principle of interpretation of beneficial binding agreement / rules between the parties is that it should be interpreted to advance the cause and suppress the mischief. The intentions of the parties to the agreement whereby the children of Respondent No.3 were to be admitted to the university was to provide an opportunity to the children of workmen to pursue medical education. However, respondent No.1 and 3 have interpreted the policy in such a way that the petitioner despite having obtained **76.18%** in the intermediate examination was left out of the contest. The perusal of annexure 'F' shows that respondent No.1 malafidely and with ulterior motive did not mention the priority which should have been assigned to the petitioner on the basis of criteria given in the policy and the petitioner was declared "***not eligible for consideration***" instead. However, despite illegal and improper application of the policy for the admission in the academic session of 2015 only seven (7) children of workmen were given admission and in case of admission of petitioner none of the students could have been unseated by the university. Therefore, we are not required to make any adverse observation on the admission of Respondent No.4 to 6, who were subsequently impleaded. Since nobody else is before this Court, therefore, we are not in a position to comment on the effect of willful misapplication of policy in the case of student at Sr. No.9 in the merit list. The petitioner has challenged the illegalities and malafides of Respondents No.1 & 3 in her case. She has clearly demonstrated from the record that in her case the policy has not been followed properly and she has been discriminated.

15. The above discussion leads us to inescapable conclusion that in the case of admissions for the year 2015, the petitioner has not been treated fairly by respondent No.1 and the observation of recommending authority that she was **“not eligible for consideration”** was contrary to the record, policy and her merit. We had, therefore, allowed her petition by a short order dated **29.05.2017** and the above are the reasons for the same.

Karachi.

Dated: _____

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