

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No.D-958 of 2013.  
C. P. No.D-1104 of 2013.  
C. P. No.D-1124 of 2013.  
C. P. No.D-1194 of 2013.  
C. P. No.D-1268 of 2013.  
C. P. No.D-1327 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
-----------------	--

28.05.2014.

PRESENT:

Mr. Justice Naimatullah Phulpoto,  
Mr. Justice Salahuddin Panhwar,

1. For orders on office objection.
2. For Katcha Peshi.
3. For hearing of M. A. No.5385/2013.
4. For hearing of M. A. No.4526/2013.

Mr. Asif Ali Abdul Razak Soomro, advocate for the petitioners in C.P. No.D-958/2013.

Mr. Safdar Ali Ghouri, advocate for petitioner in C. P. No.D-1104, 1268 and 1327 of 2013.

Mr. Inayatullah G. Morio, advocate for petitioner in C. P. No.D-1124/2013.

Mr. Akeel Ahmed Bhutto, advocate for petitioner in C. P. No.D-1124 & 1194 of 2013.

Mr. Faiz Muhammad Larik, advocate for respondents No.1 & 2.

Messrs M. Sohail H. Rana and Riaz Ahmed Soomro, advocates for PM&DC.

Mr. Habibullah G. Ghouri, advocate for Principal, Chandka Medical College, Larkana.

Mr. Jai Jai Veshnu Mange Ram, Deputy Attorney General.

Mr. Naimatullah Bhurgri, State Counsel.

-----

Naimatullah Phulpoto, J.- Through this order, we intend to dispose of captioned Constitutional Petitions, as all petitions relate to the same subject-matter involving common question of law.

2. C. P. No.D-958/2013 is the leading petition, wherein the petitioners have prayed for the following relief(s):-

- a) *That this Honourable Court may graciously be pleased to declare that above act of respondents by suspending/ stopping/ canceling classes of petitioners in the Evening Shift Medical Course in Chandka Medical College Larkana Sessions 2013-14, without any reason or fault on the part of students as illegal, without lawful authority, justification, in violation of principles of natural justice and norms of equity.*

- b) *That this Honourable Court may further be pleased to direct the respondents to continue and complete the Evening Shift Medical Course in Chandka Medical College Larkana (Shaheed Mohtarma Benazir Bhutto Medical University) Larkana Session 2013-14, without break and allow petitioners and all other students to continue their medical studies in the respective categories, without break or disturbance, and if there is any impediment in restoration of Evening Shift then adjust the petitioners in the morning shift or in the coming Session.*
- c) *That this Honourable Court be further pleased to issue Writ of Prohibition, restraining respondents from depriving the petitioners and other students from continuing their medical education in the Evening Shift Medical Course in Chandka Medical College Larkana (Shaheed Mohtarma Benazir Bhutto Medical University) Larkana Session 2013-14.*

3. Precisely, relevant facts are that Evening Shift Of Medical Course in Chandka Medical College, Larkana for Sessions 2013-14 was announced by the Shaheed Mohtarma Benazir Bhutto Medical University, Larkana through advertisement published in daily "KAWISH" Hyderabad, dated 27<sup>th</sup> May, 2013, and applications were invited from the candidates for admissions in the evening classes for the following courses:-

- i. MBBS Evening Course of CMC Larkana.
- ii. Pharm-D (Doctor of Pharmacy).
- iii. D-Physiotherapy.

As per admission offer, 100 seats were shown to be allocated for MBBS, out of which 75 seats on merit and 25 seats under UEDP; similarly 100 seats were shown allocated for Pharm-D, out of which 75 seats on merit and 25 seats under UEDP and 50 seats for D-Physiotherapy, out of which 30 seats on merit and 20 seats under UEDP. The petitioners in pursuance of such advertisement applied for admissions and after scrutiny of their academic documents etc they were called upon to appear in the written test to be held through National Testing Service (N.T.S). The petitioners appeared in the said test and as per merit list issued by the University Authorities, they were declared successful. Thereafter, the respondent No.3/Director Admissions of the

University issued Provisional Admission letters of first year MBBS Class Evening Shift Course of Chandka Medical College, Larkana to the petitioners and all other successful candidates. The petitioners after fulfillment of all the requisite formalities deposited the admission and tuition fees, thus classes of Evening Shift Medical Courses in Chandka Medical College, Larkana commenced from 16.7.2013, but it is stated that all of sudden the respondents, without notice to the petitioners, verbally announced suspension of evening shift of classes on 25.7.2013 and the entry of the petitioners was banned. Thereafter, aforesaid Constitutional Petitions were filed before this Court.

4. Notices were issued to the respondents as well as A.A.G and D.A.G.

5. Respondent No.4 (Principal of CMC Larkano) filed his statement, whereby it is pleaded that he has no concern with the evening shift of Medical Course, whereas respondent No.6 (Secretary Health) has mentioned that Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University, approached PM&DC for admission of evening classes of MBBS in the university but the PM&DC declined such request. Despite this fact university ignored the instructions, and started process of admission for evening classes.

6. Pursuant to the orders of this Court PM&DC filed comments and has raised plea that there is no provision of evening classes in the PM&DC Rules. Reference has been made to Section 11 of PM&DC Ordinance, 1962; further it is stated that Vice Chancellor of the Medical University has violated the instructions of PM&DC, hence they are liable for action.

7. Mr. Asif Ali Abdul Razak Soomro, learned advocate for the petitioners argued that admission policy was announced by the Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University,

Larkana. Students applied for admission in evening classes and after completion of all the formalities provisionally they were admitted in first Professional MBBS Session 2013-14 and they also attended the classes for about one week; thereafter, Sindh Government, on the instructions of the PM&DC restrained the petitioners to attend the classes. He has further submitted that education is the fundamental right of the petitioners. Respondents have deprived them from the valuable right without any legal justification; so far issue of recognition of evening classes by PM&DC is concerned, he argued that it was not raised at initial stage and students were not aware of it. In support of his contentions he has relied upon the cases reported as *Chairman, Selection Committee v. Wasif Zamir Ahmad* 1997 SCMR 15), *Imdad Hussain v. Province of Sindh* (PLD 2007 Karachi 116) and *Pakistan Medical and Dental Council v. Ziauddin Medical University* (PLD 2007 SC 323).

8. Counsel for the other petitioners adopted the arguments advanced by Mr. Asif Ali Abdul Razak Soomro, advocate.

9. Mr. Inayatullah G. Morio, advocate for petitioner in C. P. No.D-1124/2013, while adopting above arguments, added that though petitioner, qualified the examination, but he was not admitted, thereafter during pendency of this petition, option of admission, in BDS, on self finance scheme was given to the petitioner by university, same has been availed hence petitioner is studying in BDS, however petitioner presses this petition for MBBS course.

10. Mr. Ghulam Ali A. Samtio, advocate, appearing on behalf of the Shaheed Mohtarma Benazir Bhutto Medical University, Larkana, has argued that it was an individual act of Mr. Akbar Haider Soomro, the then Vice Chancellor. Medical University and its governing body have no concern with the opening of the evening classes without approval. He has argued that Vice Chancellor allowed provisional admissions to the

petitioners without seeking approval from the PM&DC, which is the requirement of the rules.

11. Mr. M. Sohail H. Rana, advocate, appearing on behalf of the PM&DC, referred to the rules of PM&DC and argued that there is no provision of evening classes in the rules of the PM&DC. He has submitted that evening classes admissions were given in Chandka Medical College without obtaining recognition of the PM&DC. As soon as PM&DC came to know about the evening classes, letter was written to the Vice Chancellor to stop the evening classes forthwith and such intimation was also given to the parents of the students. Mr. Rana has argued that no evening classes, in any university are allowed in the entire country. He has submitted that such attempt was made for opening the evening classes by LUMHS in 2010, but such request was declined by the PM&DC.

12. Mr. Habibullah G. Ghouri, advocate, appearing on behalf of the Principal, Chandka Medical College, Larkana, has agitated that there is no faculty and other necessary equipments to run the evening classes in college. He also argued that rules do not permit the Principal to run the evening classes. He has argued that 23 petitioners appeared in current session and after qualifying test, got admission in morning session. Lastly, he argued that petitions have become infructuous.

13. We have carefully heard the learned Counsel for the parties and perused the entire record.

14. During the hearing of the petitions, by order dated 26.3.2014 PM&DC was required by this Court to examine the case of the petitioners/students on humanitarian grounds to save their future.

15. In response to the aforesaid order statement dated 08.4.2014 was filed by Chairman, Pakistan Medical & Dental Council, relevant para is reproduced as under :-

*“It is not legally possible and within the competence of the above stated Ordinance, amendments, amended Act, Rules of the PM&DC and the Judgments in subject matter to accommodate the petitioners/students as per proposal of the learned Advocate for the petitioners for their admission in morning MBBS Course in the various Medical Colleges of Sindh. There is a proper system for the admission of Medical students (Admission Policy) in morning courses only. No where in the country any Medical Institutions started on their own the evening courses of MBBS. (Subject matter of the petition). There is no possibility in above matter to accommodate the petitioners in the morning courses of the Medical Colleges of Sindh. The detail parawise comments already filed by the PM&DC through their Advocate. Who represent the matter before this Hon’ble Court”.*

16. Perusal of above reflects that PM&DC has categorically stated that proposal was thoroughly examined, but the rules do not permit the evening classes of MBBS. In the comments filed by PM&DC, it is also mentioned that there is no provision at all to recognize the evening classes. Learned Counsel for PM&DC informed that evening classes are not recognized/allowed in any medical college of the country. It has also been brought on the record that such attempt was made by LUMHS in the year 2010 to run the evening classes, but PM&DC did not allow the same, similar request of Shaheed Mohtarma Benazir Bhutto Medical University to run evening classes, was earlier declined by PM&DC; in spite of that, Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University, announced evening classes admission. Such act is contrary to the law. While meticulous examination of rules it is manifest that no provision exists regarding recognition of evening classes in MBBS course. It is provided in Section 11 of the Pakistan Medical & Dental Ordinance, 1962 that ***no medical institution can train or grant a medical or dental qualification or train and grant both unless the said qualification, degree or diploma has been accorded recognition in terms of the aforesaid section.*** Regarding the dictum

of Hon'ble apex Court in the case of *Pakistan Medical and Dental Council v. Ziauddin Medical University* (PLD 2007 SC 323), as relied by Counsel for the respective parties, it is pertinent to mention that the students of Faisalabad Dental College, were allowed to be accommodated in other colleges; candidly those students were not students of evening classes and were in advanced stage of their academic year; but here the petitioners applied for morning course in same academic year, but they did not qualify the test of morning classes, thereafter, in their 2<sup>nd</sup> attempt they availed the opportunity of evening classes, announced by University, pursuance to that they were admitted by the university, having this knowledge that such admission is for evening classes only, petitioners attended their classes in the first academic year of their course for a week only, therefore, their claim for admission in morning classes, will seriously effect the academic career of regular students. Further, it is matter of fact there is limited allocation of seats to every institution by the PM&DC, and no college can exceed such limit, thus claim of the petitioners has no legal strength. Therefore, we are of the considered view that the petitions are devoid of merits, hence same are dismissed alongwith listed applications.

17. Before parting with the order, it is worth to add here that apparently the act of the then Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University, Larkana and other concerned officers falls within the term of "***misfeasance***". Hence, petitioners are at liberty to sue them in accordance with law, before competent Court having jurisdiction. PM&DC shall also conduct thorough probe and action shall be taken against the delinquent officials as per rules.

JUDGE

JUDGE