

**Stereo. H C J D A-38.**

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT AT LAHORE**  
JUDICIAL DEPARTMENT

**I.C.A.No.174 2010 in WP No.7848/2009**  
Vice Chanellor Versus Breeha Zainab etc.

**J U D G M E N T**

Date of hearing	<b><u>23.02.2011</u></b>
Appellant by	<u>Mr. M. A. Hayat Haraj, Advocate</u>
Respondents No.1 by.	<u>Mr. Shujah Haider Syed, Advocate</u>

**NASIR SAEED SHEIKH, J.** The Vice Chancellor/ Chairman Admission Board, University of Health Sciences, Lahore has instituted the instant ICA No.174/2010 against the judgment dated 23.4.2010 passed in Writ Petition No.7848/2009 by a learned Single Judge of this Court whereby the respondent No.1 Breeha Zainab considered to be suffering from disability in her left hand on account of disease of polio paralysis, was directed to be admitted in the MBBS class in the University of Health Sciences Punjab, Lahore.

2. Briefly stating the facts of the case are that Breeha Zainab respondent No.1 applied for her admission to Medical and Dental Colleges of the Province of Punjab against one of the seats reserved for disabled students for the year 2008-2009 Session. The claim of the respondent No.1 being a disabled student was that she suffered from the after effects of the disease of polio paralysis on left hand. Her medical examination was conducted by a Medical Board under the auspices of the University of the Health Sciences, Lahore and the Board expressed an opinion that the respondent No.1 does

not qualify for admission as a disabled student. The respondent No.1 preferred an appeal to the Appellate Disability Board but could not succeed. The respondent No.1 then instituted a Writ Petition No.6861/2008 before this Court contending that the private respondents No.3 to 9 impleaded in the said writ petition also suffered a similar disability which was being suffered by the respondent No.1 and that while the respondents No.3 to 9 having been granted admission by the University of Health Sciences Punjab, Lahore, the respondent No.1 has been treated discriminately in the matter, therefore, the writ petition be allowed and the University be directed to grant admission to the petitioner against one of the disabled seats for MBBS Session 2008-2009. This writ petition came up for hearing before a learned Single Judge of this Court on 16.1.2009 and the University of Health Sciences Punjab Lahore as well as the Controller of Examination MBBS classes in Medical Colleges, Lahore who were respectively respondents No.1 and 2 raised a preliminary objection that a remedy of revision under Section 10 of the University of Health Sciences Lahore Ordinance LVIII of 2002 was available to the writ petitioner Breeha Zainab and that the petitioner has not availed of the said alternate remedy and the writ petitioner be directed to file a revision petition before the Chancellor for the redress of her grievance which, if preferred, be directed to be disposed of in accordance with law on merits. The Writ Petition No.6861/2008 was disposed of vide order dated 16.1.2009 through the following short order by a learned Single Judge of this Court:-

*“16.01.2009 Mr Habib Ullah Shakir, Advocate for the petitioner.  
Mr. Nadeem Afzal Lone, Advocate for respondents  
No.1 & 2.*

*Learned counsel for respondents No.1 & 2  
submits that comments have been filed by him in the  
office which, however, have not been placed on record.*

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*Further submits that remedy of revision under Section 10 of the University of Health Sciences Ordinance, 2002 was available to the petitioner which has not been availed of by her and if revision is filed before the Vice Chancellor, the same shall be disposed of in accordance with law on merits.*

2. *Learned counsel for the petitioner submitted that copy of this petition may be forwarded to the Vice Chancellor for being treated as a revision who may be directed to dispose of the same within specified period.*

3. *In view of the above, copy of this petition shall be forwarded to Vice Chancellor, University of Health Sciences, Lahore along with its annexures for looking into the grievance of the petitioner, treating the same as revision under the aforesaid Ordinance and its disposal in accordance with law within six weeks. Disposed of."*

The Vice Chancellor took the cognizance of the case and referred the matter to the Medical Examination Board for consideration vide order dated 21.2.2009. The respondent No.1 appeared before Appellate Medical Board but failed to get any affirmative results in her favour. After waiting a long, the respondent No.1 instituted a second Writ Petition No.7848/2009 on 16.10.2009 before this Court contending that another girl by the name of Iqra Anjum who suffered from a similar disability in her hand has been allowed admission in the MBBS Session of 2008-2009 by the University of Health Sciences Punjab and the respondent No.1 has been denied her due right of admission therefore the University of Health Sciences be directed to grant admission to the respondent No.1 on similar grounds/basis.

3. Parawise comments were requisitioned from the University of Health Sciences, Lahore as well as from the Controller of Examination MBBS classes in Medical College, Lahore, respondent No.1 and 2 respectively. In

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paragraph No.3 of the parawise comments, the official respondents made the following disclosure:-

*“The decision of the Board was passed on to the Chancellor vide letter dated October 10, 2009. The Chancellor after perusal of the facts conveyed vide letter dated October 24, 2009 decided that, “Having perused the facts of the case, plea taken by the petitioner arguments of the University, report of the Hearing Officer and other record of the case placed before me, I have reached the conclusion that the request of Ms. Breeha Zainab for grant of admission in MBBS course under quota reserved for disabled persons is devoid of any legal force and merit. I, therefore, reject the petition.”*

The learned Single Judge of this Court vide judgment dated 23.4.2010 held that the case of the respondent No.1 is similar to that of Iqra Anjum who also suffered a similar disability and who has been admitted in the MBBS Session of 2008-2009 therefore the writ petition of the respondent No.1 was allowed and the University of Health Sciences was directed to admit the respondent No.1 in the MBBS class. The following portion of the last paragraph of the impugned judgment is relevant and is reproduced below:-

*“The disability in both of the cases appears to be similar in nature. However, placing them in different categories of disability, that is, ‘A’ in case of petitioner and ‘B’ in case of Iqra Anjum appears to be an attempt to benefit Iqra Anjum on the one hand and to deny admission to the petitioner on the other hand. Admittedly both of the students have suffered from Polio. Both are disabled. In Breeha Zainab’s case there are Post Polio Paralysis acquired after birth whereas in case of Iqra Anjum there is Gross limp, meaning thereby that both of the persons are almost in the same category. Similarly with regard to function of limbs, in both the cases function is not normal but the deficiency distinguished by the Board does not appear to be of marked difference. Since Iqra Anjum having similar disability has been*

*admitted the petitioner ought to have also been admitted. Therefore, this petition is allowed and respondents are directed to admit the petitioner in MBBS class. No order as to costs."*

4. The Vice Chancellor/Chairman Admission Board, University of Health Sciences, Lahore has opted to prefer the instant ICA impleading the writ petitioner Breeha Zainab as respondent No.1 and the Controller of Examination, MBBS Classes in Medical Colleges Punjab, Lahore as a proforma respondent No.2. This ICA was fixed for hearing on 22.02.2011 when the learned counsel for respondent No.1 raised an objection that the instant ICA is not maintainable in view of the provisions of Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 wherein a remedy of revision has been provided against the order passed by the Academic Council of Admissions of the University, which is headed by the Vice Chancellor, therefore, keeping in view the bar incorporated in the 1st proviso to Section 3 sub-section (2) of Law Reforms Ordinance, 1972, the ICA is not competent against the judgment passed by the learned Single Judge of this Court in Writ Petition No.7848/2009. The learned counsel for the appellant sought a short time to prepare his brief and the matter was accordingly heard today by this Court.

5. It is contended by the learned counsel for the appellant that the remedy of revision as provided in Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 was not available in the instant case, therefore, the bar contained in 1st proviso to Section 3 sub-section (2) of the Law Reforms Ordinance, 1972 is not attracted. The learned counsel for the appellant elaborated that the remedy of revision under Section 10 of the

Ordinance, 2002 is available against an order which is passed by any of the “**authorities**” of the University and the Vice Chancellor in the capacity of the Chairman of Admission Board of the University is not included in the definition of the word “**authorities**” as defined in Section 22 of the Ordinance, therefore, the provisions of Section 10 of the Ordinance of 2002 cannot be made applicable in the instant case in order to non-suit the appellant from the instant ICA.

6. Conversely, the learned counsel for the respondent No.1 has relied upon the provisions of Section 10 of the University of Health Sciences Lahore Ordinance, 2002 to argue that the Chancellor of the University who is the Governor of the Province of Punjab has been conferred upon the revisional powers in respect of the orders passed by the Academic Council of Admissions of the University and that during the hearing of the previous Writ Petition No.6861/2008, this objection was raised by the appellant himself who was the respondent No.1 in the said writ petition that a remedy of revision is provided for under Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 in the matter and thus the earlier writ petition was decided on 16.1.2009 on the basis of the objection raised by the appellant and the other official respondent of the writ petition and that the appellant cannot now argue that the provisions of Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 are inapplicable to the instant controversy.

7. We have considered the arguments of the learned counsel for the parties and have perused the record with their assistance.

8. The important question involved about the maintainability of the instant ICA needs interpretation of Section 10 of the University of Health Sciences Lahore Ordinance, 2002 Ordinance No.LVIII of 2002 which reads as follows:-

*“Revisional powers of the Chancellor:  
The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such order as he may deem fit.”*

The term “**Authorities**” of the University has also been defined in Section 22 of the Ordinance which reads as follows:-

*“Authorities: The following shall be Authorities of the University:*

- (i) the Board of Governors;
- (ii) the Syndicate;
- (iii) the Executive Committee;
- (iv) **the Academic Council;**
- (v) the Selection Board;
- (vi) the Finance and Planning Committee;
- (vii) the Board of Faculties;
- (viii) the Advanced Studies and Research Board;
- (ix) the Discipline Committee; and
- (x) Such other authorities as may be prescribed.

9. The learned counsel for the appellant has admitted before this Court during the arguments that Vice Chancellor of the University of Health Sciences, Lahore is the Chairman of the Academic Council and the decision about admission of the students into MBBS classes is made by Academic Council under the Chairmanship of the Vice Chancellor of the University. It is also not denied that Vice Chancellor is defined in Section 2 clause (XXVIII) of the Ordinance. The Vice Chancellor of the University is also declared as one of the officers of the University as per provisions of Section 8 of

the University of Health Sciences Lahore Ordinance No.LVIII of 2002. By virtue of Section 13 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002, the powers and duties of the Vice Chancellor have been defined which include the two general powers of control and supervision over all the academic matters and systems of examinations of the University. By virtue of Section 23 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002, the Vice Chancellor is one of the members of the Board of Governors of the University, therefore, the Vice Chancellor of the appellant University is one of the “*Authorities*” as envisaged under the provisions of Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002.

10. It is also important to note that “Academic Council” of the University is enumerated as an Authority in Section 22 clause (iv) of the Ordinance. The constitution of the Academic Council is separately dealt with in Sections 30 and 31 of the Ordinance which are re-produced below:-

*“30. Academic Council: (1) The Academic Council shall consist of”*

- (i) the Vice Chancellor, who shall be its Chairman;*
- (ii) the Deans of the University;*
- (iii) the Directors of Institutes;*
- (iv) the Principals of affiliated and constituent colleges;*
- (v) the Chairpersons of the teaching departments;*
- (vi) the Professors including Professors Emeritus;*
- (vii) five person to be nominated by the Chancellor;*

(viii) *the Registrar;*

(ix) *the Controller of Examination; and*

(x) *the University Librarian.*

(2) *The members of the Academic Council, other than ex-officio members, shall hold office for three years, and if the office of any such member becomes vacant before the expiry of such term, such vacancy shall be filled in the prescribed manner.*

3. *The quorum for a meeting of the Academic Council shall be one third of the total number of members, a fraction being counted as one.*

31. *Powers and duties of the Academic Council: (1) The academic Council shall be the academic body of the University and shall, subject to the provisions of the Ordinance, the Statutes and the Regulations, have the power to lay down proper standards of instruction, research, publication, examination and to regulate and promote the academic life of the University, medical institutions and affiliated and constituent colleges.*

(2) *Without prejudice the generality of the foregoing powers and subject to the provisions of this Ordinance, the Statutes and Regulations, the Academic Council shall have the power to:*

(i) *advise the Syndicate on academic matters;*

(ii) *regulate the conduct of teaching, research, publications and examinations;*

(iii) *regulate the admission of students to the University and conduct examinations of affiliated colleges and medical institutions;*

(iv) *regulate the award of scholarships, medals and prizes;*

(v) *regulate the conduct and discipline of students of the University medical institutions and affiliated colleges;*

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- (vi) *proposed to the Syndicate schemes for the constitution and organization of faculties, institutes and other academic bodies;*
- (vii) *make Regulations on the recommendations of the Boards of Faculties and the Boards of Studies for approval of the Board;*
- (viii) *propose Regulations for each academic year, on the recommendations of the Board of Studies of the University, prescribing the courses of studies, the syllabi and the outlines of tests for all examinations; provided that, if the recommendations of a Board of Faculties or the Board of Studies are not received by the specified date, the Academic Council may, subject to the approval of the Syndicate permit such Regulations to continue for the next following year;*
- (ix) *recognize the examinations of other Universities or examining bodies as equivalent to the corresponding examinations of the University;*
- (x) *appoint members to the various Authorities in accordance with the provisions of this Ordinance; and*
- (xi) *perform such other functions as may be prescribed by the Statutes."*

The Vice Chancellor of the University is the Chairman of the Academic Council and by virtue of Section 31 clause (iii) *supra* the Academic Council is to regulate the admissions of the students to the University. It is not the case of the appellant that Vice-Chancellor of the University solely makes a decision about the admissions to MBBS classes. It is the Academic Council which makes the decision of the admissions and accordingly list of the selected candidates is displaced by the University. As the Academic Council undoubtedly is an **'authority'** constituted under the

Ordinance therefore remedy of revision as envisaged and provided for in Section 10 of the Ordinance is available against the orders of the Academic Council qua the admissions of students in MBBS classes.

11. Another fact which is important is that the Chancellor of the University has exercised the revisional power in the matter, as is reflected in the parawise comments, vide order dated 24.10.2009 in respect of the case of the respondent No.1 and entertained the revision petition of the respondent No.1 as per directions issued by this Court in earlier order dated 16.1.2009 and rejected the revision petition. The appellant and respondent No.2 in the first hearing of the earlier Writ Petition No.6861/2008 themselves raised an objection about the availability of the remedy of revision petition under Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 and the Writ Petition No.6861/2008 was disposed of vide order dated 16.1.2009 passed by a learned Single Judge of this Court. The appellant now cannot be allowed to argue that the provisions of Section 10 of the University of Health Sciences Lahore Ordinance No.LVIII of 2002 are not applicable to the facts and circumstances of the instant case and that the remedy of revision as provided for in Section 10 of the Ordinance of 2002 does not cover the decision regarding the admission controversy of the respondent No.1.

12. We are, therefore, convinced that a remedy of revision was available in the matter against the order of refusal of admission to the respondent No.1, which is to be treated as the original order for the purpose of Section 3(2) proviso one of Law Reforms Ordinance, 1972. Additionally a revision was entertained by the Chancellor of the University

and was rejected by him vide order dated 24.10.2009 and this fact has been narrated in reply to paragraph No.3 of the parawise comments by respondents No.1 and 2 before the learned Single Judge in Writ Petition No.7848/2009, the extract of which has been re-produced above, therefore, the bar of proviso to Section 3 sub-section (2) of Law Reforms Ordinance, 1972 is fully attracted in the instant case and the instant ICA is not competent for the above reasons.

13. It is settled law that where a remedy of an appeal, revision or review is provided against an original order forming basis of a writ petition then an ICA in the matter is not competent. Reliance is respectfully placed upon Mst. Karim Bibi and others Versus Husain Bakhsh and another (PLD 1984 Supreme Court 344) and Muhammad Abdullah Versus Deputy Settlement Commissioner, Centre-I, Lahore (PLD 1985 Supreme Court 107).

14. The instant ICA being not competent before this Court against the impugned judgment dated 23.04.2010, passed in W.P.No.7848 of 2010 is, therefore, **dismissed.**

**(Nasir Saeed Sheikh)**  
**JUDGE.**

**(Muhammad Khalid Mehmood Khan)**  
**JUDGE**