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Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W. P.No.28142 of 2014

Asma Javaid etc. Vs Government of Punjab, etc.

J U D G M E N T

Date of Hearing	29.10.2014.
Petitioners By:	Malik Ghulam Rasul, Advocate.
Respondents By:	Ch. Muhammad Umar and Mian Haris Yasin, Advocates for Respondent No.3 PM&DC. Mr. Imran Muhammad Sarwar, Advocate for Respondent No.2 University of Health Sciences. Mrs. Samia Khalid, AAG along with Aamir Rasheed, Law Officer, Health Department and Syed Usman Munir Bukhari, S.O (ME), Health Department.

Ayesha A. Malik J: Through this Petition, the Petitioners challenge the notification issued on 18.09.2014 by the Pakistan Medical & Dental Council, Islamabad (PM&DC) wherein the number of seats for male and female medical and dental students was fixed at 50% each, for the admissions in the academic year commencing 2014-15.

2. Notices were first issued on 23.10.2014. On 28.10.2014, learned counsel for the Respondent PM&DC appeared before this Court and informed the Court that the final merit list was to be issued on 30.10.2014. Therefore, keeping in mind the urgency of the matter, all the learned counsels agreed that the case should be argued on 29.10.2014.

3. Learned counsel for the Petitioners argued that the entrance test for the candidates for medical and dental colleges was held on 31.08.2014. As per the prospectus issued to the Petitioners and other candidates, admission to medical and dental colleges was to be on open merit basis in the public sector medical and dental colleges of Punjab. It was announced that all candidates having domicile of Punjab or Federal Capital Area, who secured 82% or above aggregate marks will be eligible to apply for admissions to the medical and dental colleges. The Respondent PM&DC held a meeting on

04.02.2014 being its 137th session wherein it made a decision to abolish admission on open merit and instead fixed a quota so that 50% seats were reserved for male candidates and 50% seats were reserved for female candidates. The decision taken by the Respondent PM&DC in this meeting was essentially on the ground that there was a growing trend of females in medical education however their sustainability in the medical field was decreasing. Learned counsel argued that essentially as per the Respondents this means that the number of female candidates qualifying on merit was increasing year by year, however since female candidates did not continue with the medical profession open merit was done away with and a quota was imposed. The learned counsel argued that the fixation of 50% quota for female candidates is totally presumptive and there is no data whatsoever on the basis of which the Respondents have concluded that female candidates do not continue their careers in the medical or dental profession after obtaining their professional education. Further argued that admittedly the Respondents accept that female candidates show better merit in the entrance exam as more than 68% of the candidates admitted to medical and dental colleges are females. Learned counsel argued that this means that male candidates are not at par with their counterparts and have a lesser merit. However, the Respondent PM&DC is promoting male candidates despite their low merit and giving a wrong message to the aspiring male candidates that even if they do not meet the merit they will still get admission in medical and dental colleges on account of the 50% quota reserved for them. Learned counsel argued that this decision of the Respondent PM&DC is discriminatory and a gross violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution). Learned counsel further argued that the malafides of the Respondent PM&DC is evident from the fact that this decision was taken on 04.02.2014 yet made public on 18.09.2014, just five days before the commencement of the admission process. Learned counsel further argued that the prospectus and other documents show that admission has to be on open merit yet the Respondent PM&DC notified its policy on 18.09.2014 creating panic amongst the female candidates. He argued that the policy prevented female candidates

from entering into the medical and dental profession, even though they had the required merit. Learned counsel argued that the formula prescribed by the Respondent PM&DC is not a guaranteed formula on the basis of which it will ensure that female candidates will continue in the medical profession or that the issues, if any, which prevent female candidates from continuing with the medical profession will be addressed. Learned counsel stated that there are remedial measures that can be adopted by the Respondents to encourage female candidates and facilitate them to continue in the medical profession, however a clog on their right to enter into the medical and dental colleges not only violates Article 25 of the Constitution but is also violative of the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case titled Shrin Munir and others v. Government of Punjab through Secretary Health, Lahore and another (PLD 1990 SC 295). Further argued that in terms of this judgment, the Hon'ble Supreme Court of Pakistan declared that the fixation of number of seats on the ground of sex is violative of Article 25 (2) of the Constitution unless it is justified as a protective measure for women and children under Article 25(3) of the Constitution. Learned counsel argued that the said policy offends the right of all candidates who deserve admission on the basis of open merit. Learned counsel stated that a similar issue was also decided by the Hon'ble Sindh High Court in a case titled Miss Farhat Jaleel and others v. Province of Sindh and others (PLD 1990 Karachi 342).

4. Learned counsel on behalf of Respondent University of Health Services (UHS) produced a copy of letter dated 24.10.2014 issued by it to the Secretary Health, Government of Punjab wherein they have stated that they will proceed with admission in the current session on the basis of open merit and do not support the policy of the Respondent PM&DC. Learned counsel stated that the policy is under discussion with the Respondents for consideration. Learned counsel on behalf of the Respondent PM&DC explained that the 137th session of the Council was held on 04.02.2014 and the decision was taken regarding fixation of quota for entry of females candidates in medical and dental colleges. Learned counsel argued that the delay in publicizing this decision was not malafide but on account of the various different disputes pertaining to the existence of the Respondent No.3

and its council. Learned counsel for the Respondent PM&DC argued that the Respondent No.3 as a regulator is highly concerned with the fact that qualified female students from medical and dental institutions do not go on to become specialist and do not carry on with their profession. The problem therefore is that there are lesser doctors whereas there is a dire need of more doctors. The PM&DC thought that one way to control this problem is to create a level playing field such that entry into medical and dental colleges be based on 50% quota for male and female candidates each, which ensures that 50% of the candidates who study medicine will continue in the profession. Learned counsel argued that the Respondent PM&DC has relied upon a study made by Dr. Shaista Faisal, Deputy Registrar-Tech, a copy of which has been placed before this Court, to show the growing trend of female candidates in the medical and dental colleges. In terms of the study learned counsel stated that female Doctors and Dentists have increased since the year 2000 and the number of female students in medical & dental colleges has also increased. However, the number of medical specialist registered with PM&DC since 2005 show that there is a far greater number of male specialists compared to female specialist. States that this shows that even though the number of female candidates in medical and dental colleges has increased multifold over the years, female doctors do not go on to practice nor do they go on for specialization in the profession. Learned counsel stated that the study further shows that the number of doctors registered with the PM&DC in 2011 shows a larger number of male doctors than female doctors. This shows that even though female candidates study medicine they do not necessarily practice in the profession. Learned counsel further stated that the research provides certain recommendations to keep female doctors in their profession such that the number of seats for male and female students should be 50% each. This is as per National male and female ratio i.e 1.07 male(s)/female (2011 est). Learned counsel stated the PM&DC decided to approve these recommendations to control the problem. Twenty five participants under the Chairmanship of Professor Dr. Masood Hameed Khan, President PM&DC considered all aspects of the research and the problem of female candidates not continuing in the medical profession

and ultimately decided to fix a quota of 50% each for entry into medical and dental colleges. Learned counsel argued that no malafide was intended by the Respondents by the delay and the objective of the policy was to improve the conditions in the profession. Learned counsel further argued that the decision of the Hon'ble Supreme Court of Pakistan relied upon by the learned counsel for the Petitioners in para 21 specifically mentioned that at the time no scientific study had been carried out on the basis of which the seats for female and male candidates were fixed. Further argued that the judgment relied upon by the learned counsel for the Petitioners was the need of the hour at that time, as it addressed the issues relevant at the time and the judgment specifically states that this has been made on the basis of the issues faced by educational and professional institutions at the time. Hence the learned counsel argued that the present scenario is different and this Court should look into the issues faced by the profession and the decline of doctors/dentists which should increase. Learned counsel further stated that it was necessary to increase the number of doctors and the fact that female candidates out did male candidates in the medical examination yet did not continue with the medical profession meant that the medical profession was losing on specialists and practitioners. Learned counsel emphasized that no bias was intended by this decision and it was made simply to address a growing concern in the medical profession.

5. I have heard learned counsel for the parties and gone through the record available on the file.

6. The issue at hand is the fixation of quota for female candidates entering into medical and dental colleges. The Petitioners question the policy on the ground that it restricts their right to compete on open merit for entry into medical and dental colleges which right is not only guaranteed by the Constitution but also in terms of the dicta laid down by the Hon'ble Supreme Court of Pakistan. I have heard all the learned counsels at length and find that the policy of fixing of quota offends Article 25 of the Constitution as well as the dicta laid down in PLD 1990 SC 295 (*supra*). Article 25 of the Constitution being the equal protection article reads as follows:-

“Equality of citizens.—(1) All citizens are equal before law and are entitled to equal protection of law.

- (2) *There shall be no discrimination on the basis of sex.*
- (3) *Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”*

Article 25 of the Constitution provides for the equality of citizens such that all citizens are equal before the law and are entitled to equal protection of the law. This is a fundamental right guaranteed to all citizens of this country irrespective of their gender. Article 25(2) of the Constitution specifically provides that there shall be no discrimination on the basis of sex. This Article specifically prohibits any kind of discrimination on the basis of gender, meaning thereby that gender cannot be made the basis to cause an inequality between men and women. The Constitution specifically provides for equality of all citizens making men and women equal before the law and entitled to equal protection of the law. Article 25(3) of the Constitution provides that the state can make special provisions for the protection of women and children, meaning that if required the state can make policies which facilitate and enable women and children to progress. This Court has already held in a similar case titled Nazar Elahi v. Government of Punjab and others (2013 CLC 1457) as follows:

“7. The point that needs consideration in this case is whether the age relaxation of three years provided for in the proclamation, for the benefit of female candidates W.P.20018 of 2012 violates Article 27 (1) of the Constitution. Article 27 of the Constitution reads as follows:-

“ No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex residence or place of birth.....

Article 25 of the Constitution being the equal protection article reads as follows:-

- “(1) All citizens are equal before law and are entitled to equal protection of law.*
- (2) There shall be no discrimination on the basis of sex.*
- (3) Nothing in this Article shall prevent the state from making any special provision for the protection of women and children.*

8. *It is clear from reading both the Articles that there shall be no gender based discrimination. Article 25 ensures equal treatment under the law however Article 25(3) provides that nothing in this article shall prohibit the State from making special provisions for the protection of women and children. This means that the Constitution has given the State a remedial power to protect women and children notwithstanding the fact that everyone is to be treated equally under the law. Article 25 of the Constitution guarantees equal protection to every citizen and also requires that the State undertake affirmative action for the protection of women and children. Therefore the Constitution has itself recognized and created a classification which needs special protection. Hence an act of the Government which aims to protect women and children will be an affirmative action which does not offend Article 25 (1) and equal treatment. The next question is whether Article 27 is offended by the age relaxation offered to female candidates. Article 27(1) provides that no citizen shall be discriminated against in respect of any appointment he is otherwise qualified for only on the ground of race, religion, caste, sex or place of birth. Article 27 provides for a safeguard against discrimination in service. The safeguard ensures that the State will not commit gender based discrimination. However this Article does not prohibit affirmative action to protect the female gender. The age relaxation offered to females under PWEF does not discriminate against the Petitioner but in fact is part of an affirmative action to protect women by creating opportunities for women professionally so that they can apply for jobs keeping in view the time spent for responsibilities such as marriage and children. Affirmative action for women and children is the remedial power given to the Government to equalize opportunities by creating special dispensation or special standards for them so as to equalize their opportunities.”*

7. The essence of Article 25 has been clearly declared in the judgment cited as PLD 1990 SC 295 (*supra*). Para 20 of the same reads as follows:-

“There being no repugnance between Article 25 and Article 22, the two have to be read harmoniously. No discrimination on the ground of sex alone can be permitted except on the ground of reasonable and intelligible classification. Such classification in our Society permits for the present establishment of educational and professional institutions exclusively for the females or exclusively for the males. However, where co-education is permitted and the institution is not reserved for one sex alone, the fixation of number on the ground of sex will directly be opposed to the requirement of Article 25(2) unless it is justified as a protective measure for women and children under Article 25(3). In other words the number of girl students can be fixed as the minimum but not as the maximum particularly so where on merit they are likely to get more than the fixed number of seats. The Constitution assumes that the women and children in our Society need protection and not the males and as long as the Constitution mentions that assumption and basis, we cannot reverse it by affording protection to male and adults at the cost of women and children. That would be opposed to the very fundamental mandate of the Constitution.”

A bare reading of the said judgment shows that, if at all there is to be fixation of seats, the minimum number of seats can be fixed and not the maximum number. The Hon’ble Supreme Court of Pakistan has also held that the fixation of the number of seats reserved exclusively for female offends Article 25(2) of the Constitution unless it is a protective measure for women and children under Article 25(3) of the Constitution. Learned counsel for Respondent PM&DC when confronted with the provisions of the Constitution and the dicta laid down in PLD 1990 SC 295 (*supra*) was unable to justify the policy especially on the touchstone of a protective measure. Therefore this writ petition stands decided on the basis of the provisions of the Constitution and the dicta laid down in PLD 1990 SC 295 (*supra*).

8. This case was argued at length by the learned counsel for Respondent PM&DC. Given the arguments made and the data placed before this Court, it is necessary to look into the aspects of this case urged by the Respondent PM&DC. Learned counsel for the Respondent PM&DC stated that a scientific research was consulted by the Respondent PM&DC before arriving at its decision on 4.2.2014. He also explained that the study was by a “female” doctor. I have gone through the documents placed before this Court and it appears that the Respondents have relied upon a research done

by Dr. Shaista Faisal, Deputy Registrar (Tech) during her MPH studies 2011-12 in which the objective of her study was to determine the growing number of females in medical education, to ascertain the number of female doctors who carry on with the profession and to identify the reasons that female doctors were unable to continue with their profession. The study was relied upon by the Respondent PM&DC primarily on the fact that it was made by a female doctor, hence possibly rendering more credibility to their decision. The study finds that female candidates outnumber male candidates in medical colleges. However they are less likely to take part in post graduate training and research. The study also finds that there are few females in specialties and in position of leadership even though they perform better in the entrance exam. At the time 62% of the medical students were stated to be females. The study concludes that there is a need to adopt measures to keep female doctors in the profession. Learned counsel for the Respondent PM&DC was asked that whilst considering the research why didn't the Respondent consider and adopt positive steps making it easier for the female doctors to continue with their profession. Learned counsel for the Respondent stated that these measures have yet to be considered but will be implemented at some point. From the arguments raised the major issues identified by the research is that female doctors do not specialize and do not continue with the medical profession. The Respondent No.3 while making its decision on 4.2.2014 relied upon a study made in the year 2011-12 without considering all the recommendations, without first requiring a solution to save the merit and without ascertaining whether the quota will ensure that female doctors will continue in the profession or continue to specialize in the profession.

9. What transpires from the decision is that the Respondent PM&DC compromised on the merit for entry into the medical and dental profession thus impacting the overall merit of this profession. The policy of the Respondent PM&DC accepts male candidates with a lesser merit with no guarantee that the other 50% will continue in the profession. It also prevents the 12% high merit candidates from pursuing a medical education simply on the basis of their gender. The policy of the Respondent PM&DC in fact does

not ensure that the best of the candidates enter into the medical profession to produce the best of doctors and dentists, but instead allows a candidate who previously could not possibly have entered into a medical and dental college, now to study medicine and become a doctor or dentist. It has been seen over the years that entry into medical and dental colleges is very competitive and as per the study produced before this Court, 62% of the candidates who succeed into medical and dental colleges are females. This was the figure given in the year 2011-12 whereas in terms of the arguments made before this Court, the figure has increased to 68%. Hence to the mind of this Court it is alarming that merit has been wasted and compromised, which ultimately means that the quality of doctors in the medical and dental profession has also been compromised. This affects the public at large. Furthermore it goes against the very spirit and purpose of the mandate of the regulator PM&DC whose job is to ensure optimum results from medical and dental colleges as well as the medical profession. In the very least they should have conducted a study to ascertain the problems and their reasons and then worked on solutions and improvements.

10. Another glaring reality of the impugned policy is that the decision taken on 4.2.2014 was never made public for discussion by the Respondent PM&DC. Stakeholders were admittedly not consulted and an old study which existed since 2011-12 was relied upon. No measures were adopted to control the problem, even in terms of the recommendations made in the Report of 2011-12. The Respondent PM&DC should have considered all the recommendations made in the study relied upon so as to retain the female doctors in their profession and involved the stakeholders, find a more acceptable solution which would ultimately increase the number of doctors and save the merit. The minutes of the meeting produced before this Court show that twenty five members of the PM&DC deliberated on the issue that there was a growing trend of females in the medical education but they did not continue in the profession. They decided to impose a quota for female candidates who excelled on merit. Interestingly all twenty five members of the PM&DC were men.

11. In view of the aforesaid, this petition is **allowed**. The policy of fixation of quota is declared to be unconstitutional, against Article 25 of the Constitution and the dicta laid down in PLD 1990 SC 295 (*supra*).

(AYESHA A. MALIK)
JUDGE

Approved for reporting

JUDGE

*Allah Bakhsh**