IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK
MR. JUSTICE SYED HASAN AZHAR RIZVI

SUO MOTO CASE NO.04 of 2022
(GRANT OF ADDITIONAL 20 MARKS TO HAFIZ-E-QURAN WHILE ADMISSION IN MBBS/BDS UNDER REGULATION 9 (9) OF THE MBBS AND BDS (ADMISSION HOUSE JOB AND INTERNSHIP) REGULATIONS, 2018).

IN ATTENDANCE:

For PMDC	:	Mr. Afnan Karim Kundi, ASC
On Court's Notice	:	Ch. Aamer Rehman, Addl. Attorney General for Pakistan
Date of Hearing	:	04.04.2023

ORDER

This Suo Motu Case bearing No.4 of 2022 was initiated pursuant to an order passed by a two member Bench of this Court dated 10.01.2022 in the following terms:

> *"However, this petition has brought to the fore regulation 9(9) of the Regulations and the awarding of twenty additional marks to those candidates who had memorized the Holy Qur'an. Whether the memorization of the Holy Qur'an is a relevant criteria for the determination of the candidates for an MBBS or BDS degree needs consideration. It also needs to be considered whether regulation 9(9) of the Regulations conforms with Article 25 of the Constitution of the Islamic Republic of Pakistan. Therefore, while dismissing this petition we retain its paper-book to consider this aspect of the case. Notice be issued to the Pakistan Medical and Dental Council, which we are informed is now the Pakistan Medical Council, ('**the Council'**) and the Council is directed to submit a concise statement which should address the aforesaid queries and to explain how the memorization of the*

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Holy Qur'an makes a candidate more eligible for an MBBS or BDS degree. The Council should also file the decision which lead to the incorporation of regulation 9(9) in the Regulations and the reasons, if any, for such incorporation. Notice be also issued to the Attorney-General for Pakistan in terms of Order XXVII-A of the Code of Civil Procedure, 1908."

2. It appears that the office issued notices to all concerned to file concise statements. Such concise statements were not filed and this fact was brought to the notice of the learned members of the Bench by way of an office note placed before them in Chambers. The record indicates that the office was directed in the following terms:

"Since the concerned, despite four reminders, have adamantly refused to respond, it may be appropriate to fix this matter in Court to the extent of the points noted in paragraph 2 of the order dated 10.01.2022."

The office accordingly sought appropriate orders of the Hon'ble Chief Justice of Pakistan. On the said office note, the HCJP passed the following order:

"Treat the order dated 10.1.22 as recommendation for invocation of suo motu jurisdiction. Allowed."

3. In view of the above, the HCJP constituted a three member Bench comprising Mr. Justice Qazi Faez Isa, Mr. Justice Amin ud Din Khan and Mr. Justice Shahid Waheed, JJ to consider the questions framed in the order dated 10.01.2022 passed in Civil Petition No.397-K of 2020. The matter was fixed before the said Bench on 15.03.2023 when the learned Bench instead of examining the matter regarding grant of additional 20 marks to Hafiz e Quran for admission in MBBS and BDS programs under Regulation 9(9) of the

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MBBS and BDS (Admissions, Examinations, House Job and Internship) Regulations, 2018 made an order released on 29.03.2023 on matters which were neither raised in the petition *(CP#397-K of 2020)* which had already been dismissed nor had any nexus or connection with such questions and was totally alien to the *lis* before the Court. This order was clearly not final and was of an interim nature since the SMC was not disposed of by means thereof, but remained pending.

4. In response to the notice, Pakistan Medical & Dental Council ("PM&DC") has filed a CMA bearing No.2057 of 2023 which consists of a report in compliance with the orders of this Court dated 10.01.2022 and 15.03.2023 on behalf the PM&DC. Paragraphs 11 & 12 of the report state as follows:-

> *"11. That after repealment of the Pakistan Medical Commission Act, 2020 by the presently enacted Pakistan Medical and Dental Council Act, 2022, no fresh criteria has yet been provided for admissions to MBBS and BDS. Under section 51(2) of the PMDC Act, 2022, the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations 2021 made under the repealed Pakistan Medical Commission Act, 2020 have been saved which are being enforced at present till such time as the PMDC is full (sic) constituted and amends the said regulations or makes new ones.*
>
> *12. That the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 do not grant any additional marks to students who are Hafiz-e-Quran."*

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Further, in paragraph 14 of the report it has been reiterated as follows:

> *"14. That in view of the aforementioned facts, it is apprised to the Honorable Court that the MBBS and BDS (Admissions, Examinations, House Job or Internship) Regulations, 2018 (approved by this Hon'ble Court) and amended in 2019 which allowed grant of 20 additional marks to Hafiz e Quran for admission in medical/dental college are not in force at present."*

5. The learned counsel for Pakistan Medical Commission ("PMC") has reiterated the stance taken in paragraphs 11, 12 & 14 reproduced above and has categorically stated in view of the fact that under the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 which are the current Regulations, do not grant any additional marks to the students who are Hafiz e Quran and the MBBS and BDS (Admissions, Examinations, House Job or Internship) Regulations, 2018 and amended in 2019 which allowed grant of 20 additional marks to Hafiz e Quran for admission in Medical/Dental Colleges are not in force. He therefore maintains that this Hon'ble Court was not properly assisted in the matter as it was already a dead issue when the order dated 10.01.2022 was passed. This position is dispositive of the SMC.

6. Turning to the order dated 15.03.2023 *announced on 29.03.2023* its perusal clearly shows that it constitutes a fresh suo motu invocation of jurisdiction relating to questions involving constitution of Benches, the power of the HCJP as

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the Master of Rolls to constitute Benches and a prohibition order bearing No.F.No.3(07)/2023/OPS-BM/4419 dated 09.03.2023. Through the said prohibition order, Pakistan Electronic Media Regulatory Authority ("PEMRA") had forbidden all satellite TV channels to telecast anything against the State institutions and not to discuss the conduct of Hon'ble Sitting Judges of the High Courts and the Supreme Court in any manner.

7. In paragraph 28 of the interim order in question it was stated as follows:

> *"The interest of citizens therefore will be best served to postpone the hearing of this case and of all other cases under article 184(3) of the Constitution till the matters noted hereinabove are first attended to by making requisite rules in terms of article 191 of the Constitution"*

The order sheet reflects that the order was signed on 29.03.2023 by two Hon'ble members of the Bench namely *Qazi Faez Isa and Amin ud Din Khan, JJ* while the third Hon'ble member of the Bench *Shahid Waheed, J* noted as follows :

> *"As the points raised and discussed in the order were not the subject matter of the case, I disagree and will record separate dissenting note".*

Such dissenting note was accordingly issued on 30.03.2023. We have carefully examined the majority judgment as well as the dissent recorded by Shahid Waheed, J. We are in no manner of doubt that the order dated 15.03.2023 invokes suo motu jurisdiction of this Court and is therefore clearly violative of the principles settled in a five

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member judgment of this Court recorded in SMC No.4 of 2021 reported as Enforcement of Fundamental Rights with regard to Independence of Press/Media **(PLD 2022 SC 306)** which clearly and categorically lays down the rule that the suo motu jurisdiction of this Court can only and solely be invoked by the HCJP. The majority order also appears to be in violation of the well settled rule of law, which is axiomatic, that the Chief Justice is the master of the roster. The order was therefore both without and beyond jurisdiction. Therefore, we are respectfully of the view that the order dated 15.03.2023 passed by two Hon'ble members of the Bench was inoperative and ineffective when made, was such at all times thereafter and continues to remain so.

8. It appears that the order was brought to the notice of the HCJP who was pleased to observe as follows:

> *"The observations made in paras 11 to 22 and 26 to 28 of the majority judgment of two to one travel beyond the lis before the Court and invokes its suo motu jurisdiction.*
>
> *The unilateral assumption of judicial power in such a manner violates the rule laid down by a 5 Member judgment of this Court reported as Enforcement of Fundamental Rights with regard to Independence of Press/Media (PLD 2022 SC 306).*
>
> *Such power is to be invoked by the Chief Justice on the recommendation of an Hon'ble Judge or a learned Bench of the Court on the basis of criteria laid down in Article 184(3) of the Constitution.*
>
> *The said majority judgment therefore disregards binding law laid down by a larger bench of the Court.*

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Any observation made in the said judgment, inter alia, for the fixation or otherwise of cases is to be disregarded. Accordingly, a circular be issued by the Registrar stating the forgoing legal position for the information of all concerned."

Accordingly, the Registrar of this Court issued a Circular dated 31.03.2023 with copies endorsed to all concerned. On perusal of the circular in question, we are of the view that the observations made by the HCJP are unexceptionable and simply rectify an unwarranted assumption of jurisdiction and intrusion into, and interference with, powers that the principles laid down in the case law place firmly in the hands of the Chief Justice alone. We accordingly affirm the observations of the HCJP as incorporated in the Circular and the directions issued therein. In view of the foregoing, the interim order dated 15.03.2023 (released on 29.03.2023) is recalled.

9. In view of the stance taken by the PM&DC in their report and as submitted by their learned counsel on instructions that the MBBS and BDS (Admissions, Examinations, House Job or Internship) Regulations, 2018 and amended in 2019 which allowed grant of 20 additional marks for Hafiz e Quran for admission in Medical and Dental Colleges are not in force and the current Regulations namely Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 do not grant any additional marks to students who are Hafiz e Quran, no

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further proceedings in this suo motu case are required. The SMC is accordingly disposed of as having been infructuous. File may be consigned to the record.

Judge

Judge

Judge

Judge

Judge

Judge

ISLAMABAD, THE
4th April, 2023
ZR/*
Not Approved For Reporting

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