

HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P No.D-1216 of 2025

[Adil Shah v. Province of Sindh and others]

Present:

Mr. Justice Arbab Ali Hakro,

Mr. Justice Abdul Hamid Bhurgri,

Petitioner : Adil Shah s/o Hassan Shah,
through Mr. Abdul Rehman A. Bhutto,
Advocate.

Respondent No.1 : Province of Sindh
Mr. Munawar Ali Abbasi, Assistant
Advocate General, Sindh.

Respondents No.2 to 5 by : Mr. Sarfaraz Ali M. Abbasi, Advocate

Dates of hearing : **27.11.2025**

Date of decision : **05.12.2025**

ORDER

ARBAB ALI HAKRO, J.- Petitioner Adil Shah, has invoked the extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution, assailing the alleged arbitrary and capricious action of Respondents Nos.2 to 5, whereby he has been declared "Term Back" and restrained from appearing in the 3rd and 4th Year MBBS examinations at Shaheed Mohtarma Benazir Bhutto Medical University, Larkana.

2. The factual matrix, as culled from the pleadings, is that the Petitioner was duly enrolled in the MBBS Session 2021-22 at the said University. His batch-mates are currently in the 4th Year of MBBS. The Petitioner, having failed in one subject of the 2nd Year MBBS, subsequently appeared in the supplementary examination held in February 2025 and successfully cleared the

subject. Consequent upon such clearance, he became fully eligible to sit in both the 3rd and 4th Year MBBS examinations alongside his batch-mates. It contends that the Respondents Nos.2 to 5, without lawful sanction and bereft of any enabling provision in the University's Examination Rules, have unilaterally and *mala fide* declared the Petitioner as "Term Back." The Petitioner asserts that such a declaration is *ultra vires*, null and void in law and repugnant to Regulation 15 of the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations, 2025, which unequivocally stipulates that a student is entitled to four consecutive chances to clear the first or second professional MBBS examination. The Petitioner further avers that he was never served with any show-cause notice nor afforded an opportunity of personal hearing before the impugned decision was taken. His repeated representations and applications to the Respondents were met with silence or outright denial, thereby occasioning grave prejudice, academic stagnation, mental distress, and financial detriment. It is contended that the impugned action is arbitrary, unconstitutional, discriminatory, and violative of the Petitioner's fundamental rights guaranteed under the Constitution, particularly the right to education, equality before law and protection against hostile discrimination.

3. The Respondents No.2 to 5, have filed preliminary objections and para-wise comments. Their stance is that the instant petition is misconceived and not maintainable. It is contended that the Petitioner had failed to clear his Second Year MBBS examination in both the Annual and Supplementary attempts. He subsequently availed a third attempt in the Annual Examination held in February 2025, wherein he finally succeeded. Thus, according to the Respondents, the Petitioner is eligible only for promotion to the Third Year of the MBBS course, and not to the Fourth Year, as sought in the petition. The Respondents rely upon Resolution No.A.C.26.1, passed by the Academic Council

of Shaheed Mohtarma Benazir Bhutto Medical University in its 26th Meeting, which expressly incorporates the "Term Back" policy. They contend that the Academic Council, as a statutory body under the SMBBMU Act, 2008, is mandated to regulate examinations and promotions, and that its resolutions carry binding force. It is further submitted that Regulation 15 of the Medical and Dental Undergraduate Education Policy, 2025, invoked by the Petitioner, has been misquoted and is inapplicable. That Regulation, according to the Respondents, only governs the maximum number of attempts (four) after which a student is debarred from medical education throughout Pakistan. It does not, however, entitle a student to simultaneous promotion to multiple professional years. The Respondents categorically deny that the Petitioner is attending Fourth Year classes with his batch-mates. They maintain that, once the Petitioner failed in two consecutive attempts, he was rightly declared "Term Back" in accordance with University policy, and that he was permitted to proceed to the Third Year MBBS only upon clearing the subject in his third attempt. They further assert that no illegality or arbitrariness has been committed, as the University has acted strictly in accordance with the rules and regulations framed by its Academic Council. The Petitioner's allegations of mala fides, discrimination, or violation of fundamental rights are vehemently denied.

4. Learned counsel for the Petitioner submits that the impugned action of Respondents Nos. 2 to 5 in declaring the Petitioner as "Term Back" is wholly arbitrary, bereft of lawful authority, and ultra vires the governing regulations. It is urged that the Petitioner, having duly cleared his Second Year MBBS subject in the supplementary examination held in February 2025, became fully eligible to sit in both the Third and Fourth Year MBBS examinations alongside his batch-mates. The counsel contends that the so-called "Term Back" system has no statutory recognition in the University's Examination Rules, nor is it sanctioned under the Pakistan Medical and Dental Council's

framework, which explicitly allows four consecutive chances to clear professional examinations. It is further argued that the Petitioner was never served with any notice nor afforded an opportunity of hearing before the adverse decision was taken, thereby violating the principles of natural justice. The impugned action, it is submitted, not only contravenes Regulation 15 of the Medical and Dental Undergraduate Education Policy, 2025, but also results in undue delay, academic prejudice and infringement of the Petitioner's fundamental rights guaranteed under the Constitution. In support of his submissions, learned counsel places reliance upon the case of **Alaptagin¹** and **Zainab Idrees²**.

5. Learned counsel for the Respondents Nos.2 to 5 submits that the petition is misconceived and not maintainable in law. It is argued that the Petitioner, having failed in the Second Year MBBS examination in both the Annual and Supplementary attempts, was rightly declared "Term Back" under the policy duly sanctioned by the Academic Council in its 26th Meeting. Only upon availing a third attempt in the Annual Examination of February 2025 did the Petitioner succeed, and thus his entitlement extends no further than promotion into the Third Year MBBS course. Counsel further contends that the Petitioner has suppressed material facts, particularly his repeated failures in Anatomy and Biomedical Ethics and that his reliance upon Regulation 15 of the Medical and Dental Undergraduate Education Policy, 2025, is misplaced. That Regulation, it is submitted, merely prescribes the maximum number of attempts after which a student is debarred from medical education and does not confer any right to simultaneous progression into multiple professional years. It is emphasized that the "Term Back" policy was duly passed by the Academic Council, a statutory body under the SMBBMU Act, 2008, which is mandated to regulate examinations and promotions. The University, therefore, acted strictly

¹ ALAPTAGIN V. PRINCIPAL, SAIDU SHARIF MEDICAL COLLEGE, SWAT AND 3 OTHERS (PLD 2004 Peshawar 307)

² ZAINAB IDREES V. PRINCIPAL, AYUB MEDICAL COLLEGES, ABBOTTABAD AND 3 OTHERS (2009 YLR 708)

within its lawful authority, and no arbitrariness or mala fides can be attributed to the Respondents. In support of their submissions, learned counsel places reliance upon the case of **Muhammad Umar Wahid³** and similarly on **Zainab Idrees** and an unreported Judgment dated 12-06-2015 in C.P. No.D-1292 of 2015.

6. Having carefully examined the pleadings, para-wise comments, arguments advanced by both sides and the statutory framework, we are constrained to observe that the Petitioner has not annexed any formal order, notification, or communication issued by the Respondents-University declaring him "Term Back." His allegation rests solely upon his own assertion. In writ jurisdiction under Article 199 of the Constitution, the Court cannot proceed on mere averments without documentary substantiation. The absence of such an order weakens the Petitioner's plea of arbitrary declaration.

7. The Respondents Nos.2 to 5, however, candidly admit that the Petitioner failed in both the Annual and Supplementary attempts of the Second Year MBBS examination and only succeeded in his third attempt held in February 2025. They further state that he is eligible to be promoted into the Third Year MBBS course and indeed has been allowed to appear in the Third Year examination, but his claim to simultaneous promotion into the Fourth Year MBBS is resisted as being contrary to Resolution No.A.C.26.1 of the Academic Council.

8. The Petitioner's reliance upon **Alaptagin and Zainab Idrees** is, upon close scrutiny, distinguishable and incapable of affording him the relief sought. Both of the cited judgments arose in the context of progression between Part I and Part II of the First Professional MBBS, which by design and by statutory interpretation were treated as constituting a single academic class.

³ Muhammad Umar Wahid and others v. University of Health Sciences Lahore, and others (PLD 2006 S.C300)

The ratio *decidendi* in those cases was that arbitrary denial of progression within the same professional Year, where Part I and Part II are but two components of one composite class, was impermissible, for to bifurcate them artificially would amount to denying a student the opportunity to complete what is essentially one integrated stage of medical education. The Courts in those cases emphasized that the denial of progression from Part I to Part II was contrary to the scheme of the Pakistan Medical and Dental Council regulations, which envisaged the First Professional MBBS as a unified whole.

9. The present case, however, is materially different in both fact and law. Here, the Petitioner seeks not progression within the same professional Year, but promotion into the Fourth Year MBBS, which is a distinct professional class, separate in curriculum, scope, and statutory recognition from the Third Year. The distinction is critical; whereas Part I and Part II of the First Professional MBBS are two halves of one whole, the Third and Fourth Year MBBS are sequential professional classes, each requiring successful completion of the preceding stage before advancement. To conflate them would be to collapse the structured hierarchy of medical education into an arbitrary continuum, thereby undermining the integrity of the professional framework. The maxim *sublato fundamento cadit opus* (when the foundation has been removed, the structure collapses) aptly applies; without first completing the Third Year, the edifice of the Fourth Year cannot lawfully be erected.

10. Accordingly, the precedents relied upon by the Petitioner do not apply directly to the present controversy. They dealt with denial of progression within a single class, whereas the Petitioner's claim concerns advancement into a higher and distinct class.

11. On the other hand, the principle enunciated in **Muhammad Umar Wahid**, squarely governs the present controversy and provides the

controlling ratio. In that case, the Supreme Court examined the statutory framework for medical education. It held that promotion to a higher professional class is conditional upon successful clearance of all subjects of the preceding class. The Court underscored that medical education is structured in a sequential manner, each professional Year serving as a prerequisite for the next and that any departure from this sequence would undermine both academic discipline and professional competency.

12. When this principle is read alongside Regulation 15 of the Pakistan Medical and Dental Council Regulations, 2025, the position becomes even clearer. Regulation 15 confers upon a student the statutory right to four consecutive chances to clear the first or second professional MBBS examination, thereby ensuring that a student is not expelled prematurely. However, the Regulation does not authorize simultaneous progression into multiple professional years; its scope is confined to safeguarding the student's right to continue education within the prescribed number of attempts. It is remedial in nature, protecting against debarment, but it does not dilute the requirement of sequential advancement.

13. Thus, the combined effect of **Muhammad Umar Wahid** and Regulation 15 is that while the Petitioner cannot be debarred from continuing his studies having succeeded in his third attempt, he equally cannot claim entitlement to appear in the Fourth Year MBBS examination without first completing the Third Year. The entitlement to multiple attempts is a shield against exclusion, not a sword to demand simultaneous promotion.

14. In the circumstances, this Court is of the considered view that the Petitioner, having cleared his Second Year MBBS examination in his third attempt, stands entitled to progression into the Third Year MBBS course in accordance with the governing regulations. The allegation of having been

declared "Term Back" is not substantiated by any annexed order or notification, and therefore does not call for adjudication in the present proceedings. What is material, however, is the Respondents' own admission that the Petitioner has now qualified for the Third Year and has been permitted to continue his studies at that level. His insistence upon simultaneous promotion into the Fourth Year MBBS examination is misconceived. Accordingly, the Petitioner's claim to Fourth Year progression cannot be sustained, though his eligibility for the Third Year stands recognized.

15. In view of the foregoing discussion, we are of the considered view that the Petitioner, having cleared his Second Year MBBS examination in his third attempt, is entitled to progression into the Third Year MBBS course, a position candidly admitted by the Respondents. His grievance regarding an alleged declaration of "Term Back" is not substantiated by any annexed order or notification and therefore does not call for adjudication. However, his prayer for simultaneous promotion into the Fourth Year MBBS examination is misconceived and contrary to the statutory framework, which mandates sequential progression from one professional class to the next. Accordingly, the Petitioner shall be permitted to appear in the Third Year MBBS examination in accordance with the law, whereas his claim to be allowed to appear in the Fourth Year MBBS examination is declined. The petition is **disposed of** in these terms, with parties left to bear their own costs.

JUDGE

JUDGE