

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 620 of 2019 : Mah Noor vs.
Province of Sindh
& Others

For the Petitioner : Mr. Fayaz Ahmed
Advocate

For the Respondents : Mr. Jawad Dero
Additional Advocate General

Mr. Masood Abbasi
Additional Registrar
ISRA University, Hyderabad

Date of Hearing : 03.04.2019

Date of Announcement: 03.04.2019

JUDGMENT

Agha Faisal, J: Present petition was filed by a medical student of fourth professional year seeking, *inter alia*, that one viva examination of the fourth professional year, at which she was absent, may be rearranged for her by the medical college, so that she would have to wait for an entire year for the said purpose.

2. Mr. Fayaz Ahmed, Advocate argued that the petitioner is a student of the respondent No.3 medical college, where she was admitted into the MBBS program in the year 2014-15. It was contended that while in her fourth year, the attendance rules were varied, requiring a minimum threshold to be achieved in order to be eligible to sit in the annual examinations. Per learned counsel, the petitioner was unable to sit in the annual examination on account of her low attendance, however, she was enabled by the respondent medical college to sit in the supplementary examination held in January 2019. Learned counsel submitted that the petitioner sat in all the theory examinations and was

precluded from appearing in viva examination scheduled on 15.01.2019. It was pleaded that the petitioner arrived late at the examination center on account of a traffic jam, however, the delay was only 10 minutes, whereas, a 15 minutes grace period was admissible under the applicable rules. It was thus prayed the petition be allowed and the medical college be directed to arrange a viva examination for the petitioner so that she is not set back an entire year.

3. Mr. Masood Abbasi, Additional Registrar, ISRA University, Hyderabad, represented the respondents No.2 and 3 and also submitted para-wise comments to the petition. It was pleaded in comments that according to the applicable regulations, 75% attendance was mandatory in order to enable a candidate to appear in the final examination. However, in order to facilitate students the medical college arranged extra classes for them to fulfill the requirements. In addition thereto, for students who remained below the requisite threshold and could not attend the annual examination, arrangements were made for them to appear in supplementary examination. It was submitted that the petitioner availed opportunity of the supplementary examination and appeared in her theory examinations, however, she was unable to reach the relevant venue in time before her viva examination. It was stated that the reported examination time was 09:00 am but examination started at 09:30 am primarily due to the absence of the petitioner. The Additional Registrar referred to a letter issued by the relevant Professor and verified by the Principal of the medical college, wherein it was stated that even though the examination was started belatedly due to absence of the petitioner, she failed to appear until slightly before 10:30 am, when the hour long examination was concluded. It was further submitted that the MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018 ("**Regulations**"), prescribed that no student can be promoted to the higher class unless the student passes all the subjects of the previous classes. It was further demonstrated from the Regulations that minimum attendance requirement was prescribed therein and further that there was a bar which stipulated that there should be no more than two professional university examinations in an academic year. Therefore, it was submitted that respondent Nos.2 and 3 were unable to schedule an extra exam for the petitioner or to permit her

to attend the final year classes in view of the Regulations. It was however stated that the petitioner had satisfactorily completed all her other fourth professional year examinations and while it may be unfeasible to seek permission for an extra examination for one student, the respondents would have no cavil to if a relaxation was granted by the regulatory body in the present facts and circumstances to enable the petitioner to attend the final year classes and sit for the annual examination, at the end of the said year, along with sitting for her outstanding viva.

4. We have considered the arguments of the respective learned counsel and gleaned therefrom that the petitioner would be required to spend entire year attending only one class, for the subject in which her viva examination remains outstanding. The Additional Registrar has categorically stated that notwithstanding the fact that the petitioner has already completed all the relevant theory examinations, the said respondents are constrained to hold her back in view of the Regulations. The Additional Registrar further submitted that since the Regulations precluded students from being promoted to higher class unless they pass all the subjects of previous classes, therefore, it is not unilaterally possible for the respondent Nos.2 and 3 to permit the petitioner to attend classes in the final professional year and then sit in the annual examination for the final year along with appearing in the viva, which was missed earlier.

5. We have also examined the record available before us and appreciated the candor of the Additional Registrar in submitting that while the petitioner had not failed in any class, the verbiage of the Regulations precluded the said respondents from permitting the petitioner to attend the classes for the final year and sit in the final year examination in conjunction with viva that remains to be taken, unless the same was acquiesced by the Pakistan Medical and Dental Council ("**PMDC**"). The PMDC has not been arrayed as a respondent in the present petition, therefore, their opinion with a view to ameliorate the present predicament was not placed before us. We are also cognizant of the time constraint and are of the opinion that it would take a significant period of time if we were to array the PMDC as respondent and

thereafter seek a response therefrom as further delay could have an adverse consequence upon the minimum attendance requirement, even if the PMDC devised to accommodate the petitioner.

6. In view of foregoing, we hereby direct the respondent Nos.2 and 3 to immediately send a representation to the PMDC highlighting the case of the petitioner and seeking whether PMDC would allow the petitioner to attend the final year classes and sit for the annual examination, subject to completion of all other requisites, at the end of the said year along with attending her outstanding viva. We would expect that said representation shall be made by the respondent Nos.2 and 3 to the PMDC within a period of five days from receiving this order and it is further expected that the PMDC would consider the said representation sympathetically and pass an order thereupon preferably within a period of 15 days from receipt of the aforementioned representation.

7. This petition, along with pending applications, is disposed of in terms herein.

J U D G E

J U D G E