

IN THE HIGH COURT OF SINDH AT KARACHI

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

CP D 6697 of 2016 : Miralam vs.
Province of Sindh & Others

For the Petitioner : Mr. Shakeel Ahmed, Advocate

For the Respondents : Mr. Jawad Dero
Additional Advocate General

Prof. Tariq Mehmood
Executive Director JPMC

Prof. Kausar Amir
Coordinator, BMSI, JPMC

Mr. Riaz Gill
Additional Director, JPMC

Date of Hearing : 29.05.2019

Date of Announcement : 26.06.2019

JUDGMENT

Agha Faisal, J: The present petition was filed challenging the denial of admission to the petitioner by the Basic Medical Science Institute, Jinnah Post-Graduate Medical Science, Karachi ("**BMSI**") in its M.Phil - Clinical Pathology program ("**Program**").

2. Mr. Shakeel Ahmed, Advocate appeared on behalf of the petitioner and submitted that the petitioner had cleared a preliminary entrance test dated 20.07.2016 and obtained the same score as another candidate, not made party herein, however, while the other candidate was accepted for admission the application of the petitioner was discriminatorily rejected. Learned counsel submitted that the petitioner was duly entitled to be enrolled in the Program and that his enrollment therein may be sanctioned by this Court.

3. Professor Tariq Mehmood, Executive Director JPMC, Professor Kausar Amir, Coordinator BMSI and Mr. Riaz Gil, Additional Director JPMC appeared on behalf of the BMSI/JPMC and submitted that a

candidate was required to be endowed with an MBBS/BDS qualification in order to be enrolled in the Program and since the petitioner was devoid of such qualification, therefore, his application was rightly rejected. It was further submitted that while the petitioner's application was rejected in the year 2016, however, he had applied again in the year 2018 for the M.Phil course in the department of microbiology and in such regard the candidature of the petitioner was accepted. It was submitted that this fact has been concealed by the petitioner from this Court as the petitioner is seeking to obtain unmerited benefit for which he has demonstrably not qualified.

The learned Additional Advocate General Sindh supported the arguments advanced on behalf of the respondents and concluded that the present petition was devoid of merit, hence, ought to be dismissed forthwith.

4. We have considered the arguments advanced on behalf of the respective parties and have also perused the documentation to which our surveillance was solicited.

5. A bare perusal of the petitioner's application form, available on file, demonstrates that requirements for admission specifically include "MBBS with House Job". The document on record is supposed to be a copy of the very application form that the petitioner had filed in the year 2016 and it is the petitioner himself that has annexed the said document in the present petition. It is apparent from the form that the qualifications mentioned by the petitioner therein make no reference to any MBBS degree. It is pertinent to record at this juncture that no claim was ever made by the petitioner, in the pleadings or during the course of arguments, to have ever qualified for an MBBS degree.

6. It was submitted on behalf of the respondents that the eligibility criteria advised by the Pakistan Medical and Dental Council ("**PMDC**") requires that only candidates having an MBBS/BDS degree be considered for admission into the Program. It was argued before us that not only was the evidence of the aforesaid degree requisite but a candidate has also to submit house job certificates recognized by the PMDC.

The rationale advanced in such regard was that since the Program leads to a clinical degree, therefore, it is restricted to medical graduates only and that the petitioner clearly is not a medical graduate.

It was submitted before us that while the candidate may apply to obtain admission in an M.Phil program in the fields of microbiology or biochemistry, however, non-medical graduates cannot be considered for enrollment in the M.Phil programs of anatomy, histopathology and/or clinical pathology as the said programs are clinical in nature.

7. It stands demonstrated from the record arrayed before us that the petitioner was not qualified for the Program. Even though the candidate who was granted admission to the Program, as opposed to the petitioner, was not made a party to the proceedings, it is gleaned from the comments filed by the respondents that the said person was selected by the committee on the basis of having an MBBS degree in addition to the clearance of the entry test. In such regard, the petitioner's claim for discrimination is unfounded.

8. The petitioner appeared in person during the course of hearing and was confronted with a copy of the offer letter dated 11.09.2018, wherein BMSI had offered the petitioner admission in its M.Phil microbiology program. The petitioner was also shown a copy of the joining report dated 29.09.2018, duly signed by the petitioner and delivered to BMSI, stipulating that the petitioner was joining the said department on the date thereof. Even though the learned counsel for the petitioner had submitted that he was unaware of the subsequent admission of the petitioner, the petitioner admitted that he had, in fact, applied in the year 2018 and was granted admission, however, he submitted that thereafter he was in process of disassociating himself from the said program.

9. The right to education is paramount in our consideration, however, the said right does not mean that a person may be enrolled in a degree program without having completed the pre requisites in regard thereof. The petitioner was found by BMSI to not be eligible for enrolment in the Program, hence, he was denied admission. Thereafter, the petitioner

himself then applied for an M.Phil program that did not require him to be a medical graduate and the said candidature was accepted by BMSI.

10. In view of the reasoning and rationale herein contained, it is manifest that the petitioner has been unable to demonstrate any vested right for being admitted into the Program for which he was, prima facie, not qualified. The petitioner has also been unable to demonstrate the infringement of any fundamental right by the respondents or any other person whatsoever. In view hereof, this petition, being devoid of merit, is hereby dismissed with no order as to costs.

JUDGE

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