

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.928 of 2018

Date	Order with signature of Judge
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1. For hearing of CMA No.6914/2018

For plaintiff	:	Moulvi Iqbal Haider advocate
For defendants No.2 to 4	:	Mr. Wasiq Mirza, advocate
For State/defendant No.1	:	Ms. Leela @ Kalpana AAG Mr. Sharaf Din Mangi, State Counsel
Heard on	:	16.05.2018
Decided on	:	22.05.2018

ORDER

KAUSAR SULTANA HUSSAIN, J. Through this application bearing CMA No.6914/2018 (U/O XXXIX Rule 1 & 2 r/w Section 151 CPC) the learned counsel for plaintiff Sohail Ahmed sought relief that the defendants may be restrained from prohibiting the plaintiff from attending the lectures of final year of MBBS, in any manner whatsoever till final decision of the case. The plaintiff has attached his affidavit alongwith this application.

2. Notice of this application was given to the defendants. The learned counsel for defendant No.4 (Controller of Examination of Dow University of health & Sciences) has submitted his counter affidavit to the present application.

3. Brief facts necessary for the disposal of present application are that the plaintiff is a student of Shaheed Muhtarma Benazir Bhutto Medical College (SMBBMC), Lyari and perusing his degree of MBBS and is presently in fourth year of the said course. However, due to demise of his mother on 23.09.2017, he failed in three papers out of twelve papers. He sat in the examination of fourth year for six theoretical papers and also appeared in five examinations of viva. He, however, did not pass three theoretical papers out of six such papers, though cleared all examinations of viva. The plaintiff decided to appear in supplementary examination for three failed subjects and deposited examination fee with the request to defendant No.5 to promote him in final year (fifth year) MBBS. His such

request was turned down whereas according to him many failed students were promoted as such he is being discriminated against. He approached to defendants No.3 to 5 for promotion to final year but all in vain, hence this suit.

4. The defendant No.4, who is Controller of examination of Dow University of Health Sciences (DUHS) with whom SMBBMC, Lyari is affiliated and is also examination body for the said medical college, in his counter affidavit opposed the contention of the plaintiff on the ground that terminal /annual examination of semester-VII of fourth year MBBS were held in the month of June, 2017 wherein plaintiff appeared and failed in four subjects which was much earlier than the sad demise of his mother which took place in September in the same year; that in September, 2017 when the mother of plaintiff expired, he was studying in semester-VIII of fourth year MBBS and as per prescribed rules, he was allowed to appear in the retake/repeat supplementary examination of the subjects of semester-VII and also semester-VIII but he failed in two subjects of semester-VII and one subject of semester-VIII; that there will only be a semester examination and retake examination for each semester and plaintiff availed both the opportunities; that it is mandatory for every student to pass all the viva as well as theory subjects of that particular module before promoting to next year; that once any student has availed the opportunity of semester examination as well as retake and remained unsuccessful in any of the subjects, he/she shall need to repeat the whole semester but at the end of the semester only need to appear in those papers in which such student failed; that before passing remaining subjects of semester-VII and VIII plaintiff cannot be promoted to semester-IX of the fifth year MBBS; that deposit of exam fee only makes the student entitled to appear in exam and not for promotion in the next year; that none of the students were promoted to final year MBBS without passing all the subjects of fourth year MBBS and that fifth year MBBS has already commenced from February, 2018 and four months already passed and if the plaintiff is allowed to attend the session of fifth year even than he cannot appear in the examination of semester-IX of fifth year MBBS on the basis of shortage of attendance, as student having attendance not less than 90% will only be allowed to appear in the examination.

5. I have carefully examined the written as well as verbal arguments put forth by both sides and also gone through relevant record presented before me. It appears that the case of plaintiff is founded on three main

assertions that due to demise of his mother, he could not pass three papers in semester-VII of fourth year and subsequently also failed for two subjects of semester-VII and one subject of semester-VIII in supplementary examination; that many students who could not clear some papers but promoted as such he is being discriminated and that he has submitted supplementary examination fee but he is not being allowed promotion to semester-IX of fifth year MBBS. On the other side the arguments advanced by the defendants are based on examination policy of the University (DUHS) with whom SMBBMC, Lyari is affiliated. Per defendants, the MBBS comprises of five years course of institutions/ study, which have been divided into ten semesters i.e two semesters each year. As gathered from the "Promotion Policy for Students of DUHS" dated 23.05.2013. Prospectus of DUHS, session 2013 and "Regulations Governing the MBBS examination" by the University of Karachi (submitted by defendants' side), vertical promotion is possible in any academic year if student fails in odd semester viz, first, third, fifth, seventh and ninth being in the same academic year. However, horizontal promotion from one academic year to subsequent academic year shall only be possible if the student clears all the odd and even papers of that particular academic year. I have also gone through "MBBS and BDS (Admission, House Job and Internship) Regulations 2016 notified by Pakistan Medical and Dental Council (PMDC) dated 27.10.2016. It emerges from bare reading of these regulations that only section 10 and 11 throw light on some aspects of MBBS and BDs examinations. The said sections are reproduced below:

10. Mandatory professional examinations for MBBS and BDS course - (1) For awarding MBBS degree, the respective university shall conduct professional examinations specified in column (2) of the Table below in academic year as specified in column (3) thereof, namely:

S.No.	Name of professional examination	To be conducted
(1)	(2)	(3)
1.	MBBS first professional examination	At the end of first academic year
2.	MBBS second professional examination	At the end of second academic year
3.	MBBS third professional examination	At the end of third academic year
4.	MBBS fourth professional examination	At the end of fourth academic year
5.	MBBS final professional examination	At the end of fifth academic year

Note:

(2) For awarding BDS degree, the respective university shall conduct professional examinations specified in column (2) of the Table below in the academic year as specified in column (3) thereof, namely:

S.No.	Name of professional examination	To be conducted
(1)	(2)	(3)
1.	BDS first professional examination	At the end of first academic year
2.	BDS second professional examination	At the end of second academic year
3.	BDS third professional examination	At the end of third academic year

4.	BDS final professional examination	At the end of fourth academic year
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11. Re-admission of students.- Any student who fails to clear first or second professional examination in four consecutive chances availed or un-availed and has been expelled on that account shall not be eligible for continuation of medical and dental studies for the MBBS and BDS in the subsequent professional examinations.

6. From the above discussion it transpired that the plaintiff could not prove his locus standi within the four walls of examination policy framed by the DUHS(examination body). Moreover his point of view is also repugnant to examination policy of Karachi University which was erstwhile examination body for almost all medical colleges in Karachi affiliated to it, hence relief sought by the plaintiff cannot be granted as any positive resolve may open a flood gate of such litigations thereby seriously jeopardizing the autonomy of Universities/examination bodies and integrity of examination system of such a delicate profession.

7. Before parting with the order, I would conclude that regulations of PMDC are not explicit with regard to horizontal promotion of students from preceding academic year to succeeding academic year on account of failure of one or more papers in an academic year as is evident from section 10 and 11 *ibid*. PMDC is a statutory regulatory authority established under Pakistan Medical and Dental Council Ordinance, 1962 and is mandated to establish uniform minimum standards of basic and higher qualifications in medicine and dentistry throughout Pakistan. In order to ensure uniformity in the examination system within its area of jurisdiction specially to set out policy and parameters for promotion of students from one academic semester/year to next level academic semester/year, it is incumbent that PMDC should prepare and notify such regulations within minimum possible time but earlier to commencement of ensuing admissions in MBBS/BDS.

8. The above application bearing CMA No. No.6914/2018 stands disposed of in above terms. Let copy of this order be also served upon PMDC for compliance.

Dated: _____ 2018

JUDGE