

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-2939 OF 2019

Petitioner : Quratulain Ibrahim Arain,
through Amar Naseer, Advocate.

Respondent No. 1 : Government of Sindh, through
Shehryar Mehar, AAG.

Respondent No. 3 : Dow University of Health
Sciences, through Wasiaq Mirza,
Advocate, along with Professor
Saba Suhail, Principal, School
of Post Graduate and Medical
Sciences, DUHS.

Dates of hearing : 02.09.2020

JUDGMENT

YOUSUF ALI SAYEED, J - In October 2012, the Petitioner, along with 20 other students, was admitted to the Masters in Advanced Physical Therapy Program (the “**Program**”) offered by the Respondent No.3, Dow University of Health Sciences, through its Institute of Physical Medicine & Rehabilitation, but apparently failed to complete the research component of the Program within the validity of such enrolment, which was for a maximum period of 5 years as per the approved policy, with her enrolment then being cancelled for that reason in terms of a Notification dated 10.10.2018, bearing Ref No. DUHS/ DPGS/ PGEC/ Minutes/Follow-up/02/2018/3044, along with that of other students across various programs. Thereafter, the Petitioner apparently applied for readmission, which was approved vide Letter dated 24.12.2018, bearing Ref No. DUHS/BASR/2018/-384, but with credit transfer to the extent of only 50% of the coursework earlier completed.

2. Being aggrieved, the Petitioner has assailed the aforementioned Notification dated 10.10.2018 and Letter dated 24.12.2018 through the instant Petition under Article 199 of the Constitution, seeking *inter alia* that the same be declared illegal, void and of no legal effect, and that she (the Petitioner) “be allowed extension in enrollment allowed to other students, in order to enable her to complete her Research work”. (Underlining added for emphasis).

3. As is discernible from the Memo of Petition, including the prayer clause, the case set up by the Petitioner is essentially one of discrimination. In that vein, it has been averred that the maximum duration for completion of the Program was a period of 5 years as per the approved Policy, but the Respondent No.3 did not always implement the same and the so-called “Policy in Practice” had been “to allow a period of 7 years of so, on selective and arbitrary basis”. It was thus averred that when the entire batch of 21 students could not complete the requisite research work, a failure that the Petitioner attributes to what has been termed by her as the “abysmal professional delivery on the part of the Respondents”, they applied for extension of time in 2016, which was allowed, but even so, 15 students still failed to complete the research work during the extended period of enrolment (i.e. by November 2017), however, the enrolments of only five of those students were cancelled vide the Notification dated 10.10.2018, and rather than adhering to their requests for extension, as granted to other students, the Respondent No.3 subjected them to re-enrolment, and that too, with limited transfer of credit, as aforementioned.

4. Proceeding with his arguments along similar lines, learned counsel for the Petitioner argued that the Notification dated 10.10.2018 was bereft of proper sanction as the same had been issued without approval of the syndicate and academic council, and was discriminatory as the enrolments of few selected students had been cancelled, which was in sharp contrast to the treatment given to ten other students of the same batch, to whom extension had been granted, whereas the Petitioner and 4 others were sent an email on 02.01.2019 with the Letter dated 24.12.2018 as an attachment, requiring them to seek re-enrolment, against the policy and contrary to the treatment accorded to their peers. He placed reliance on the judgments in the cases reported as Zeeshan Javed vs. Province of Sindh 2019 MLD 368, Abdul Haleem Siddiqui vs. Federation of Pakistan 2019 PLC (CS) 238, and Dr. Nauman Muhammad Khan vs. CA&DD 2019 MLD 97.

5. Conversely, learned counsel appearing on behalf of the Respondent No.3 denied the allegations of ineptitude and discrimination. He submitted that as per the course duration policy set out in the Prospectus, a copy of which was placed on record with the Counter-Affidavit, the maximum duration allowed for each course was stated to be equal to twice the duration of the taught portion of the course, and in the case of the Program the duration thereof was 2 years, hence the enrolment validity was in fact only 4 years, with the research component forming part of the Program within that timeframe. Additionally, it was also specified in the Prospectus that in the event of failure to complete the course in the given duration, re-enrolment would be required to complete the course as a new candidate, however credit transfer of up to 30% could be given from the previous course. It was submitted

that in the case of the Petitioner, she had failed to complete the coursework due to her own apathy and absenteeism, remaining recalcitrant despite warnings. Attention was drawn to the exchange of correspondence in that regard.

6. With reference to the Counter-Affidavit and with the assistance of the Principal, School of Post Graduate and Medical Sciences, who was in attendance, it was explained that all of the 21 students forming part of the batch admitted to the Program in October 2012 were required to pass their coursework and submit the research work by November 2016, but a number of them failed to do so and their cases were reviewed by the Board of Advanced Studies and Research (the “**BASR**”), at its 54th meeting held on 06.02.2018 along with the cases of other Masters/Ph.D. students on the basis of their completed coursework completion and the status of their research synopsis/dissertation, with it being decided that of the students whose enrolment had exceeded the maximum duration allowed in terms of the policy governing the postgraduate program, the enrolment of those who had not even submitted/approved research project/thesis synopsis by any of the relevant bodies of the University (i.e. the Scientific Committee/Institutional Research Review Committees/IRB/BASR) would not be extended, and extension would only be awarded to those students who had at least completed and submitted and obtained approval of their research synopsis from any of those bodies on or before 06.02.2018. However, while considering certain representations that were forthcoming from students, the Academic Council, in its 15th Meeting held on 17.09.2018, decided *inter alia* that postgraduate students whose enrolments were cancelled due to expiry of the enrolment period would be allowed to re-enrol and credit transfer of 50% would be allowed to them. Thereafter, pursuant to the decision taken by the

BASR at its 56th meeting on 28.09.2018, those students who had already completed the major part of their research or submitted their thesis project for approval or submitted their synopsis and obtained approval in that regard were allowed extensions to complete their research, whereas those students who had not initiated their research or even submitted their research proposal to any relevant body were allowed readmission with credit for 50% of their coursework. It was pointed out that 13 students were in the former category, whereas 5 students, including the Petitioner, fell in the second, and had not been able to submit their research plan/synopsis even after taking one extra year after lapse of their enrolment period. Furthermore, the decision taken in this regard was applied across the postgraduate programs, with a list of 58 students similarly re-admitted in the various programs with 50% credit being placed on record. Learned counsel further submitted that the allegations of discrimination were thus misconceived and maintained that the approach of the concerned functionaries of the Respondent had throughout been in accordance with the applicable policy and rules, which had been applied objectively and even-handedly, without undue favour.

7. Having considered the arguments advanced at the bar in light of the pleadings and material placed on record, it transpires that no discernible case of discrimination stands made out in as much as an intelligible criteria seems to have been devised and applied by the Respondent No.3 for addressing the cases of the students who had exceeded the enrolment period specified in respect of the Program, with extension or re-admission being the two distinct tracks devised in that regard. Evidently, the case of Petitioner and other similarly placed students did not qualify for an extension in enrolment, as the volume of work undertaken by them up till then was not commensurate to that of the students

whose cases merited extension, and thus formed a separate class. That being so, the cases of the students in the distinct classes are not correlatable, and no case of discrimination stands made out as there is no allegation or indication of any relaxation having been extended to any person in the same category as the Petitioner. The judgments relied upon by the Petitioner are distinguishable on the facts and are inapplicable to the matter at hand.

8. Under the circumstances, it is apparent that the Petition is misconceived, hence is dismissed, along with the pending Miscellaneous Application.

JUDGE

JUDGE

Karachi
Dated _____