

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

**Present:**

Yousuf Ali Sayeed and  
Arbab Ali Hakro, JJ

**HCA No.27 of 2023**

Sheraz Hakeem.....Appellant

Versus

Agha Khan University & others.....Respondents

**HCA No.46 of 2023**

Agha Khan University & others.....Appellants

Versus

Sheraz Hakeem & another.....Respondents

**HCA No.63 of 2023**

Agha Khan University & others.....Appellants

Versus

Sheraz Hakeem & another.....Respondents

Zohaib Sarki, Advocate for the Appellants in HCA No.27/2023  
and for the Respondents in HCAs Nos.46 & 63 of 2023.

Hussain Ali Almani, Advocate for the Appellants in HCAs  
Nos.46 & 63 of 2023 and for the Respondents in HCA  
No.27/2023.

Date of hearing : 12.08.2024, 11.09.2024, 25.09.2024  
and 02.10.2024

## ORDER

**YOUSUF ALI SAYEED, J.** - These Appeals stem from Suit No. 1938 of 2022 instituted before this Court on the Original Side by a student of the MBBS program at the Aga Khan University (“**AKU**”), namely Sheraz Hakeem (“**SH**”), impugning the decisions made in the matter of his expulsion by the Disciplinary Committee, as communicated through the Disciplinary Decision Notification dated 23.09.2022 (the “**Notification**”) issued by the Interim Vice Provost, and the Appeals Committee, as subsequently communicated through a Letter dated 02.11.2022 issued by the Provost (collectively, the “**Impugned Decisions**”).

2. The reasons for expulsion are delineated in the Notification, the substantive part of which reads as follows:

“On August 3, 2022 you were informed about the Disciplinary Committee that had been put in place to review acts of behaviour on your part that were in violation of the Student Code of Conduct and Disciplinary Procedures of The Aga Khan University.

Based on the ensuing investigation, the Disciplinary Committee made a note of the following:

- i. You unauthorizedly approached an alumnus of the University on February 10, 2022, seeking to undertake a private elective in the United States of America without any prior intimation to the University.
- ii. You were fully aware that being a home student, you are not permitted to undertake a foreign elective in the fourth year of your degree; however, you deliberately and advertently (as early as February 2022) sought a foreign elective in the USA.
- iii. In your email correspondence with the University on 30<sup>th</sup> June 2022, you maintained that it was your brother’s wedding in the United States, which was your primary reason for travel; however, it was only when the Disciplinary Committee asked for his marriage license, you stated that due to the death of your purported aunt, the wedding/marriage was converted into an engagement.

- iv. The death certificate of your purported aunt states that she passed away on 8<sup>th</sup> June, 2022, however, in all correspondence you continued to mention marriage and it was only as an afterthought, when the disciplinary committee sought evidence of marriage/wedding did you change your stance and mention about your alleged aunt. You, admittedly failed to inform the University about the change of plans from the alleged wedding to engagement, which was an unapproved holiday. This is ambivalent and doubtful and appears to be concealment of facts.
- v. You have alleged (in your written statement) that you obtained approval from Dr. Sadaf Altaf in the Office of Career Counselling and Electives (OCCE which she has categorically denied) on 21<sup>st</sup> March, 2022, whereas you had already started seeking private electives more than a month before on February 10, 2022, which is unethical and deliberate violation of policies and ethics.
- vi. Not only did you undertake an unauthorized foreign elective, you also failed in all respects the University, its guidelines, practices, risking lives of the patients and brought the university into disrepute when you purportedly tested positive for Covid (the veracity and validity of your test is spurious and not admitted), you continued with your rotation (attending clinics) without intimating the faculty and staff, which is unacceptable conduct for any person, let alone a fourth year medical student.

The Committee also noted that unfortunately, this has not been an isolated event and your previous conduct and practices cannot be disregarded, which were also illegal and put the University, Hospital and patients at risk including breach of patient confidentiality, morality and ethics by photographing patient's partograph and record in the OB/GYN and sleeping on patients couch during rotation, all of these are unbecoming of a doctor/physician.

In light of the above, I am writing to inform you that you are being expelled from the University effective July 1, 2022. All the rotations you have gone through from July 1, 2022 until September 5, 2022 will be considered null and void.

As per policy, you may initiate the appeal process within 10 days of receiving this letter, using the appeal form available on <https://www.aku.edu/admissions/Documents/student-na-appeal-form.pdf>.

This letter is being communicated to your parents, Dean Medical College, and the Student Records Office.”

3. Through CMA No. 19035 of 2022 preferred in the Suit under Order 39, Rules 1 and 2 CPC, SH sought suspension of the Impugned Decisions while also seeking that he be allowed to continue with his medical education by completing certain missed rotations, and it being prayed inter alia that:

- 1) *“Hospital Paediatric” rotation, which he missed due to the suspension. Recently, the batch of 2024 was promoted to year 4 of M.B.B.S. on December 6, 2022. The batch of 2024 has recently started “Hospital Paediatrics Rotation” from December 6, 2022. Plaintiff may be allowed to do his “hospital Paediatrics Rotation” with the batch of 2024. This will ensure that his missed academic time is made up for.*
- 2) *“Medicine Rotation O.S.C.E. Exam” from Plaintiff, which he missed due to being suspended on September, 6, 2022 by the defendants / A.K.U. administration two days before his medicine exam, as Plaintiff has completed the rotation’s full credit hours of 7 weeks.*
- 3) *“Psychiatry Rotation O.S.C.E. Exam” and full credit hours of 3.5 weeks may be allowed since Plaintiff has completed it.*
- 4) *Year 4 Prof Examinations which Plaintiff missed due to being suspended. This includes:- Obstetrics and Gynecology Prof Exam, Hospital Paediatrics Prof Exam and Psychiatry Prof Exam.*
- 5) *After taking all the fourth (4<sup>th</sup>) Year Examinations that Plaintiff, missed due to being suspended, he may be promoted to year 5 of M.B.B.S.*
- 6) *“Paediatrics rotation” during his fifth (5<sup>th</sup>) year elective time from December 12, 2022; as according to **Page 31** of A.K.U. Student Handbook, “When a student is required to take a remedial, up to four weeks, could be used for it from the elective period of Year 5.”*

4. That application was dismissed by a learned Single Judge through an Order dated 30.01.2023, with SH nonetheless being allowed to continue to attend classes, with the relevant paragraphs reading as follows:

“9. During pendency of the Suit, Dr. Laila Akbarali/Defendant No.3-A provides a Schedule for the completion of Plaintiff’s requirements and provides a chance to the plaintiff to appear in the Exam by following the policy. It is appropriate to reproduce the Table as under:

<b>Requirement</b>	<b>Dates</b>	<b>Note</b>
Medicine OSCE Exam	Feb 2, 2023	
Paediatrics rotation	Feb 6, 2023– March 25, 2023	Exam: TBD Paeds department will announce this to all the students
Psychiatry 50% Remedial	April 3, 2023 – April 13, 2023	Exam: TBD Expected: April 13, 2023
Pre-Prof Break	April 14, 2023– May 12, 2023	
Year IV Prof	May 15 – 19, 2023	

10. I have gone through the material placed on record by the parties besides the contentions of the learned counsel. Normally the Courts exercise parental jurisdiction in the student’s cases. However, the Courts never encourage a case of student who ex-facie violates the scheme of educational institutions. If favours of the nature are extended in favour of the student then the standard of the education and the discipline which is pre-requisite of a college/university would be compromised. In the case in hand prima facie there is sufficient material produced by the University reflecting that the absence of the plaintiff was neither justified nor condonable. It is stated that the grounds for the absence of the plaintiff were considered by the authority concerned and reached to a conclusion that the case of the plaintiff is fully covered by the Student Handbook-2022 Procedure 3.4 (***cited Supra***). The issue that the plaintiff be allowed to be treated in the manner the other two students namely Zoha Qureshi and Iman Farooqui is also not persuasive, as the University on examining these cases came to the conclusion that their case is an exception in view of the Student Handbook-2022 and were allowed to sit in the exam. I also clear in my mind that in the plaintiff case balance of convenience rests with the University no irreparable loss would be caused to the plaintiff who cannot be allowed premium over his default. On the contrary, allowing injunction application would definitely amount to intervention in the educational scheme of the University. The plaintiff therefore be allowed to appear in the exam as per the Schedule which has been filed by the University. Resultantly, the application bearing CMA No.19035/2022 is dismissed. In consequence thereof, contempt applications listed at Serial No.2 & 3 are also dismissed as Defendant No.3-A has given proper rotation policy/schedule to Plaintiff to appear in the examination.”

5. The concession granted to SH on 30.01.2023 was then perpetuated through the subsequent Order dated 16.02.2023, whereby it was directed that he “be permitted to sit in the classes, appear in exam and be given all facilities including physical access, electronic and the card etc., forthwith”. In that backdrop, cross-appeals bearing HCA Nos. 27 and 46 of 2023 have been preferred by SH and AKU respectively against the first of those Orders, whereas HCA No. 63 of 2023 preferred by AKU relates to the second.
  
6. Proceeding with his submissions, learned counsel appearing on behalf of SH argued that he had been treated unfairly in as much as the factual matters presented by him in his defense had not been properly considered and the punishment meted out to him was also unduly harsh, as it went far beyond the scope of what was envisaged in terms of the relevant Guidelines, Policies and Procedures of AKU. He submitted that SH had applied in good faith for leave in accordance with the Student Handbook on account of an upcoming family wedding so that he could travel to the United States to attend the occasion, only for the event to be put off due to a bereavement in the family and his return to be delayed due to confusion caused by certain errant Covid test results prompting an inadvertent miscommunication on his part, which set in motion a chain of events that spiralled out of control without there being an intention on his part to be anything but be forthright in his dealings with AKU.

7. He invited attention to a Note appearing in the Student Handbook, stipulating that a student remaining absent from an examination without prior permission or adequate supporting medical evidence from the Student Health Service would be considered as having failed the same, and argued that SH had already endured such a consequence which was reflected accordingly in his transcript. He argued that further disciplinary action had been unwarranted and even if it was felt that some further censure was required, expulsion was too severe and disproportionate a measure. He pointed out that the particular examination missed/failed by SH during his period of absence had then been cleared and that he had since completed the MBBS program. He sought that the Order dated 30.01.2023 be set aside to the extent of the dismissal of CMA No. 19035 of 2022 and that operation of the Impugned Decisions be suspended, and placed reliance on the judgments in the cases reported as Kashif Anwar vs. Agha Khan University 2006 CLC 1621, Rimsha Shaikhani vs. Nixor College through Board of Directors/Governors and another PLD 2016 Sindh 405, Yasir Nawaz and others vs. Higher Education Commission and others PLD 2021 Supreme Court 745, and Khyber Medical University and others vs. Aimal Khan and others PLD 2022 Supreme Court 92.
  
8. Conversely, learned counsel for AKU invited attention to the same Note in the Student Handbook so as to point out that any unauthorised leave also constituted a disciplinary offence, which according to him was sufficient to have triggered Clause 7 of the Guidelines, Policies and Procedures, setting out the disciplinary proceedings and actions that could be taken, including expulsion, and pointed out with reference to the Notification that the circumstances underpinning the same were not simply confined to absence, but extended

to disregarding published policies and regulations as well as repeatedly providing wrong and false information during the course of the enquiry conducted in the matter and the buildup thereto, which constituted disciplinary offences under Clauses 5.1.14 and 5.1.17 of the Guidelines, Policies and Procedures.

9. He argued that it was within the competence of the Disciplinary Committee to proceed in the matter in the manner deemed appropriate under the given circumstances as per the relevant rules and regulations and the Court ought not to second guess its actions, especially not at the interlocutory stage. He placed reliance on the judgments of the Supreme Court in the cases reported as Khyber Medical University and others vs. Aimal Khan and others PLD 2022 Supreme Court 92, Aina Haya vs. Principle Peshawar Model Girls High School-1, Peshawar and others 2023 SCMR 198, Sundas and others vs. Khyber Medical University through V.C Peshawar and others 2024 SCMR 46, and Liaqat University of Medical and Health Sciences (LUMHS) Jamshoro through Registrar and another vs. Muhammad Ahsan Shakeel and others 2024 SCMR 443.
  
10. Having heard the arguments, it merits consideration that while seized of these Appeals arising from interlocutory proceedings, it is neither necessary nor desirable for us to venture in depth into the merits or demerits of the case of either party, especially as much water has flown since the time of the impugned Orders, with subsequent events have gone so far as for SH to have virtually completed the MBBS program on the strength of the concession granted to him to sit in the classes and appear in exams. As such, the fate of the matter hangs in the balance pending final determination of the Suit, as was candidly conceded by

learned counsel for the parties. Ergo, we had posed a query on 11.09.2024 as to what turned on the fate of the Appeals under the given circumstances, and were informed by learned counsel appearing on behalf of SH that the results of 4 courses/modules remained unknown as they had been withheld by AKU, hence the outcome ought to be disclosed and an opportunity to cure the deficiency, if any, ought to be afforded pending final determination of the Suit. On that date, we had thus directed learned counsel for AKU to seek instructions in the matter, with the position that emerged being reflected in the Order made on the next date (i.e. 25.09.2024), which reads as follows:

“Learned counsel for the Respondent in High Court Appeal No.27 states on instructions that the university is willing to disclose results and transcripts of the Appellant and, in the event that the Appellant has failed any module / course, he may be given an opportunity to repeat or resit the same, but without unsettling the impugned Order that is the subject of the appeal, with the eventual fate of the Appellant remaining to be determined upon final decision of the underlying Suit. Learned counsel for the appellants seeks time. To come up on 02.10.2024 at 11.00 a.m.”

11. Thereafter, during the course of submissions made on the subsequent date, it was contended by learned counsel for SH that the Impugned Decisions had to be suspended even if the course of action envisaged in the Order of 25.09.2024 were followed, as AKU had incorporated a Note/Disclaimer at the foot of the transcripts/results shared with SH reflecting that he had been expelled and that his continued participation in classes and examinations was by virtue of the Orders made in the underlying Suit, and that such Note/Disclaimer ought to be expunged.

12. However, in that respect too, it was pointed out by learned counsel for AKU that the insertion of the Note/Disclaimer was already under challenge through CMA No. 9752/23 pending in the Underlying Suit as well as Suit No. 1661 of 2023 subsequently filed by SH before this Court.

13. Under the circumstances that have emerged, we are of the view that no interference is warranted in the matter at the interlocutory stage. The learned Single Judge has exercised his discretion in dismissing the underlying application and we see no cause for unsettling the decision, especially as the final determination regarding the Impugned Decisions remains to be settled at trial, and the question of whether SH was entitled to be granted the concession that he was notwithstanding such dismissal is a question that has been rendered academic from the interlocutory standpoint due to the events that have followed since. As for the subject of the Note/Disclaimer, the same is not a matter that falls within the scope of the Appeals and to be determined within the framework of the Suit.

14. The Appeals thus stand dismissed in the foregoing terms.

JUDGE

JUDGE

MUBASHIR