

IN THE HIGH COURT OF SINDH AT KARACHI

CP D - 7852 of 2018

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

Mst. Rubina

vs.

M/s. Dow University of Health Sciences & Another

For the Petitioner: Mr. Ghulam Shabbir Shar, Advocate

For the Respondents: Mr. M. Wasiq Mirza, Advocate

Date of Hearing: 21.12.2018

Date of Announcement: 12.02.2019

JUDGMENT

Agha Faisal, J: The present petition was filed challenging the inability of the Dow University of Health Sciences, the Respondent No. 1 herein, to admit the petitioner in its Masters of Nursing Sciences (“**MSN**”) one year program.

2. Mr. Ghulam Shabbir Shar, learned counsel for the petitioner, submitted that Respondent No. 1 had been admitting 20 students in its MSN Program each year since the year 2009 and the process for admission for the Sessions 2018 was initiated by Respondent No. 1 vide advertisement in daily newspapers, copy whereof is available at page 25 of the Court file. It was argued that minimum 50 marks were required to gain admission and despite the petitioner having obtained 53 marks the admission to the MSN program was unlawfully denied thereto. Per learned counsel the pay-order for the admission fee was also received by Respondent No. 1 from the petitioner and interview letter was also issued thereto, however, the Respondent No. 1 failed to admit the petitioner and

the same was illegal, discriminatory, mala-fide and in violation of Article 4 of the Constitution of Islamic Republic of Pakistan.

3. Mr. M. Wasiq Mirza, learned counsel for respondents, controverted the arguments advanced on behalf of the petitioner. It was submitted that letters for interview were issued to 20 candidates short-listed, in accordance with the marks obtained in the entry tests, out of 34 candidates, who had obtained more than 50 percent marks. Out of 20 candidates, the top eight were selected after conducting the interviews. It was demonstrated from the record that each of the eight selected candidates for the MSN program obtained higher marks than the petitioner. Learned counsel vehemently denied that Respondent No. 1 ever accepted any amount from the petitioner, in the form of pay-order or otherwise since the name of the petitioner was never amongst the selected candidates. Per learned counsel there was no vested right accrued in favour of the petitioner to obtain admission, especially when it was demonstrated from the record that each successful candidate had obtained higher marks than the petitioner. Therefore it was prayed that the present petition be dismissed.

4. We have heard the arguments of the respective learned counsel and have also reviewed the record arrayed before us. The primary issue to determine is whether the petitioner has been able to demonstrate any infringement of a fundamental right, meriting the interference of this Court in exercise of its writ jurisdiction.

5. It is observed that eight candidates were successful in obtaining admission to the MSN program and each of the said candidates scored higher in the admission process than the petitioner. The list of marks obtained by the respective candidates was filed by the learned counsel for the respondents, highlighting the stated position, and the said list was not controverted by the

learned counsel of the petitioner. It is thus apparent that each of the eight successful candidates was at a distinct advantage to the petitioner, hence, no right of the petitioner, if any in the first place, was infringed by the successful candidates.

6. Per learned counsel for the petitioner, the Respondent No. 1 had denied admission to the petitioner after having received admission fee therefrom, in the form of pay orders. This assertion proved to be incorrect. Learned counsel for the respondents denied ever having demanded or received any admission fee from the petitioner and challenged the petitioner to place before the Court any documentation to substantiate her claim. When confronted with this situation the learned counsel for the petitioner improved upon his earlier stance and submitted that the petitioner was ready to pay the admission fee, however, none in fact was ever paid to the Respondent No. 1.

7. The only argument left to consider is the reduction in seats in the MSN program by the Respondent No. 1. This issue, although alien to the pleadings of the petitioner, was sought to be argued by her learned counsel post having had the benefit of perusal of the comments filed by the Respondents. It is apparent that the annual 20 seats in the MSN program have been reduced to 8 for the 2018 session. The rationale provided by the Respondent in such regard is the diminished quantum of supervisors presently available with the Respondent No. 1. It was argued that the lower quantum of admissions in the session under consideration was determined with a view to maintaining an efficient student / supervisor ratio so as to ensure that the quality of education / training is not impacted. While we have noted with concern the reduction of seats in a program of a reputed institution, we are also cognizant that the duty to maintain the quality of education imparted is paramount. We do expect that the Respondent No. 1 shall take immediate remedial measures to ensure that the quantum and quality

of their teaching personnel is restored and maintained at its optimal level, however, the said predicament does no merit to the present case of the petitioner.

8. The petitioner has failed to demonstrate any right or entitlement for admission in the MNS program of the Respondent No. 1. The selection process, as demonstrated before us, picked the eight top candidates and awarded them the requisite admission. The petitioner's vague allegations of discrimination have been clearly dispelled by the record before us. In view of foregoing, it is considered view of the Court that the present petition is misconceived and devoid of merit, hence, this petition, along with pending application/s, is hereby dismissed with no order as to costs.

J U D G E

J U D G E