

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zulfiqar Ali Sangi

C.P. No.D-2802 of 2016

Dr. Salman Gul Silawat

Petitioner

Versus

The Chancellor of University of Sindh and others

Respondent

Petitioner	:	Through Dr. Raana Khan Advocate
Respondent No.1	:	Through Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh
Respondents No.2 to 8	:	Through Mr. Kamaluddin, Advocate
Date of hearing	:	02.10.2019 & 10.10.2019

ORDER

Zulfiqar Ali Sangi, J.-Through instant petition, petitioner Dr. Salman Gul Silawat

has prayed as under:-

- “1. Declare all the acts of Respondent No.4, 7 and 8 are discriminating in manner based on, nepotism, favoritism and rational attitude.
2. Direct the Respondents No.4, 7-8 to allow the Petitioner to sit in the forthcoming examination without prescribing the period of attempting the same and without making any statement through affidavit but in transparent manner without any coercion and pressure by following the rule and regulations as detailed in prospectus of 2005.
3. Restrain the Respondents’ No.4, 7-8 do not apply any other rule and regulation except as mentioned in prospectus of 2005, as no rule can be applied in retrospective effect but in prospective effect especially when the right of any person become aggrieved.

4. Any other relief(s) may deem fit and proper under the circumstances of the case.”

2. Learned counsel for the Petitioner submits that Petitioner was enrolled for the course of MS Urology Degree in LUMHS Jamshoro with enrolment No.PG-636 in the year 2005; that he applied on the basis of prospectus of 2005 and received admission letter dated 27.01.2005; that after the approval of thesis in the year 2015 he attempted to clear examination of theory held in October, 2015 and April, 2016, but could not qualify; that then Petitioner made an attempt to sit in session of October 2016 but Respondent No.7 did not allow him on the ground that period of seven years within which he was required to pass the exam has expired; that act of Respondents was illegal, unlawful and against the prospectus of admission for the year 2005; that at the time of admission Petitioner was not informed about the rules and regulations; that the rules and regulations were not available in the year 2005; that even period of 07 years if counted from approval of thesis will be completed in the year 2022; that the act of respondents is in violation of Articles, 3, 4, 8, 9, 25 and 37 of the Constitution of Islamic Republic of Pakistan, 1973; that the limit as imposed for sitting in examination is illegal and against the law. In support of her contentions learned counsel relied upon **Naila Maqbool Laghari through next of kin, Maqbool Ahmed and 136 others v. Government of Sindh** (PLD 2018 Sindh 391), **Amna Sharif and another v. POF Board through Director Industrial and Commercial Relations (DICR) and others** (2015 MLD 229), **Syed Faiz-ur-Rehman v. Principal, Sheikh Zayed Medical College, Rahimyar Khan and 4 others** (2004 CLC 661), **Zarqa Haq v. Government of Balochistan through Secretary, Health, Quetta and 2 others** (PLD 1994 Quetta 47), **Farva Saeed v. Government of Punjab through Secretary Health, Civil Secretariat, Lahore and 2 others** (2003 CLC 1278) and **Uzma Jamshid v. Baha-ud-Din Zakariya University through Vice-Chancellor, Multan and 2 others** (2008 CLC 514). Lastly, she prayed for allowing the petition and direction to Respondents to allow the Petitioner to sit in examination.

3. Learned counsel for Respondents (University) and learned AAG submitted that prospectus-2005, Rules for the Studies to Postgraduate Degree and Diploma Course, 2005 and "Curriculum for MS Urology" are different and independent to each other; that all these Rules and Regulations etc. are in existence since 2005; that in the year 2005 Petitioner was informed about obeying the Rules and Regulations vide admission letter dated 27.01.2005 (attached by Petitioner as Annexure-C at page-29); that MS (Urology) Degree is a 04 years Program / Course and is divided in two parts i.e first part is B.M.S paper examination which has to be passed during training period of the course and part-II is theory to be completed after completion of training; that after passing theory the candidate has to pass practical / viva-voce examination in three consecutive examinations (attempts); that Petitioner after failing to qualifying in first two attempts never submitted examination form nor deposited its fee in the office of Controller Examination to appear in theory examination in October, 2016; that Petitioner passed Basic Medical Science paper, which is paper-I, in 14 attempts in October, 2012 (examination held in January, 2013); that Petitioner submitted his thesis on 07.05.2013, which was sent to Focal Person of HEC's Plagiarism Policy, who from time to time advised him to re-write certain areas; that after re-writing he kept on submitting the same to Focal Person for HEC's Plagiarism Policy on 23.09.2013, 31.12.2013, 11.02.2014, 19.03.2014, 29.04.2014 and 12.08.2014 and only on 26.08.2014 the same was cleared; that thesis was then sent to Controller of Examination and on 15.12.2014 a panel of three Examiners was selected by the Dean and on 24.12.2014 and the thesis was sent to them, which was then accepted; that Petitioner became qualified to appear in final examination of theory i.e Paper-II; that Petitioner appeared in examination in the month of October, 2015 but failed; that again Petitioner sought permission and appeared in examination in April, 2016 and again failed, then he was given a last chance to appear in October, 2016 examination but he failed to avail of the same. Lastly, he contended that although period of 07 years had already expired, but on Petitioner's application Vice-Chancellor allowed him as a last

chance to appear in October, 2016 examination, being his third attempt, he was required to submit his affidavit alongwith examination form like other students but he failed to avail the said chance. They lastly submitted that petition is not maintainable and it may be dismissed and in this regard they relied on Rules 6.2, 10.3 and 10.6 of Rules for the Studies leading to Postgraduate Degree and Diploma Course in LUMHS, 2005.

4. We have heard the learned counsel for the parties and perused the material available on record.

5. Admission letter dated 27.01.2005 submitted by Petitioner as Annexure-C at page-29 of the Court file contains a note at the bottom which is reproduced as under:-

“NOTE:- This is full time course. During the period of this course you are strictly forbidden to engage in any kind of employment in any institution / Organization. You are not allowed to take part in political activities. You will have to abide strictly by rules and regulations of the Liaquat University of Medical and Health Sciences, Jamshoro. Registration with RTMC is mandatory for selected MCPS / FCPS-II candidates.”

6. Contention of the learned counsel for the petitioner is that in 2005 there were no rules and regulations and his admission would be governed only by scheme under prospectus wherein no time line or number of attempts for a candidate to qualify the same and complete the course is described. We find it difficult to subscribe to such a view. Prospectus is a formal document giving details of a school, college, etc. and its activities and it is not a substitute for relevant rules and regulations under which a candidate’s admission etc. will be regulated by the given college or university. The admissions letter could not have better highlighted such fact by adding a note in this connection, which has been reproduced above. The relevant rules are quite clear in respect of the controversy in hand and which for the sake of convenience are reproduced hereinunder.

Rule 6.2 of 2005 Rules relate to the Studies Leading to Postgraduate Degree & Diploma Course of LUMHS Jamshoro and deals about the eligibility of candidate is as under:-

“6.2 Eligible candidates will first appear in written Entry Test. Candidates securing passing scores (minimum 40%) will be allowed to appear in interviews. The selection shall be made on merit, based on the cumulative scores in written test and interviews.”

Rule 10(3)(a)(b) of the said Rules deals with the examinations and is reproduced as under:-

“10.3 (a) A candidate, after having qualified for the final examination, shall be required to sit in any of the three consecutive examinations, else he / she shall cease to qualify for taking that examination and shall have to seek fresh admission to the course. However, October 2004 Examination will be last opportunity for the old postgraduate candidates in this regard.

(b) Any Postgraduate Degree candidate who fails to pass the final examination of a course within seven years of completing the duration of the course shall not be allowed to sit in subsequent examinations. This shall apply from October 2004 examination onwards for all candidates.”

Rule 10.6 deals with allowing the candidates to appear in practical examinations after passing theory part, which is reproduced as under:-

“10.6 The candidates who have pass theory part shall be allowed to appear in three subsequent consecutive practical examinations on payment of full prescribed fee.”

7. The Petitioner in para-6 of the petition has admitted that his thesis was approved as final on 31.07.2015 and thereafter he became eligible for appearance in the final examination, which he availed in October, 2015 and April, 2016 but could not qualify. Thereafter, he did not submit his examination form and fee for his third attempt in October, 2016. Rule 10.3 (Supra) is very much clear in this regard which prescribes three attempts to be made consecutively for qualifying the subject course. Perusal of record reveals that on his own application, the petitioner was allowed to appear in M.S Final Urology examination October 2016 for third / last time (last attempt) on a condition to submit an affidavit vide letter No.390 dated 18.08.2016 he did not avail such opportunity. It is obvious that criterion of three consecutive opportunities under Rule 10.3 (Supra) has not been met by the petitioner.

8. The contention of the petitioner that rules of 2005 were not available and are fake have no force. The copy of such rules have been brought on record by the learned

counsel for University which seems to be duly approved. Even otherwise the petitioner has not challenged veracity or vires of the rules to appreciate her contention that the rules are fake etc.

9. We have also noted that admission to the Petitioner was allowed in the year 2005, 14 attempts were allowed to him for approval of his thesis. Thereafter, one year extension was granted to him vide letter No.LUMHS / PGMC / -1978 / 85 dated 21.02.2009 in his training period to complete his Research work. Then, he attempted twice to qualify the exam but in vain, third time allowed by rules has not been availed by him. In view of above discussion and the relevant rules, it is clear that the Petitioner was required to complete the course during 07 years but he could not achieve that benchmark. In these circumstances, the relief which the petitioner has sought by means of this petition and which is discretionary in nature cannot be granted to him. Resultantly, we do not find any merit in this petition.

10. Above are the reasons of short order dated 10.10.2019 whereby captioned petition was dismissed.

JUDGE

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