

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

C. P. No. D-1194 of 2021

Present:-

Ahmed Ali M. Shaikh CJ &
Yousuf Ali Sayeed, J

Petitioner : Kashmala Khan through Mr.Abdul Salam Memon, Advocate

Respondent No.1 : Federation of Pakistan, through Mr. Khurshed Javed, AAG.

Respondent No.2 : Pakistan Medical Commission through Mr. Fahad Ali Khan, Advocate holding brief for Mr. Zeeshan Abdullah, Advocate, alongwith Mr. Muhammad Anwar Alam, Officer Incharge, PMC, Karachi.

Respondent No.3 : Jinnah Sindh Medical University through Mr. Rehman Aziz Malik, Advocate.

Mr. Abdul Jalil Zubedi, AAG, Sindh

Date of hearing : 28.12.2021

Direction:

1. For hearing of Misc. No.6426/2021 (contempt)
2. For hearing of Misc. No.6428/2021
(Review application being Misc. No.6427/2021 pending)

ORDER

YOUSUF ALI SAYEED, J. – Misc. Application No.6426/2021 has been filed by the Petitioner alleging a violation of the Order dated 25.02.2021, whereby the Petition was disposed of in the following terms:

“Learned counsel for the petitioner relied upon at Page-47 (Annexure P-8) of the court file, which is notification dated 13.11.2020 issued by respondent No.3, whereby all those students of MBBS who were enrolled in 2017 but debarred due to the completion of 4 attempts have been allowed to appear in upcoming examination, 2020. It is further stated in the same notification that the total number of attempts will be eight combining both first and second year.

2. Learned counsel for the petitioner submits that the petitioner is not being allowed the benefit of the aforesaid notification despite submission of Form and payment of fee her admit card has not been issued. Notice has been served upon respondent Nos.2 and 3, but nobody is present on their behalf. Learned Assistant Attorney General and learned Assistant Advocate General submit that the notification is on record and if the case of the petitioner is covered in the notification, the same benefit may be allowed to her.

3. In view of the above, this petition is disposed of with the directions that if the case of the petitioner is covered under the aforesaid notification she will be allowed to avail benefit of the notification.

Office is directed to transmit copy of this order to the Vice Chancellor of respondent No.3.”

Succinctly stated, the crux of matter was that the Petitioner claimed to be entitled to the benefit of a Notification dated 13.11.2020 (the “**Subject Notification**”) issued by the Controller of Examinations of Jinnah Sindh Medical University (the “**University**”), and thus sought further attempts to sit certain examinations in which she had remained unsuccessful and impugned the decision of the University to delist her from the student roll. The substantive part of the Subject Notification reads as follows:

“It is for information of all concerned students of SMC and affiliated medical colleges, with the approval of competent authority, all those students of MBBS who were enrolled in 2017 and were debarred due to the completion of 4 attempts are allowed to appear in upcoming examination, 2020. The total number of attempts will be eight combining both first and second year.”

Notwithstanding another pending Application (Misc. No.6427/2021) seeking review of the Order dated 25.02.2021, learned counsel for the Petitioner pressed for a definitive hearing of the Application under reference as the Petitioner sought to sit certain forthcoming examinations. It was submitted that the Petitioner was entitled to two further attempts as she had not sat the scheduled examination due to personal exigencies, hence could avail the same, and those attempts were not to be counted against her. It was argued that the aforementioned Order of the Court had been violated as the University had counted those un-

availed attempts in failing to allow the Petitioner the benefit of the Subject Notification, and it was only by virtue of a subsequent Order dated 01.03.2021 that she had been afforded the opportunity to sit further examinations.

Conversely, learned counsel appearing on behalf of the University refuted that contention and denied that there had been any violation of the Court's Order in as much as the case of the Petitioner had been considered in light of the Subject Notification but it had been found that she had availed the permissible number of attempts prescribed therein in as much as the relevant policy/regulations envisaged a continuous assessment process and chances, whether availed or un-availed, were to be counted while reckoning whether the maximum permitted number of attempts had been exhausted.

In this regard, we have observed that the Admission in MBBS and BDS Course and House Job/Internship/Foundation Year Regulations- 2013 made under the erstwhile Pakistan Medical and Dental Council Ordinance, 1962 provided as follows:

“Any student who fails to clear First Professional in four chances availed or un-availed and has been expelled on that account shall not be eligible for continuation of medical/ dental studies of the MBBS or BDS and shall not be eligible for fresh admission as a fresh candidate in either MBBS or BDS.

Any student who fails to clear 2nd Professional in four chances availed or un-availed and has been expelled on that account shall not be eligible for continuation of medical studies of the MBBS and shall not be eligible for fresh admission as a fresh candidate in either MBBS or BDS”.

A student who has availed the chances to clear the First Professional examination or part thereof in four chances availed or un-availed and has been expelled on that account shall not be eligible for continuation or medical/ dental studies of the MBBS or BDS course and shall not be eligible for fresh admission as a fresh candidate in either MBBS or BDS.

Similarly, Regulation 11 of the MBBS and BDS (Admissions, House job and Internship) Regulations, 2018 provided that:

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 of the MBBS and BDS in the subsequent professional examinations and readmission.

As such, whilst the evident purpose of the Subject Notification was to facilitate candidates to the extent of bundling the number of permissible attempts across the first and second years so that the exams of both years could be cleared under any number of the permutations falling under the maximum cap of eight attempts, that is not to say that un-availed chances were not to be reckoned for purpose of the overall computation. In the case of the Petitioner, scheduled examinations were admittedly not attempted, hence it cannot be said that there has been undue denial of the benefit of the Subject Notification or violation of the Order dated 25.02.2021. That being so, the listed Application stands dismissed.

JUDGE

CHIEF JUSTICE