

JUDGMENT SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D- 2561 of 2019

PRESENT:

Mr. Justice Nadeem Akhtar

Mr. Justice Arshad Hussain Khan

PETITIONERS Through Mr. Muhammad Dilawar Qureshi, Advocate.

RESPONDENT NO.1. Through Mr. Allah Bachayo Soomro,

RESPONDENT NO.2to5. Through Mr. Najab Din Rajpar, Advocate.

Date of hearing 24.02.2021

Date of decision 24.02.2021

ARSHAD HUSSAIN KHAN, J. Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has made the following prayers:-

- a. To direct the respondents No.2 to 5 to issue admit cards / slips to the Petitioners forthwith and allow the Petitioners to appear in the ongoing Examinations of BBA (Hons) Part-I, 1st Semester, 2019.
- b. To direct the respondents No.2 to 5 to manage the conduct of examinations for the Petitioners for the papers wherein the Petitioners could not appear due to non issuance of admit cards / slips by the respondents.
- c. Cost of the petition may be saddled upon the respondents.
- d. Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the Petitioners.

2. Brief facts arising out of the present petition are that the petitioners took admission in Bachelors of Business Administration, BBA (H) Part-I, in the month of January, 2019, at respondent No.6-Hyderabad Institute of Arts, Science & Technology (HIASST) which is affiliated with respondent No.2-University of Sindh, Jamshoro, as regular student of HIASST. They were also issued registration certificates and enrollment cards by respondent No.4-Deputy Registrar (Gen) University of Sindh. The petitioners have also deposited the amount of Rs.2200/- each on account of their examination fee for BBA-(H)-P-I first semester against the challan issued by respondent No.6 and so also the examination forms of the petitioners were processed. It has further been stated that examination of 1st semester was announced by respondents No.2, however, the admit cards / slips of the petitioners were not

issued to them without disclosing any reason, therefore, they made efforts to contact the respondents but all went in vain and resultantly the Petitioners could not appear in their first paper. The petitioners have approached this Court through instant petition against the illegal and unlawful act of respondents for not issuing admit cards / slips.

3. Pursuant to notices of this case, except respondent No.6, whose Director though on 03.12.2019 appeared in Court and sought time to engage counsel, however, thereafter neither its counsel appeared nor any reply was filed on its behalf, all other respondents filed comments/reply to the petition.

4. Respondents No.2 to 5 in their written reply denied the allegations levelled against them and stated that the Petitioners are not eligible for admission in BBA(H) degree as their marks are below the criteria, which should be at least 60% aggregate marks. It is further stated that registration certificates and enrollment cards though were issued on the basis of challan, however, without adopting requisite legal and codal formalities, the same do not confer any right upon the Petitionersto appear in the examination. It has been further stated that during the process of scrutiny forms, it was found that the Petitioners along with other candidates were not eligible, therefore, their admission forms were returned to respondent No.6 in the month of October 2019 and this fact was very much in the knowledge of the Petitioners. It has been stated that since the respondent-university has already rejected the admission of the Petitioners as such the question of process and / or acceptance of their examination forms does not arise. The Petitioners have filed the present petition by suppressing material fact about rejection of their admission form as such on this ground alone instant petition is liable to dismissed.

5. On behalf of respondent No.1, Deputy Secretary-HE/IV filed para-wise comments wherein it has been stated that the subject matter of the instant petition pertains to the admission and examination which is an administrative matter related to the university concerned and as such respondent No.1 has no role to play as the same does not fall under the functional jurisdiction of respondent No.1.

6. We have heard learned counsel for the parties, learned AAG and have perused the record with their assistance. Perusal of the record reveals that the eligibility criteria for admission in BBA (Hons) program offered by respondent No.2 amongst other is Higher Secondary Certificate (HSC) with atleast 60% aggregate marks. It would be appropriate to reproduce the

relevant portion of Prospectus-2019, University of Sindh Jamshoro in respect of Bachelor & Master Degree Programs as under :

“BUSINESS ADMINISTRATION BBA (HONS) 04YEAR DEGREE PROGRAM 8 - SEMESTERS CH-136

Pre-requisite:- H.S.C. with at least 60% aggregate marks. Candidate with intermediate Arts must have offered one of the Social Science subject as elective at H.S.C. level.”

7. Admittedly the petitioners secured lesser than 60% aggregate marks in H.S.C and as such they did not meet the eligibility condition / pre-requisite criteria laid down by University of Sindh, Jamshoro, for admission in its BBA (Hons) 04-Year Degree Program. Learned counsel for the petitioners in his arguments contended that the condition / criteria as laid down in the prospectus is not applicable to the petitioners as they are not regular students of the University as they got admission in respondent No.6 and that is the reason the petitioners had also not undergone the entry test conducted by the University prior to the admission, which was also one of the pre-conditions of admission in the University for regular student. We are afraid that this argument will not be of any help for him as although the petitioners got admission in respondent No.6, yet they seek degree from respondent No.2-the University and as such policy framed by respondent No.2 for admission in BBA (Hons) 04-Year Degree Program will be applicable to the Petitioners no matter they did not get direct admission in the University. A perusal of the prospectus of respondent No.2 also does not show that there is any separate criteria laid down by respondent No.2, for its regular students and the students admitted through its affiliated colleges. Besides, there is also nothing available on the record, which could show that respondent No.6 offered admission in its institution in lesser than 60% aggregate marks in HSC.

8. The prospectus, rules and regulations framed by the public educational institution are meant as administrative policy of the respective institute, which are recognized and made applicable to all the candidates without any discrimination. It may be observed that in academic matters the University authorities are the best judges to interpret the Rules and Regulations framed by the university authorities. Normally courts are reluctant to interpret the same unless a case of grave injustice is made out otherwise it would become difficult for the universities to run their affairs. Reliance in this regard can be placed on the case of Muhammad Ilyas Vs. Bahauddin Zakariya University, Multan and another (2005 SCMR 961), wherein the Honourable Supreme Court, inter alia, has held as under :-

"5. We have heard the learned counsel and have also gone through the relevant regulation. At the outset it may be noted that as far as the rules/regulations framed by the University Authorities for the purpose of conductive/regularizing examination etc. of University are concerned these are required to be interpreted by the University Authorities itself and Courts should avoid to interpret the same unless a case of grave injustice is not made out otherwise it would become difficult for University administration to run its internal affairs relating to examination, etc. Further, a perusal of Regulation 8(F) and its other parts clearly demonstrate that the petitioner was required to obtain (CGPA) independently in each Semester for the purpose of promotion to the next Semester. As it has been pointed out hereinabove that the petitioner did not obtain requisite (CGPA) in the 3rd Semester i.e. 2.00 (CGPA), therefore, University Authorities in exercise of power conferred upon them under Regulation 8(F) rightly removed his name from the roll. The learned I.C.A. Bench after examining the case of petitioner in depth reached to the conclusion that he was required to obtain 2.00 CGPA in the 3rd Semester, therefore, his name was rightly removed from the roll of University as impugned judgment is just and legal, therefore, no interference is called for this Court in exercise of jurisdiction under Article 185(3) of the Constitution of Islamic Republic of Pakistan."

In this regard reliance can also be placed on the case of Fakharyar v. Agriculture University Peshawar[PLD 2016 Peshawar 266].

9. It is settled law that educational institutions are bound by the Policy laid down in their prospectus. Students are also required to follow the Policy. It is further settled law that this Court in exercise of its constitutional jurisdiction does not interfere in the matters of examinations and/or admissions to the educational institutions as the authorities concerned are the sole judges of the criteria laid down by the institutions in their prospectus and/or calendar unless an ex facie case of jurisdictional error is pointed out. In instant case, no such jurisdictional error has been pointed out nor has it been shown that the decision of the respondents is perverse or arbitrary. Reliance in this regard can be placed on the cases of Muhammad Abdullah Riaz v. University of Health Sciences (UHS) Lahore and another[PLD 2011 Lahore 555], Sahiba Dost v. Chairman Admission Board/Vice-Chancellor, UHS, Lahore[PLD 2011 Lahore 605] and Usman Tariq v. Punjab Public Service Commission and others[2013 PLC (C.S.) 1183].

10. Reverting to the case in hand, the Petitioners do not appear to have met the eligibility criteria for getting admission in BBA (Hons) 04-Year Degree Program offered by respondent No.2 in its Prospectus-2019, University of Sindh Jamshoro in respect of Bachelor & Master Degree Programs. And further since respondent No.2 also a degree awarding authority, is disputing the very admission of the Petitioners, therefore, the Petitioners cannot claim

to have acquired a vested right to appear in the examination and continue with their studies in the above referred BBA (Hons) 04-Year Degree Program offered by respondent No.2.

11. It may also be stated that the Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the constitutional jurisdiction to establish a clear legal right, which should be beyond any doubt and controversy.

12. In view of the foregoing discussion and relying upon the ratio of the authorities, stated supra, we are of the opinion that this constitutional petition being devoid of merit is liable to be dismissed.

13. Before parting with the judgment, we may observe that although respondent No.6-Hyderabad Institute of Arts and Science & Technology [HIAST], an Institute affiliated with respondent No.2, despite notices failed to put its' stance in the case, however, it appears that the Institute was instrumental in providing admission to the petitioners in BBA (Hons) 04-Year Degree Program offered by respondent No.2, despite their lacking eligibility criteria and as such HIAST is liable to either refund the fee so far collected by it from the Petitioners and / or to provide them benefit in the shape of credit hours for the period the petitioners studied in the HIAST, if the law / rules / regulations / policy so permit, and the petitioners, if so desire, may approach HIAST in this regard.

14. With the above observations, this petition was dismissed by our short order dated 24.02.2021 with no order as to costs and these are the reasons for the same.

JUDGE

JUDGE

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P.No.D-2561 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

24.02.2021.

Mr. Muhammad Dilawar Qureshi, Advocate for petitioner.
Mr. Najab Din Rajper, Advocate for respondents 2 to 5.
Mr. Allah Bachayo Soomro, Additional A.G.
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For the reasons to follow, the petition is dismissed with no order as to costs with the observation that HIAST will be liable to either refund the fee so far collected by it from the Petitioners and / or to provide them benefit in the shape of credit hours for the period the petitioners studied in the HIAST, if the law / rules / regulations / policy so permit, and the petitioners, if so desire, may approach HIAST in this regard.

JUDGE

JUDGE

Hafiz Fahad