

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 2973 of 2012

Date	Order with signature of Judge
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Present :

1. Mr. Justice Ghulam Sarwar Korai
2. Mr. Justice Nadeem Akhtar

For Katcha Peshi :

- Dates of hearing : 23.07.2013.
- Petitioners : Anil Alam and 42 others, through
Ms. Nazia Siddiqui Advocate.
- Respondent No.1 : Province of Sindh, through
Mr. Miran Muhamamd Shah, Addl. A.G., Sindh.
- Respondent No.2 : Ms. Rubina Johns, Controller of Sindh Nurses
Examination Board, Karachi, in person.

ORDER

NADEEM AKHTAR, J. – Through this Constitutional Petition, the petitioners have prayed that the action of the respondents of withholding the petitioners' result of supplementary nurses examination, be declared as illegal, malafide and discriminatory ; a writ of mandamus be issued directing the respondents to announce the said results of the petitioners held in May 2011, and to issue certificates to them accordingly ; and the respondents be restrained from conducting further examination of nurses in future without first announcing the petitioners' said result.

2. The case of the petitioners is that they were students of Nursing on self-finance basis ; they regularly appeared in annual examinations of Nursing ; they could not succeed in all papers of the annual examination, therefore, they applied to appear in the supplementary examination, which was to be held on 09.05.2011 ; they were restrained by the respondents from appearing in the supplementary examination, and admit cards were not issued to them ; 123 other students, who had also not cleared the annual examination and had applied to appear in the supplementary examination, were allowed to appear in the supplementary examination ; in view of such discrimination by the respondents, the petitioners filed Civil Suit No. 494/2011 in the Court of 1st Senior Civil Judge, Karachi-South, for declaration and mandatory injunction, praying that they may be allowed to appear in

the supplementary examination ; vide order dated 07.05.2011, the learned trial court allowed the petitioners to appear in the supplementary examination ; in compliance of the said order, the respondents issued admit cards to all the petitioners, who accordingly appeared in the supplementary examination ; since the Suit filed by the petitioners had served its purpose, they withdrew their Suit on 16.05.2011 ; the appeal filed by the respondents against the aforesaid order dated 07.05.2011, was dismissed by the learned lower appellate court vide order dated 18.10.2011 ; the said order was not challenged further by the respondents, and as such the same attained finality ; and, the result of the supplementary examination of all the students was announced by the respondents, but the result of the petitioners was withheld.

3. The learned counsel for the petitioners submitted that the respondents themselves issued admit cards to all the petitioners and allowed them to appear in the supplementary examination in compliance of the order passed by the learned trial court. She further submitted that result of all the other students who had appeared in the supplementary examination was announced, but the result of the petitioners was withheld without any justification or without assigning any reason. She contended that such action on the part of the respondents was discriminatory and violative of Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, as the respondents had not treated the petitioners as equals to the other students. The learned counsel argued that the malafide action of the respondents had violated the fundamental rights of the petitioners, as their academic session and entire future has been jeopardized.

4. Ms. Rubina Johns, the Controller of Sindh Nurses Examination Board, Karachi, representing respondent No.2, submitted that the petitioners had appeared in the second year of supplementary examination of Nursing, though they were not eligible in view of Rule 3.7 of the 'Rules and Regulations for Nursing Educational Institutions issued by the Pakistan Nursing Council'. The said Rules and Regulations were produced by her. While referring to Rule 3.7, Ms. Johns submitted that under the said Rule, only one chance could be given to the failed students who were on scholarship, and two chances could be given to such failed students who were without scholarship. She further submitted that the said Rule provides that, after exhausting the chances mentioned therein, the training / admission of the students was liable to be terminated, rendering them disqualified to get admission in any other institution in the same programme. She contended that, since the petitioners were not entitled to appear in the supplementary examination as per the said Rules, issuance of admit cards to the petitioners by the respondents and their appearance in the supplementary examination, did not create any right in favour of the petitioners, nor did they become entitled to the result of such examination. She also contended that the respondents are not obliged to announce the result of the petitioners, and their result was rightly withheld. The learned A.A.G. adopted the submissions made on behalf of respondent No.2.

5. The learned counsel for the petitioners, the representative of respondent No.2 and the learned A.A.G., were all heard by us, and the material available on record was also perused by us. We have noticed that some of the petitioners had appeared in the supplementary examination of the 'Second Year Nursing Examination', and the remaining had appeared in the supplementary examination of 'Preliminary Nursing Examination'. Therefore, as far as the students / petitioners who had appeared in the supplementary examination of 'Preliminary Nursing Examination' are concerned, Rule 3.7 relied upon by the respondents shall not apply, as the said Rule applies to the first, second, third and fourth years of Nursing Examination, and not to 'Preliminary Nursing Examination'. Regarding the students / petitioners who had appeared in the supplementary examination of the 'Second Year Nursing Examination', the burden was on the respondents to show that such students had exhausted two chances of supplementary examination, as admittedly the petitioners were not on scholarship. The respondents miserably failed in discharging such burden, as it was neither argued on their behalf that such students had exhausted two chances of supplementary examination, nor was anything brought on record to substantiate such fact. It is to be noted that both the learned lower courts below were also of the view that the respondents did not produce any material before the said courts to show that the said Rule 3.7 was applicable in the case of the petitioners.

6. We would like to observe here that the purported Rules and Regulations produced by respondent No.2 have not been framed under any statute, nor have they been notified officially and formally by the Government, which fact is evident from a bare reading of the same. The said purported Rules and Regulations, which appear to be an internal document of the Nursing Educational Institutions, do not have the force of law, and as such the same cannot be relied upon.

7. We agree with the learned counsel for the petitioners that after issuing admit cards to the petitioners and allowing them to appear in the supplementary examination, there was no justification for the respondents to withhold their results. After paying the requisite fee and appearing in the said examination, the petitioners were entitled to receive their results. Consequently, this petition is allowed, the impugned action of the respondents is hereby declared as malafide, discriminatory and illegal, and they are directed to announce the results of all the petitioners within seven (07) days.

Judge

Judge