

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

C. P. No. D-589 of 2015

Present:

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

Petitioner : Ms. Mehwish Saleh through
Abdul Sattar Gujjial, Advocates.

Respondent No.1 : The Principal/Project Director,
Shaheed Mohtarma Benazir
Bhutto Medical College, Lyari,
Karachi, through Malik
Waseem Iqbal, Advocate.

Respondent No.2. : Dow University Of Health
Sciences through Muhammad
Wasiq Mirza, Advocate.

Respondent No.3. : Government of Sindh, through
Sandeep Malani, Assistant
Advocate General, Sindh.

Respondents No.4. : Pakistan Medical & Dental
Council, through Muhammad
Arif, Advocate.

Date of hearing : 04.10.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner had apparently obtained admission to the MBBS Program at the Respondent No.1 college, but was then expelled vide letter dated 30.07.2013, with reference being made to the regulations of the Pakistan Medical & Dental Council (“**PMDC**”) and to its letter dated 16.07.2013 notifying the Principals/Deans of all Recognized Medical/Dental Colleges/Universities of Pakistan that the Executive Committee/Council of the PMDC had decided that:-

“Any student who fails to clear first Professional in four chances availed or unavailed 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 unavailed 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”.

2. Being aggrieved, the Petitioner had filed Constitutional Petition No. D-355/2014 before this Court, alleging that her expulsion was in violation of law, as there was no such condition mentioned in the prospectus and the Petitioner had not been afforded an opportunity of hearing prior to her expulsion. That Petition was disposed of at the behest of the Petitioner vide an Order dated 26.03.2014, with directions being issued to the Secretary, Health Department, Government of Sindh to dispose of an Appeal/Representation pending on the subject, the relevant excerpt of which reads as follows:

3. It is stated by learned counsel for the petitioner that the petitioner is a student of first year MBBS of Respondent No.1. However, vide letter No.SMBBMCL/(Student)/2013-14/28952 dated 30.7.2013 the petitioner was expelled from the College as per the Rules and Regulations of Pakistan Medical & Dental Council as mentioned in PMDC letter dated 16.07.2013. Learned counsel for the petitioner states that thereafter, as per prospectus of the Respondent No.1, the petitioner filed an appeal before the Secretary, Health, Health Department, Govt. of Sindh, Karachi, on 3.9.2013, which is still pending adjudication. Learned counsel for the petitioner, however, states that he would be satisfied and would not press this petition if directions are given to the Secretary, Health, Health Department, Govt. of Sindh to decide the said appeal in accordance with law and as per the statutory rules and regulations within a period of one month.

In the circumstances, we dispose of this petition alongwith the listed application, with directions to the Secretary, Health, Health Department, Govt. of Sindh, Karachi to dispose of the appeal filed by the petitioner within a period of one month from today and furnish compliance report to the M.I.T. Let a copy of this order be sent to the Secretary Health for compliance.”

3. The Statement that came to be filed on behalf of the Respondent No. 3, being the concerned Secretary reflects that in light of the applicable rules/regulations and attendant circumstances, the matter was decided against the Petitioner, in as much as it narrates that:

“1. In compliance of order of Honourable High Court of Sindh at Karachi dated 26th March, 2014, the Secretary, Health Department, Government of Sindh to dispose of the appeals of the petitioners by calling a meeting in the department, a meeting was called on 02.05.2014 in Health Department, Government of Sindh where the matter was examined at length and was found that both the students of First Year MBBS, at Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi have availed four chances but failed to clear the 01st Professional MBBS examination, therefore, according to the rules of Pakistan Medical & Dental Council, Islamabad (Annexure-I). The Principal, Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi cancelled the admissions of both students having exhausted the all four chances hence, under the rules there is no further chance to appear in examination. Hence their request is not covered under the rules. However, in view of the request of students their case has been referred to the Pakistan Medical & Dental Council, Islamabad for comments on 05th May, 2014 (Annexure-II). Subsequent Reminder issued on 23rd June, 2014 (Annexure III).

2. Reply from Pakistan Medical & Dental Council, Islamabad has been received which says that the request of the petitioner is not covered under rules hence it is rejected (Annexure-IV).

3. As per above rules the petitioners applications for continuation studies of both students is not covered under the rules there is no further chance to appear in examinations. Hence, their request is regretted.”

4. While the scope of a further challenge stood curtailed or at least circumscribed by virtue of the outcome of the earlier matter, the present Petition came to be filed in the wake of the decision made by the Respondent No.3.

5. A comparative reading of the two sets of pleadings reflects that other than the addition of one further prayer in terms of Clause 3, the same otherwise remain identical to what had been advanced through the earlier Petition, with it being prayed that this Court be pleased:

- “1. To direct the Respondents No.1 & 2 for issuing/providing Transcripts/Mark Sheet and details of results of the Petitioner’s examination of 1st & 2nd Semesters of 1st year MBBS, to her as well as to produce the relevant records before this Hon’ble Court.
2. To declare that the letter of expulsion from the college (annexure P/3) issued by the Respondent No.1 as well as the Respondent No.2’s letter referred therein and decision of the Respondent No.3 (annexure P/15), are illegal, ab-initio void, as such stood cancelled.
3. To declare that Section 9 of **Admission in MBBS/BDS Courses and conditions for out job/Internship/ Foundation year Regulation 2013** cannot be implemented re-prospectively upon the Petitioner.
4. To direct the Respondent No.1 to allow the Petitioner for attending her classes and appearing in 2nd Semester of 1st year MBBS examination.
5. To declare that the Petitioner is entitled to continue her study at the college and to reappear in the examination of 2nd Semester of 1st year MBBS at the college.
6. To pass such further orders, as deemed just and proper under the circumstances of the case.

[sic]

6. As is apparent, the decision of the Respondent No. 3 has not been directly challenged, however, while advancing the very prayers that had been made earlier, the Petitioner has also sought to raise a new ground, that the relevant Rules/Regulations of the PMDC could not have been applied in her case as they had not been in the field at the time of her admission.

7. On query posed as to how grounds and prayers that had been advanced through the earlier petition could be reargued in view of its outcome or how the question of retrospectivity could be introduced vide a second petition when it could and ought to have been argued in the earlier round but was not done, learned counsel endeavoured to shift his argument from one of retrospectivity to that of inapplicability and contended that the Respondent No.3's decision suffered from error as the Petitioner had not exhausted the permissible number of attempts. Indeed, such an attempt at reorientation of the line of argument is apparent from the Orders made as far back as 25.10.2018 and 28.11.2018, the relevant excerpts from which read as follows:

25.10.2018

“None present for respondent No.1 though their comments have been filed. In their comments they have relied on the Pakistan Medical & Dental Council (PMDC) Regulation and in the Notice dated 26th July, 2013 they have clearly submitted that for first year student of Medical, Dental and Allied Health Sciences the maximum number of attempts allowed to continue the education are four attempts. Counsel for the petitioner submits that the petitioner appeared in three attempts but she was not allowed to appear in fourth attempt. Issue notice to the Principal/Registrar of respondent No.1 to attend this Court on the next date of hearing. Counsel for respondent No.4/PMDC is also directed to come prepared to argue the matter. Adjourned to 15.11.2018.”

28.11.2018.

“Ms. Anjum Remani, Associate Principal of respondent No.1 submits that the petitioner has already appeared in four attempts for clearing first year MBBS (02 Semesters) but again the counsel for the petitioner insists that the petitioner has been given only three chances to clear the examination. In order to resolve the controversy the Principal is directed to submit all four marks sheets on the next date. At this juncture, the Principal for respondent No.1 submits that she has to approach to the respondent No.2 for securing certified copies of the marks sheets. The Registrar of respondent No.2 shall provide duplicate copies of marks sheets to respondent No.1 for producing the same in court so that the controversy may be resolved.

8. As it stands, the transcripts that were submitted under the cover of the Statement dated 05.10.2022 filed on behalf of the Respondent No.4 reflect that the Petitioner has remained unsuccessful after exhausting the permissible number of attempts.

9. That being so, we see no force in the Petition, which stands dismissed accordingly along with the pending miscellaneous application.

JUDGE

CHIEF JUSTICE

MUBASHIR