

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 1938 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No. 19035 of 2022.
2. For hearing of CMA No. 02 of 2023.
3. For hearing of CMA No. 546 of 2023.

Mr. Khawaja Shams-ul-Islam, Advocate for the Plaintiff.
Mr. Ali Almani, Advocate for the Defendants 1 to 3 along
with alleged contemnor Dr. Laila Akbarali.

Date of Hearing : 24.01.2023

Date of Order : 30.01.2023

AMJAD ALI SAHITO, J.:- By this common order, I intend to dispose of the above three listed applications. Through Application under Order 39, Rules 1 &2, R/w Section 151 C.P.C and Section 50 of Specific Relief Act (CMA No.19038 of 2022) the Plaintiff seeks suspension of Disciplinary Decision Notification dated 23.09.2022 issued by the Defendant No.3 so also appeal rejection order dated 02.11.2022 issued by the Defendant No.1 and he further prayed that defendant may be directed that the plaintiff be allowed to continue with his medical education and take from the plaintiff the following rotations:-

- 1) "Hospital Paediatric" rotation, which he missed due to the suspension. Recently, the batch of 2024 was promoted to year 4 of M.B.B.S. on December 6, 2022. The batch of 2024 has recently started "Hospital Paediatrics Rotation" from December 6, 2022. Plaintiff may be allowed to do his "hospital Paediatrics Rotation" with the batch of 2024. This will ensure that his missed academic time is made up for.
- 2) "Medicine Rotation O.S.C.E. Exam" from Plaintiff, which he missed due to being suspended on September, 6, 2022 by the defendants / A.K.U. administration two days before his medicine exam, as Plaintiff has completed the rotation's full credit hours of 7 weeks.
- 3) "Psychiatry Rotation O.S.C.E. Exam" and full credit hours of 3.5 weeks may be allowed since Plaintiff has completed it.
- 4) Year 4 Prof Examinations which Plaintiff missed due to being suspended. This includes:- Obstetrics and Gynecology Prof Exam, Hospital Paediatrics Prof Exam and Psychiatry Prof Exam.
- 5) After taking all the fourth (4th) Year Examinations that Plaintiff, missed due to being suspended, he may be promoted to year 5 of M.B.B.S.
- 6) "Paediatrics rotation" during his fifth (5th) year elective time from December 12, 2022; as according to **Page 31** of A.K.U. Student Handbook, "When a student is required to take a remedial, up to four weeks, could be used for it from the elective period of Year 5."

Through two contempt applications, the plaintiff prayed initiation of contempt proceedings against the alleged contemnors.

2. Learned counsel for the Plaintiff submits that the above-noted both orders were passed in violation of the Student Code of Conduct and Disciplinary Procedures as well as Student Hand Book-2022 so also in violation of Articles 9, 10-A, 25-A, and Clause-C of Article 37 of the Constitution of Pakistan, 1973 as the Plaintiff has not committed any breach of disciplinary procedure. Learned counsel submits that for no legitimate reason, Defendant No.1 came to a conclusion for expelling the Plaintiff on the count that he failed to appear in one of the exams throughout his career. He further added that the Plaintiff was interviewed by the disciplinary committee as formed by the Dean pursuant to a show cause notice. He further submits that the only one point that could be considered as a point of determination is that the Plaintiff categorically stated that he left the country with the permission of Dr. Sadaf Altaf in February-March this year for his electives on his own credit for USA, where he overstayed due to his Covid positive result, which led to his delay in the last exams and there were no other allegations. Learned counsel further submits that approval was sought from Mr. Amin Keasshwani and with the understanding that the foreign elective was without credit, the Plaintiff tried to find an elective in the United States of America by emailing the Defendant University's Alumni Dr. Nimrah Jamshed and she helped him and he was able to secure an elective at Dallas, Texas; the Plaintiff after completing attendance in all his rotations travelled to attend his brother's engagement; after that the Plaintiff developed a cough since at that time the Covid was at an all-time high in Dallas, the Plaintiff suspected that he might have gotten covid and he tested positive for Covid, therefore, the Plaintiff would not be able to take flight; however, through an email, the Plaintiff informed the Defendant No.2 about his health and Dr. Sadaf assured him that he should quarantine and focus on getting better. Learned counsel submits that due to Covid, the Plaintiff could not attend his psychiatry exam and the absence of the Plaintiff was not deliberate, but it was owing to a medical issue. Learned counsel submits that the Defendant No.3 issued a letter to the Plaintiff alleging therein that a complaint has been received against the Plaintiff and state that the Plaintiff failed to comply with the University policies therefore, the plaintiff has violated

Rules 3.2, 3.3 and 5.1 of the code of Conduct and Disciplinary Procedures, therefore, a disciplinary committee was constituted to investigate this matter. Learned counsel for the Plaintiff submits that after the investigation the Plaintiff was suspended in terms of Rule 6.6.6 of the Code of Conduct on 06.09.20022 without assigning any cogent reasons. Thereafter, the Plaintiff filed an appeal before Defendant No.1/AKU through Defendant No.2 on 01.11.2022, the appeal of the Plaintiff was rejected by the Defendant No.1 without assigning any reason and the committee simple held that **“I agree with the Committee’s recommendation the same is my final decision”**. Learned counsel submits that two other students in the same clinical group missed their Psychiatry OSCE exam, namely Iman Farooqui and Zoha Qureshi, but they were allowed on the reason that the Iman Farooqui tested covid positive, whereas due to the death of close friend of Ms. Zoha Qureshi, she was also allowed to sit in exam, therefore, the case of the Plaintiff is of the similar of the above said two students and the Plaintiff craves for same relief and he referred the order dated 15.12.2022, whereby, this Court has suspended the decision of the committee; that the plaintiff completed entire Medicine Rotation of 7 weeks from July 25 till September 6 and his Medicine S.S.C.E Exam scheduled two days later, but on 8th September 2022 the plaintiff was suspended, that’s why he could not attended the Medicine O.S.C E Exam; that before suspension the plaintiff had successfully completed six rotations in the fourth year of M.B.B.S; that the plaintiff had completed his credit hours of 3.5 weeks of “Psychiatry Rotation” from May 16 to June 7 but he could not attended exam due to his suspension; that the plaintiff had completed credit hours of 7 weeks of Medicine Rotation from July 25 to 6th September but he was prevented from attempting the medicine exam two days before the exam by the AKU administration. Learned counsel for the Plaintiff submits that the Plaintiff has a prima facie case and balance of convenience is also lies in his favour. Lastly, prayed that the instant application may be allowed. In support of his contention, he has relied upon the cases reported as 2006 CLC 1621, 2013 YLR 2294, 1999 MLD 3173, 1997 MLD 3066, SBLR 2019 Sindh 128 and PLD 2020 Sindh 74.

3. Learned counsel for the Defendants submits that the Plaintiff has provided false information to the University to obtain

three days leave from 27.06.2022 to 29.06.2022 on the ground that he had to attend his brother's wedding in Dallas, USA, at the time he applied for leave, the wedding had already been postponed; that the Plaintiff had planned to travel back to Pakistan by 01.07.2022 for his Psychiatry OSCE in time, but the route attached by him from Turkish Airlines was never issued. Turkish Airlines confirmed that the tickets were never issued and it is clear that the Plaintiff never intended to return for the Psychiatry OSCE Exam; that on 29.06.2022, the plaintiff submitted an alleged covid positive report to the Defendant No.1 and requested for approval of medical leave, but the purpose of the Plaintiff to obtain an approved absence from his Psychiatry OSCE as he had made no travel arrangements to return for it. On 29.06.2022, the Defendants have also received a complaint that the plaintiff has amongst other things arranged for a fake covid report to avail medical leave from his Psychiatry OSCE Exam; that the plaintiff submitted covid positive report and subsequently, the plaintiff admitted that the report was dubious and concealing three covid negative reports and was admitted before the Appeals committee that he concealed the negative covid reports; that on 06.11.2022, the Defendant No.3-A suspended the plaintiff from all academic and campus based activities until further notice as per clause 6.6.6 on the ground that the plaintiff had engaged in behavior which was in violation of the Student Code of Conduct and Disciplinary Procedures and brought to the knowledge of the Plaintiff that as per policy the University initiated disciplinary proceedings to investigate the complaint due to complicate nature of the case and a disciplinary committee has constituted to extend its proceedings beyond the normal time period of 15 working days. During disciplinary proceedings, the Plaintiff admitted that he in fact never had a covid positive and the report was invalid and has concocted a new story stating that due to the death of his phupho/aunt, the wedding has been postponed and an engagement ceremony was held; that the Plaintiff admitted his breach of the Handbook and he travelled despite knowing that the alleged wedding ceremony was postponed. He further submits that any student who has missed an examination without permission or a valid reason is considered failed and the relevant provision is that" 3.4 Procedures (u) Absence from an examination without a valid reason is considered as a failure in the examination". Learned counsel further submits that the Plaintiff deliberately and

intentionally missed his exam. Therefore, the Plaintiff committed disciplinary offences coupled with his deliberate misrepresentations resulted in a further breach of the code clause 5.1.14 of the Code which reads as “*Providing wrong information, giving false and/or fabricated evidence, deliberately concealing material facts or information to the University in any proceedings and inquiries carried out at any forum by the University.*” Learned counsel submits that after a proper opportunity of hearing to the Plaintiff, the committee finally expelled the Plaintiff from the University effective from 1st July 2022; thereafter, the Plaintiff had filed an appeal under Code 8.0 of the Student Code of Conduct and Disciplinary Procedure for reconsider the review of the decision passed by the Disciplinary Committee. On 01.11.2022, the Appeals committee provided an opportunity to the plaintiff to present his case personally and after considering all record and information provided by the Plaintiff, the committee has determined that the decision of the vice Provost Student Affairs and Services should be upheld and they are agreed with the recommendation of the committee. Learned counsel submits that the Plaintiff has not provided any reasonable explanation for not immediately informing the Defendant No.1 that the Plaintiff did not have covid; even the doctor who arranged Plaintiff’s elective while he was in USA emailed Plaintiff questioning why he attended clinic after receiving the covid positive report and why he did not immediately inform his supervising consultant. It is a fact that Plaintiff attended clinic after allegedly testing positive, which is sufficient to demonstrate that the Plaintiff is trying to maintain his innocence in sending a false positive covid report. Learned counsel for the Defendants submits that the plaintiff has rightly been suspended from the University. In response that two students were allowed to sit in the exam, learned counsel has filed a statement before this Court, which states that it is a matter of record that Ms. Zoha Qureshi was allowed due to the demise of his close friend, which was also notified through a memorandum, whereas the other student is concern, Mr. Iman Farooqui has covid positive and he informs the concerned in time along with Covid report. He lastly submits that through an email, the plaintiff was provided a schedule for completion of his remaining requirements for year IV without prejudice to the case of the Defendants in instant suit. Therefore, he prayed for dismissal of the injunctive application. In support of his contention, he has placed reliance on the cases reported as

PLD 1982 Supreme Court 131, 1983 SCMR 196, PLD 2001 Lahore 260, 1998 CLC 2045, PLD 2022 Supreme Court 92 and 2005 SCMR 961.

4. Heard learned counsel for the respective parties and perused the record.

5. Essentially, the case of the Plaintiff is that the Plaintiff may be allowed to sit in the examination as he had not deliberately missed his exam. Per the learned counsel for the Plaintiff, the Plaintiff had not appeared in his earlier exam owing to Covid positive. Whereas the case of the Defendants is that the plaintiff has provided wrong information by giving false and fabricated evidence and deliberately concealing the material facts. The plaintiff is a fourth-year student of M.B.B.S program undertaken by the Defendant No.1, (hereinafter referred to as **“University”**). The plaintiff during the fourth year attended three rotations namely Medicine, Anesthesia and Psychiatry and completed his rotation with 100%. Finally, University announced the schedule and the Exam was to be held on 01.07.2022, but the plaintiff missed his Psychiatry OSCE. In order to cover his absence the plaintiff submitted an application to the University to obtain three days' leave from 27.06.2022 to 29.06.2022 on the ground that he had to attend his brother's wedding ceremony in Dallas, USA. It is important to note here that at the time when he applied for leave, the wedding had already been postponed. The plaintiff also provided false information to the University by submitting a covid positive test and subsequently, he admits that it was dubious and concealed three covid negative tests. Things are not ended here, the plaintiff has also given false information to the University to establish that he intended to return for his Psychiatry OSCE scheduled for 01.07.2022. He provided an itinerary from Turkish Airlines showing a return on 29.06.2022, but Turkish Airline confirmed that no such ticket was ever issued. Based on false information, the University initiated disciplinary proceedings and after completing all codal formalities, the University through a notification dated 23.09.2022 expelled the plaintiff from the University.

6. Since, the plaintiff failed to obtain prior permission from the University and as per Student Handbook-2022, if any student absent from an examination without prior permission should

consider himself as having failed an examination. It is appropriate to reproduce the relevant Para of the Handbook-2022 issued by the University, which reads as under;-

“Students absent from an examination without prior permission or adequate supporting medical evidence from the Student Health Service should consider themselves as having failed an examination. Any unapproved leave is considered unauthorized absence from the medical College and will be considered a disciplinary offence.” It also provides that:-

3.4 Procedure

u) Absence from an examination without a valid reason is considered as a failure in the examination.”

7. Further, learned counsel for the plaintiff invited attention of this Court that two other students namely Zoha Qureshi and Iman Farooqui were also absent and failed to appear in the examination but they were given chance to sit in the next examination. Though such fact has not been denied in a statement filed by the Defendants which reflects that Zoha Qureshi in her application requested that due to the sudden demise of her friend, she was in a state of shock and on such ground, her leave was approved and time was extended. The University had also approved leave of second student Iman Farooqi on the ground that she had contracted Covid positive. The Procedure provides in 3.4 of the Handbook written supra states that the absence of a Student from an examination without a valid reason is considered as a failure of the examination. Since both students have given valid reasons as such time was extended in their favour. On the other hand, the Plaintiff has given false information to the University, as such, vide letter dated 23.10.2022 after conducting a thorough enquiry, he was expelled from the University on the ground of false information provided by him. The Procedure as given in 7.4 of Hand Book provides the following Disciplinary Actions:

“7.1. In cases of breaches of Disciplinary Offences 5.1.1 – 5.1.19, the University will impose anyone or more the disciplinary actions given below, depending on the severity of the offence.

7.1.1 Counselling of the student.

7.1.2 A letter of warning or reprimand to the student.

7.1.3 Probation for a specified period fo time with mandatory periodic counseling.

7.1.4 They payment of fine by the offender commensurate with the nature and gravity of the offence committed.

7.1.5 Suspension from the University for a specified period.

7.1.6 Expulsion from the University and / or expulsion from the University residences if so required.

7.1.7 *Any other penalty which the relevant authority / body of the University may deem fit to impose.”*

8. The above regulations clearly state that in case a student is found guilty of breaching code of conduct set by the University, it shall impose disciplinary action keeping the severity of offence committed by the student. It has been time and again held by the Hon'ble Supreme Court of Pakistan that the Courts must sparingly interfere in the internal governance and affairs of education institution. It is simply prudent that the courts keep their hands off educational matters and avoid dislodging decisions of the University authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every University has the right to set out its disciplinary and other policies in accordance with the law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the Courts results in disrupting the smooth functioning and governance of the University. It is therefore best to leave the disciplinary administrative and policy matters of the universities or educational institutions to the professional expertise of the people running them unless of course there is a violation of any of the fundamental rights or any law. Reliance is placed in the case of Khyber Medical University and others vs. Aimal Khan and others, the Hon'ble Supreme Court of Pakistan has held as under:-

- “4. *It has been time and again held by the Hon'ble Supreme Court of Pakistan that the Courts must sparingly interfere in the internal governance and affairs of education institution. It is simply prudent that the courts keep their hands off educational matters and avoid dislodging decisions of the university authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every university has the right to set out its disciplinary and other policies in accordance with law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the Courts results in disrupting the smooth functioning and governance of the university. It is therefore best to leave the disciplinary administrative and policy matters of the universities or educational institutions to the professional expertise of the people running them, unless of course there is a violation of any of the fundamental rights or any law.*
5. *This self-restraint by the courts in matter of education institutions is based on the wisdom that academic freedom and institutional autonomy of the universities must be protected and safeguarded. Academic freedom is not merely liberty from restraints on thought, expression, and association in the university, but also that the university should have the freedom to make decisions about the educational matters including disciplinary matters. As it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the four*

essential freedoms of a university; who may teach, that may be taught, how it shall be taught and who may be admitted to study.

7. *Raison d’etre of courts is to settle disputes, which come before them. it is not the constitutional mandate of the courts to run and manage public or private institutions or to micro-manage them or to interfere in their policy and administrative internal matters. Courts neither enjoy such jurisdiction nor possess the requisite technical expertise in this regard. Courts should step in only when there arise justiciable disputes or causes of action between the parties involving violation of the Constitution or the law.*
8. *..... Regulation 32(c), made by the University under its delegated legislative power, is a law within the scope of the term “law as used in Article 4 of the Constitution; it fixes a penalty of three years and allows no discretion to the decision-making authority for it to be reduced. There is thus no scope, in the relevant law, to grant relief of reducing the disqualification-period to the respondent No.1 on the ground of compassion or hardship. The reduction of the disqualification period by the High Court, in contravention of the relevant law, is an example of judicial overreach or judicial overstepping, where law is ignored or modified by the Court to give way to personal emotions and sense of compassion. Such exercise of judicial power is not permissible.”*

9. During pendency of the Suit, Dr. Laila Akbarali/Defendant No.3-A provides a Schedule for the completion of Plaintiff’s requirements and provides a chance to the plaintiff to appear in the Exam by following the policy. It is appropriate to reproduce the Table as under:

Requirement	Dates	Note
Medicine OSCE Exam	Feb 2, 2023	
Paediatrics rotation	Feb 6, 2023 – March 25, 2023	Exam: TBD Paeds department will announce this to all the students.
Psychiatry 50% Remedial	April 3, 2023 – April 13, 2023	Exam: TBD Expected: April 13, 2023
Pre-Prof Break	April 14, 2023 – May12, 2023	
Year IV Prof	May 15 – 19, 2023	

10. I have gone through the material placed on record by the parties besides the contentions of the learned counsel. Normally the Courts exercise parental jurisdiction in the student’s cases. However, the Courts never encourage a case of student who ex-facie violates the scheme of educational institutions. If favours of the nature are extended in favour of the student then the standard of the education and the discipline which is pre-requisite of a college/university would be compromised. In the case in hand prima facie there is sufficient material produced by the University reflecting that the absence of the plaintiff was neither justified nor condonable. It is stated that the grounds for the absence of the plaintiff were considered by the authority concerned and reached

to a conclusion that the case of the plaintiff is fully covered by the Student Handbook-2022 Procedure 3.4 (*cited Supra*). The issue that the plaintiff be allowed to be treated in the manner the other two students namely Zoha Qureshi and Iman Farooqui is also not persuasive, as the University on examining these cases came to the conclusion that their case is an exception in view of the Student Handbook-2022 and were allowed to sit in the exam. I also clear in my mind that in the plaintiff case balance of convenience rests with the University no irreparable loss would be caused to the plaintiff who cannot be allowed premium over his default. On the contrary, allowing injunction application would definitely amount to intervention in the educational scheme of the University. The plaintiff therefore be allowed to appear in the exam as per the Schedule which has been filed by the University. Resultantly, the application bearing CMA No.19035/2022 is dismissed. In consequence thereof, contempt applications listed at Serial No.2 & 3 are also dismissed as Defendant No.3-A has given proper rotation policy/schedule to Plaintiff to appear in the examination.

11. The cases relied on by learned counsel for the plaintiff are distinguishable from the facts of the present case.

JUDGE