IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal**, JJ.

CP D 6967 of 2017	:	Talha Nasir & Others vs. Pakistan Medical and Dental Council & Others
CP D 7534 of 2017	:	Shazia Jamali vs. Pakistan Medical and Dental Council & Others
CP D 79 of 2018		Fatima Ahmed vs. Pakistan Medical and Dental Council & Others
CP D 563 of 2018		Zoya Gul vs Pakistan Medical and Dental Council & Others
CP D 1595 of 2018		Ramsha Durrani & Others vs. Pakistan Medical and Dental Council & Others
For the Petitioners		Mr. Akhtar Hussain, Advocate (in CP D 563 of 2018) Mr. Mohammad Ali Lakhani Advocate (in the remaining petitions)
For the Respondents		Mr. Kafil Ahmed Abbasi Deputy Attorney General Mr. Jawad Dero Additional Advocate General Mr. Sohail H.K. Rana, Advocate (for the PMDC) Mr. Rehan Aziz Malik, Advocate Prof. Atta-ur-Rahman Student Advisor (for the JSMU) Mr. Wasiq Mirza, Advocate (for the DUHS)
Dates of Hearing	:	17.10.2018, 07.02.2019 & 12.03.2019
Date of Announcement	:	23.04.2019

JUDGMENT

Agha Faisal, J: These petitions are interconnected as they have been filed by medical students, enrolled in the MBBS Program, affected by the decision of their medical university to implement an annual system of examination, in place of the semester system that was prevalent thus far. Since the petitioners have failed to clear one or more subjects in their respective semesters, hence, they are ineligible to be promoted to the succeeding year without spending a year awaiting the requisite annual examination.

The petitioners had filed the respective petitions seeking to perpetuate the semester system, however, have modified their stance during the course of their hearings to a singular prayer that the medical university may be permitted to conduct one special examination in order to enable the petitioners to clear their remaining subjects and thus be promoted to the successive year without losing an year. Since the grievance of the petitioners is common and the listed petitions were also argued conjunctively, therefore, the said petitions shall be determined vide this common judgment.

2. The facts in CP D 6967 of 2017 are representative of the controversy in all the present connected matters, therefore, the scope of the factual constituent shall be circumscribed to that apparent from the said petition. Mr. Mohammad Ali Lakhani, Advocate articulated the case for the petitioners and submitted that they are all reading for courses in the 7th semester, falling within the fourth professional year. It was submitted that the semester system was followed by the relevant medical university from the time of the petitioners' admission till the point when the same was unilaterally altered to the manifest detriment of the petitioners. Learned counsel adverted to the Medical and Dental Council Ordinance, 1962 ("**1962 Ordinance**") and submitted that a semester system was not in dissonance therewith.

Per learned counsel, upon the unilateral decision to transform the semester system into an annual system, and by giving it retrospective effect, the rights of the petitioners have been marginalized as they have

been precluded from advancing to the successive year on account of one or more exams not having been cleared in a previous semester. It was argued that in the semester system the possibility of retakes was available bi-annually, however, in the annual system this opportunity has been taken away from the petitioners hence they are liable to sit back a year even if one of the exams in a previous semester remains to be cleared.

Learned counsel referred to a series of correspondence between the medical institutions and their regulator the Pakistan Medical and Dental Council ("**PMDC**"), respondent No.1 herein, wherein it was sought to be demonstrated that the PMDC was repeatedly asked for clarifications in respect of the semester system, however, it was argued that the PMDC failed to address the issue in a conclusive manner. Lastly, learned counsel drew attention to a letter dated 07.02.2019 issued by the respondent No.2, Jinnah Sindh Medical University ("**JSMU**"), to the PMDC seeking permission to continue with the bi-annual semester system for students already enrolled and in respect thereof it was submitted that no reply has been given by the PMDC till date. In conclusion, the learned counsel submitted that a special exam may be permitted to the petitioners so that they may be able to clear subjects in which they have been unable to pass in the past and thereafter the petitioners have no cavil to be assimilated in to the annual system.

3. Mr. Sohail Hayat K. Rana, Advocate appeared on behalf of the respondent No.1, PMDC, and submitted that the present petitions are not maintainable primarily on the ground that there were no fundamental rights are involved. Learned counsel drew the Court's attention to the prayer clauses in the petition and submitted that it was evident therefrom that not only was there no infringement of the basic rights of the petitioners but further that the said clauses sought relief in view of the 1962 Ordinance, which had already been superseded by the Pakistan Medical and Dental Council Ordinance, 2019 ("**2019 Ordinance**").

Per learned counsel the regulations governing the present controversy are the MBBS and BDS (Admissions, House Job and Internship) Regulations 2018 ("**2018 Regulations**") which have already been approved by the honorable Supreme Court vide its order dated 17.09.2018. It was argued that the PMDC is the only regulatory body exercising dominion and control with regards to medical education and its jurisdiction has been recognized time and time again by the honorable Supreme Court, including without limitation in the case of *Pakistan Medical and Dental Council vs. Ziauddin Medical University* reported as *PLD 2007 SC 323*.

Learned counsel submitted that the examination system in medical institutions in Pakistan was always annual and that any medical institution not following the said system was doing so in violation of the applicable rules. By way of an illustration, it was submitted that the medical colleges in Islamabad follow a modular system, however, the exams are still conducted on an annual basis. Therefore, it was sought to be demonstrated that while a medical college / institution remained at liberty to employ any system of teaching it considers efficient, the examination system was required to remain as annual. It was, therefore, argued that the present petitions have not demonstrated any fundamental right under threat, therefore, there was no apparent reason for the invocation of the writ jurisdiction of this Court.

4. Mr. Rehman Aziz Malik, Advocate appeared on behalf of the JSMU and submitted that all medical institutions in Pakistan are bound to follow the rules and regulations set forth by the PMDC. It was argued that a semester system was being followed by the medical colleges in Karachi from the time that they were functioning under the administrative umbrella of Dow University of Health Sciences ("**DUHS**"). Learned counsel categorically stated that while they have sought permission / clarification from the PMDC for the determination of whether the annual system is required to be applied to the existing students as well, the said respondent has, however, immediately issued a notification to alter the prevailing system of annual so that the said respondent remain in conformity with the law. It was submitted in writing on behalf of JSMU that they were ready to conduct a special

examination for the petitioners if so enabled by the Court or the regulatory body.

5. Since the issue of applicability of a semester system was stated to have been in vogue from the time that the medical colleges were affiliated with DUHS, we directed the said institution to assist the Court with respect to the rationale upon which the said decision was based. Mr. Wasiq Mirza, Advocate appeared on behalf of DUHS and submitted a detailed reply along with annexures. It was gleaned from the voluminous record filed that the entire rationale for the implementation of a semester system was guidelines issued by the Higher Education Commission ("**HEC**") in the 28th meeting of its Syndicate. It was apparent from the record that the guidelines included a recommendation that in order to attain uniformity and harmony amongst educational institutions it was proposed that by fall 2008 all higher educational institutions would gradually shift towards a semester system. We sought the assistance of the learned counsel for the DUHS, as well as that of the respective learned counsel for the other parties, to assist the Court with regard to whether there was any other basis for the implementation of semester system in the medical institutions. The result of the aforesaid exercise was that no other rationale was apparent form the record placed before us.

6. At this juncture it may be pertinent to observe that vide order dated 02.05.2018 an earlier learned Division Bench, seized of these petitions, had rendered an interim order and directed that a retake examination may be scheduled for the petitioners. It is within our contemplation that while a challenge to the aforesaid order was pending before the honorable Supreme Court, the said retake examination was in fact held, however, the Honorable Supreme Court was pleased to set aside the order referred to hereinabove, notwithstanding the factum that the examination had already taken place. It is also within our knowledge that a review petition was preferred in order to protect the rights of the students who had already cleared the retake examination, however, the review petitions admittedly did not succeed.

7. The respective learned counsel had drawn our attention to the Regulations for the Degrees of the Bachelors of Medicine and Bachelors of Surgery 2003 ("**2003 Regulations**") issued by the PMDC and submitted the said regulations, inter alia, stipulated that no students could be permitted to the next professional year unless they passed all the subjects of the previous classes and further that the examination system was annual. Learned counsel for the petitioners had relied upon the Admissions in MBBS and BDS Courses and Conditions for House Job Internship Foundation Years Regulations, 2013 ("**2013 Regulations**") to argue that a semester system had been put in place thereunder. Their reliance was placed upon a table appearing after regulation No.8 in which there was reference to semesters in the first two professional years. We find ourselves unable to concur with the argument so advanced as notwithstanding the fact that the reference to the semester is only with respect to the first two professional years and not the subsequent ones in which he petitioners are placed, but that the very same table categorically explicates that the examination in each of the successive professional years shall be an annual examination.

Our attention was also drawn to Regulation 26 of the 2013 Regulations and it was sought to be argued therefrom that universities specifically permitted to carry out a semester system of examination were precluded from the enforcement of the annual system. However, no permission instrument and/or document was placed before us to demonstrate that the medical institutions presently under scrutiny were ever specifically permitted to carry out a semester system.

We have also taken into consideration that the medical colleges that are now affiliated with JSMU were earlier affiliated with DUHS and had been following the semester based curriculum from the earlier period and that the entire justification put forth by Mr. Wasiq Mirza Advocate was that the implementation of the semester system was a result of the guidelines proposed by the HEC. While DUHS is not a respondent before us in the present proceedings and had only assisted us upon request, therefore, it is considered inopportune to make any observations with regard to the functioning of the said institution or the basis thereof, however, for the purposes of the present petitions it may

suffice to observe that the rationale employed by the DUHS does not augment the case of the present petitioners.

8. Having considered the 2003 Regulations and 2013 Regulations, it follows that the present set of rules in vogue are the MBBS and BDS (Admissions, House Job and Internship) Regulations 2018 ("**2018 Regulations**"). The 2018 Regulations were issued under the 1962 Ordinance and now, inter alia, regulate all medical and dental institutions. It is pertinent to reiterate that 2018 Regulations have also been approved by the Honorable Supreme Court vide its order dated 17.01.2018. It is noted from the Regulation 10 that the professional examinations in respect of each professional year is to be conducted on an annual basis. It may be pertinent to record that Regulation 24 clearly stipulates that on commencement of these regulations all regulations, notifications, instructions and circulations etc. which regulate any matter under these regulations are repealed. It is for this reason that JSMU had issued a Notification dated 19th May, 2018 wherein it was stated that as per 2018 Regulations the annual examination system is required to be followed, hence, dispensing with the semester system earlier in place.

It is observed that all 3 sets of regulations, being the 2003 Regulations, 2013 Regulations and the 2018 Regulations, have consistently maintained an annual system of assessment and any deviation therefrom is any issue between the respective medical institution and the regulatory body. It was only the 2013 Regulations, no longer in force, that purportedly created a dispensation for medical institutions specifically permitted to function under a parallel regimen, however, no such specific permission was placed before us.

9. In view of the reasoning and rationale as delineated herein, we are constrained to observe that the petitioners have been unable to demonstrate infringement of any fundamental right meriting the interference of this Court in its Constitutional jurisdiction, hence, these petitions, along with pending applications are hereby dismissed with no order as to costs.

10. It is considered expedient to observe in closing that JSMU supports the contention of the petitioners that they may be allowed one set of retake examinations where after they would have no cavil to be assimilated into the annual system as prescribed by the 2018 Regulations. JSMU has already made a representation to the PMDC, vide its letter dated 07.02.2019, wherein PMDC's permission had been requested for continuation of the bi-annual semester system for students already enrolled in this system of examination and admittedly the PMDC had not decided the said representation till date. In view hereof we expect that PMDC shall consider the representation of JSMU, dated 07.02.2019, sympathetically and pass an order thereupon preferably within a period of fifteen days from the date of receipt of this judgment.

SD/- JUDGE
SD/- JUDGE

CERTIFIED TO BE TRUE COPY

ASSISTANT REGISTRAR(WRIT)

Endt: C.P. No. D-6967/2017 & others

Karachi dated:25-04-19

Copy forwarded for information & compliance to:

1- The Pakistan Medical & Dental Council, a statutory body constituted under section 3 of the Medical & Dental Council Ordinance of 1962, to be served through its President, having Regional Office at 36A, Located at Shahrah-e-Iraq, Karachi.
2- The Jinnah Sindh Medical University, to be served through tis Vice Chancellor at Rafiqui H. J. Shaheed Road, Karachi.
3- The Jinnah Medical & Dental College to be served through its Principal at 22-23 on Shaheed-e-Millat Road, Karachi.

ASSISTANT REGISTRAR (WRIT)