

P L D 2006 Lahore 482

Before Sh. Hakim Ali, J

AQSA MANZOOR---Petitioner

Versus

**UNIVERSITY OF HEALTH SCIENCES, LAHORE through Vice-Chancellor and 3 others---
Respondents**

Writ Petitions Nos.2029, 2285, 2192, ,2386, 2127, 2095, 2030, 1934, 2674, 2160, 2393, 2161, 2284 and 2793 of 2005, decided on 10th November, 2005.

(a) Constitution of Pakistan (1973)---

---Art. 199---Constitutional jurisdiction of High Court---Scope---Educational Institution---Examination---Notification issued by the University to improve the quality and standard of medical education, was assailed---Policy matters of the Government could not be assailed or challenged in the constitutional jurisdiction unless those were proved to have been framed or formulated against the fundamental and basic provisions of the Constitution---Candidates/petitioners in the present case, had participated in the examination after the enforcement/publication of said notification and the contention of the examinees was that they were not imparted the knowledge of enforcement of the notification and they were not in the knowledge of the provisions of the regulation given in the same---Validity---Held, law was promulgated, published in the Gazette of the Government or through notifications of a notifying body, empowered by law to do so---As and when a notification was published and enforced, it became the law and it was not necessary or mandatory for the enforcing authority to inform or impart knowledge of the notification to each and every one; it was the duty of all concerned to be aware of the new law being enforced by its competent authorities---In law a person who had acted or taken steps after the enforcement of law, rules, regulations could not be permitted to resile or retreat by stating that he would not be governed by newly-enforced laws, rules and regulations---Rule of approbation and reprobation would be applicable in such a case---Ignorance of law was no excuse---Students having participated and taken the next coming examination after the publication of the impugned notification were to be considered and held to have known the existence and impact of that notification---Objection raised by the examinees could not be acceded to or approved in law that the students/examinees were not aware of the notification---Students having appeared and attempted the examination, were to be governed by the regulation mentioned in the notification in question and therefore were estopped to raise any objection against the notification after having availed its benefit but having remained unsuccessful---Constitutional petition assailing the notification, in circumstances, was dismissed by the High Court.

Alaptagin v. Principal, Saidu Sharif Medcial College, Swat and 3 others PLD 2004 Pesh. 307 distinguished

Mst. Kaniz Fatiam through Legal Heirs v. Muhammad Salim and 27 others 2001 SCMR 1493; Punjab Small Industries Corporation v. Ahmad Akhtar Cheema 2002 SCMR 549; Syed Match Factory Ltd. through Managing Director v. Authority under Payment of Wages Act and others 2003 SCMR 1493; W.P. No.2687 of 2005; Miss Lubna Sabir and others University of Health Sciences W.P. No.10998 of 2005; Muhammad Tariq Iqbal v. University of Health Sciences W.P.No.1764 of 2005/BWP; Ali Yousuf and another v. Chairman of Academic Council and Principal, Dow Medical College, Karachi and others 2000 SCMR 1222; Muhammad I-Iamid Shah v. Pakistan Medical and Dental Council through Secretary and 4 others 1996 SCMR 1101 and Akhtar Ali,'Javed v. Principal, Quaid-i-Azam Medical College, Bahawalpur 1994 SCMR 532 ref.

(b) Constitution of Pakistan (1973)---

---Art.199---Constitutional jurisdiction of High Court---Scope---Educational institution---Examination---High Court, under its constitutional petition could not create an extra chance for the petitioners if it was not available and granted by any law, regulation, rule or statute.

(c) Notification---

---Implications---Law was promulgated, published in the Gazette of the Government or through notifications of a notifying body, empowered by law to do so---As and when a notification was published and enforced, it became the law and it was not necessary or mandatory for the enforcing authority to inform or impart knowledge of the notification to each and everyone; it was the duty of all concerned to be aware of the new law being enforced by competent authority---In law a person who had acted or taken steps after the enforcement of law, rules, regulations could not be permitted to resile or retreat by stating that he would not be governed by newly enforced laws, rules and regulations---Rule of approbation and reprobation would be applicable in such a case---Ignorance of law was no excuse.

(d) University of Health Sciences Lahore Ordinance (LVIII of 2002)--

---S. 10---Constitution of Pakistan (1973), Art.199---Constitutional petition---Maintainability---Retnedy for filing of revision before the Chancellor being available to the petitioners, constitutional petition was not maintainable.

Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim and 27 others 2001 SCMR 1493; Punjab Small Industries Corporation v. Ahmad Akhtar Cheema 2002 SCMR 549 and Syed Match Company Ltd., through Managing Director v. Authority under Payment of Wages Act and others 2003 SCMR 1493 ref.

Ch. Manzoor ul Haq for Petitioner.

Asif Ismail for University of Health Sciences.

Sardar Muhammad Hussain Khan for Quaid Azam Health Medical College Bahawalpur.

Bashir Ahmad Ch. and Muhammad Farooq Warind for Sh. Zayed Hospital Rahimyar Khan.

Dates of hearing: 17th and 18th October, 2005.

JUDGMENT

SH. HAKIM ALI, J.---By this alone and sole order judgment, I have intended to dispose of the following writ petitions, as in all these writ petitions, common questions of law and facts have arisen:--

(i) W.P.No. 2285-2005/BWP, (ii) W.P.No. 2192-2005/BWP, (iii) W.P.No.2386-2005/BWP, (iv) W.P.No. 2127-2005/BWP (v) W.P.No.2095-2005/BWP, (vi) W.P.No. 2029-2005/BWP, (vii) W.P.No. 2030-2005/BWP, (viii) W.P.No. 1934-2005/BWP, (ix) W.P.No. 2674-2005/BWP, (x) W.P.No. 2160-2005/BWP, (xi) W.P.No. 2393-2005/BWP, (xii)

W.P.No.2161-2005/BWP, (xiii) W.P.No. 2284-2005/BWP and (xiv) W.P.No. 2793-2005/BWP.

2. The above noted writ petitions can be divided into three categories, in accordance with facts as narrated by the learned counsel

3. (i) First category, relates to students of M.B.,B.S., who had appeared in Part First Professional but had remained unsuccessful due to their failure in one or two subjects.

(ii) Second category, consists of those students/writ petitioners, who have failed in Part Second and now wanted to be promoted to Part-III of M.B.,B.S..

(iii) Third category, contains the students of Part-III M.B.,B.S. Professional, who want to be permitted to join and attend the classes of 4th Professional M.B.,B.S.

4. Speaking and voicing the grievances on behalf of the petitioners, Ch. Muhammad Manzoor-ul-Haq learned Advocate has mainly argued all the cases, who is associated and assisted by his other colleagues in this task. Commencing his arguments, it has been submitted by him as under:--

(a) Section (iv) of the Chapter "Examination" of PM & DC Regulations in regulation No.2 words are as follows:--

"No student shall be permitted to the 3rd year of M.B.,B.S. class without passing the First Professional M.B.,B.S. Part-I and Part II University examination in Anatomy, Physiology and Biochemistry."

(b) He has also relied upon regulation No.3, which is found with the following words:--

"No student can be promoted to the higher classes unless he passes all the subjects of the previous classes."

(c) Has also quoted regulation No.12 of PM & DC, which is reproduced as under:--

"The first professional examination should be divided into two parts, each to be conducted by the University."

(d) Referring to Professional M.B.,B.S. Examination, he has relied upon the wordings of Clause (d) of First Professional M.B.,B.S. Examination Part No.1, which are as under--

"Any student who fails to clear the First Professional M.B.,B.S. Part I Examination in three chances availed or un-availed after becoming eligible for each examination shall cease to become eligible for further medical education in Pakistan."

The same condition is noted in First Professional M.B.,B.S. examination with the same clause

5. According to learned counsel, there must be kept in view the distinction and difference between the words "part" and "class". Dilating upon word "class" he interprets it as a body of students while for "Part I", it would mean a part of a whole thing or an article. As per learned counsel, "as noted in above regulation No.2 to section IV (Examination Chapter)" Part 1 and Part

II of the First Professional M.B.,B.S. are to be treated one class. If a student has to be promoted to Part II then it should be treated as one class of 1st Professional M.B.,B.S. and it would not be considered equivalent to changing of a class. It would remain a part 1 of First Professional M.B.,B.S. Class. To explain it more, he submits that if a student fails in one or two subjects in Part I, M.B.B.S. 1st Professional, he must be promoted to Part II without any hindrance, as it would not be promotion of student from one class to other class if a student fails in Part II of 1st Professional M.B.,B.S. then his promotion should be considered and taken as promotion from one class to other class. He has also referred to academic schedule provided by the Prospectus of Government Medical Colleges in the Punjab for Session 2002-2003 and 2003-2004. He has also quoted Para 3(a) of (ii) University Examination, Chapter (page 26 of the Prospectus), in which as per learned counsel, a student if fails in IInd Annual Examination, then his promotion is to be cancelled to other class and he may be considered barred to be promoted to the next higher class. He has also submitted that while interpreting a case of a student interpretation beneficial to him should be adopted. Mr. Nadeem Iqbal Chauhry, Advocate has referred to a decision reported in PLD 2004 Peshawar 307 (Alaptagin v. Principal, Saidu Sharif Medical College, Swat and 3 others) and states that same interpretation has been made to the above noted regulations of PN and DC by Full Bench of Hon'ble Peshawar High Court, in the abovenoted case. So, the present case should be treated alike.

6. The learned counsel also contends that the petitioners were given admission in the Medical College on the basis of prospectus of 2003-2004, therefore, they would be governed by the prospectus and through those rules, regulations, which were in existence at the time of admission. The new amendments brought or through notification made on 29-6-2004 would not apply to their cases.

7. To avail the chance of reply, as a preliminary objection, it has been asserted by Mr. Muhammad Asif Ismail, learned Advocate on behalf of University of Health Sciences that Section 10 of University of Health Sciences 2002 has provided remedy of revision to the petitioners, who can file such a revision before the Chancellor, who is also empowered by law to decide the cases of the petitioners. As the petitioners have got alternate efficacious remedy, therefore, they cannot knock the door of this Court by invoking the powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. He relies upon 2001 SCMR 1493 (Mst. Kaniz Fatiam through Legal Heirs v. Muhammad Salim and 27 others), 2002 SCMR 549 (Punjab Small Industries Corporation v. Ahmad Akhtar Cheema) and 2003 SCMR 1493 (Syed Match Factory Ltd. through Managing Director v. Authority under Payment of Wages Act and others) for this purpose. Similar questions raised by other students in different writ petitions were also decided by this Lahore High Court in W.P. No.2687 of 2005 at Multan Bench, vide order dated 26-7-2005, by which all those writ petitions were disposed of by accepting this objection. As per learned counsel, one of those writ petitions bearing No.3369 of 2005 was exactly on the same facts, in which case of Part I of First Professional M.B.,B.S. and Part II promotion was involved. It has also been revealed by the learned counsel that in W.P. No.10998 of 2005/LHR (Miss Lubna Sabir and others v. University of Health Sciences) identical question was raised and the learned Division Bench of this Court had decided that the cases of the petitioners would be treated as representation which would be decided within seven days by the Chancellor. He has produced a copy of order dated 1-8-2005 passed in that writ petition. He has also referred to another decision of W.P. No.1764 of 2005/BWP (Muhammad Tariq Iqbal v. University of Health Sciences), in which the writ petition was dismissed by this Court.

8. Learned counsel for the respondents also submits that violation of any rule or regulation has not been committed by the respondents. Therefore, the writ petitions are not maintainable.

Narrating the earlier practice, it has been stated by him that examination of First Professional M.B.,B.S. was previously conducted by the then University upon the end of the year of First Professional M.B.,B.S., treating those two years a single class and the Medical College itself had used to conduct their own home examination for promotion after one year of First Professional M.B.,B.S. Class, and they used, therefore, to promote the students through the college examination. But after 2004, the present University of Health Sciences has changed this system for the conduct of examination. Now, after one year, the First Part of both these years of First Professional M.B.,B.S. Class is also conducted by the University of Health Sciences. Therefore, the earlier view and scenario having changed, the old system cannot be applied to the instant cases, because the writ petitioners had accepted themselves to this new manner and method of examination to be held by the University of Health Sciences after each year. They have participated in the first Year of the First Professional M.B.,B.S. examination, conducted by the University of Health Sciences, therefore, they are now estopped to agitate against its holding or to resile from its impact on the students. The provisions of law and regulations framed by the University cannot now be challenged by them. Learned counsel further submits that University of Health Sciences had got published a Notification on 14-7-2004 after it was recommended by the Syndicate and Academic Council to the Board of Governors with regard to the amendment in the statutes and regulations of M.B.,B.S. Ist, IInd and IInd Annual Examinations. As per learned counsel, under heading of First Professional M.B.,B.S. Part I Examination, Regulation No.3 has been framed and approved which is as under:--

"A candidate who passes in one or more subjects but fails in the annual examination shall, if he/she so desires, provisionally be allowed to join second year M.B.,B.S. class till the commencement of supplementary examination. The candidate, however, shall have to pass the failed subjects in this supplementary examination failing which he/she shall be detained in the first year. Under no circumstances a candidate shall be promoted to the second year M.B.,B.S. till he/she has previously passed all the subjects in the First Professional. Part I Examination."

With the same effect and the force, Part II Examination contains with the same number of Regulation No.3. for First Professional M.B.,B.S. composite examination same wordings have been used in -Regulation No.3 and similar words and sentences have been employed for Second and Third Professional M.B.,B.S. Examination. Learned counsel argues that it is essential for the students appearing in the annual examination to pass the failed subjects up till the next supplementary examination. If a student fails in the next examination, he cannot be promoted according to regulation No.3 of Part I Examination of First Professional M.B.,B.S. Examination. It has also been explained by the learned counsel that the petitioners had appeared in the Annual 2004, Examination, when the provisions of this notification were already brought in force. Therefore, the petitioners are bound by the aforementioned Regulation No.3. He has also relied upon a judgment delivered by my learned brother Maulvi Anwarul Haq, J. in Writ Petition No.2687 of 2005, which has been passed by the learned Judge while 'gracing the Multan Bench. He has also placed reliance on a learned DB judgment, which has been delivered in Writ Petition No.10998 of 2005 at Principal Seat.

9. Replying to it, learned counsel for the petitioners states that notification dated 14-7-2004 providing the above noted Regulations was never notified to the students. Therefore, these Regulations cannot be applied with retrospective effect because students were admitted in the Medical College, before the amendment was brought through the impugned Notification dated 14-7-2004. Students were not aware of the rules which have now been referred to. by the learned

counsel for " University of Health Sciences. As per learned counsel, deletion, amendment or substitution of any rule/regulation cannot be applied retrospectively.

10. After hearing of arguments of both the sides, and from the perusal of the relevant record, before delivering the judgment on merits, I would like to note down the following para. in this judgment, which is the background theory and philosophy of this decision, while deciding all the cases:

"Life is a sacred trust; use its force towards the best! Doctors of tomorrow are students of yesterday, what kind and quality of doctors, we want to see in future, is the subject to be attended by us today!

A doctor passing with grace marks or that emerging from examination on merits?

Which option we have to adopt is to determine the fate of this case!"

11. The University of Health Sciences Lahore was established to consolidate all the Colleges in one streamline policy and formulate one policy for all the Government and its affiliated Colleges. Its aim and purpose was to improve the standard and quality, of medical education. In other words, it is the duty of the University of Health Sciences to frame policies of such nature, so as to promote the up to highest mark of the quality medical education. It is settled law that policy matters of the Government cannot be assailed or challenged in the writ jurisdiction' unless those are proved to have been framed or formulated against the fundamental and basic provisions of the Constitution of the Islamic Republic of Pakistan, 1973. Therefore, viewed from this angle the notification dated 14-7-2004 is an effort of the University of Health Sciences, Lahore to improve the quality and standard of medical education. It has been admitted by the learned counsel for the petitioners that all these petitioners had' participated in the examination after the enforcement/publication of this notification dated 1477-2004. Their objection, that they were not imparted the knowledge of enforcement of this notification and so they were not in the knowledge of the provisions of this regulation, the simple answer to their contention is that law is promulgated, published in the Gazette of the Government or through notifications of a notifying body, empowered by law to do so. As and when a notification is published and enforced, it becomes the law. It is not necessary or mandatory for the enforcing authority to inform or impart knowledge of that notification to each and every one. It is the duty of every student, College Authorities and Citizens to be aware of the new laws being enforced by its competent authorities. Ignorance of law is not an excuse, is the widely known legal maxim upon which building structure of law has been built. The students having participated and taken the next coming examination after the publication of that notification dated 14-7-2004 are to be considered and held to have known the existence and impact of that notification. Therefore, the objection raised by the learned counsel for the petitioners cannot be acceded to or approved in law that the students/petitioners were not aware of the above mentioned notification.

12. In law a person, who acts or takes steps after the enforcement of a law, rules and regulations cannot be permitted to resile or retreat by stating that he would not be governed by newly-enforced laws, rules and regulations. The rule of approbation and reprobation would be applicable in such a case. It may be noted that at the end of each chapter of examination the notification has in fact given a clear warning to all concerned by noting the following sentence:--

"The regulations shall be applicable with effect from Annual Examination 2004 and onwards."

13. As the writ petitioners have appeared and attempted the Annual Examination of 2004, therefore, they are to be governed by this regulation. They are now estopped to raise any objection against this notification after having availed the benefit of it but having remained unsuccessful.

14. The decision referred to by learned counsel for the petitioners of PLD 2004 Peshawar 307 (Alaptgin v. Principal, Saidu Sharif Medical College, Swat and 3 others) is not applicable to the facts and circumstances of this case on two counts. Firstly, that decision has not taken into consideration the present notification dated 14th July, 2004, issued by University of Health Sciences, Lahore. Secondly, the unequivocally used words of Regulation No.3 of the above mentioned notification for Part 1st, Part IInd of First Professional M.B.,B.S. examinations, and for 1st, IInd, IIIrd and Final Professional examination of M.B.,B.S., it would take precedence over all the other previous regulations, it being the latest one.

15. As regards the interpretation of class and part as put up by the learned counsel, which appears to have been borrowed by the learned counsel from PLD 2004 Pesh. 307, the judgment of Hon'ble Peshawar High Court, it would have been relevant, if the above noted notification of University of Health Sciences, Lahore has not come into existence. After the birth of above mentioned notification and its enforcement, this distinguishing-feature of class and part has evaporated.

16. Turning to the argument of the learned counsel for the petitioners that the petitioners may be granted grace marks and extra chance, this prayer and request cannot be acceded to because of the decision, referred below:--

"2000 SCMR 1222 (Ali Yousuf and another v. Chairman of Academic Council and Principal, Dow Medical College, Karachi and others), 1996 SCMR 1101 (Muhammad Hamid Shah v. Pakistan Medical and Dental Council through Secretary and '4 others) and 1994 SCMR 532 (Akhtar Ali, Javed v. Principal, Quaid-i-Azam Medical College, Bahawalpur)."

17. This Court cannot create an extra chance for the petitioners if it is not available and granted by any law, regulation, rule or statute.

18. As regards the grant of grace marks, the learned counsel has not been able to point out any rule, and regulation by which a student can be granted grace marks in all the subjects, therefore, this prayer is also turned down. The writ petitioners have got another alternate and efficacious remedy under section 10 of the University of Health Sciences Ordinance, 2002 of the filing of revision before the Chancellor. Therefore, this writ is not maintainable on this score also. Reference has rightly been made by the learned counsel for the respondent to the following rulings:--.

(a) 2001 SCMR 1493 (Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim and 27 others).

(b) 2002 SCMR 549 (Punjab Small Industries Corporation v. Ahmad Akhtar Cheema).

(c) 2003 SCMR 1493 (Syed Match Company Ltd., through Managing Director v. Authority under Payment of Wages Act and others).

19. As my learned brother, Maulvi Anwarul Haq, J has invoked the provision of section 10 of University of Health Sciences and has directed the petitioners of writ petitions to approach the Chancellor in his judgment delivered in W.P. NO.2687/2005/MN, if the petitioners of the instant writ petitions opt to file revision petition under section 10 of the above noted Ordinance, before the Chancellor in such an event, the present judgment would not be a bar or an impediment in the way of petitioners so as to maintain the equality between one category of students and to avoid discrimination being done to the present writ petitioners, to get the same relief, which is decided to be granted to the writ petitioners of the above noted writ petitions, by the Chancellor.

20. Accordingly, the writ petitions are dismissed with no order as to costs but with the above noted directions, observations and reservations.

M.B.A./A-

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Petitions dismissed.