

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

Civil Revision No.568-P/2014.
Date of hearing.....17.07.2014

Mst: Faryal Gohar...Vs..Ghandra University of Peshawar & others

Appellant(s) by.....

Respondent(s) by.....

MALIK MANZOOR HUSSAIN, J:- This revision petition has been directed against Judgment dated 04.07.2014, passed by the learned Additional District Judge-XI, Peshawar, whereby the application of the petitioner for direction to the respondents to issue Examination form and give permission to appear in 2nd year MBBS Examination, has been dismissed.

2. Briefly sated the facts of the case are that petitioner filed a civil suit for declaration, permanent and directive injunction against the respondents; that petitioner be allowed to sit in the MBBS 2nd year examination as well as onward Examinations. The suit was accompanied by application for temporary

injunction. Respondents were summoned who contested the suit by filing written statement and also filed reply to the application for temporary injunction. Arguments on application were heard and the learned trial Court through its order dated 15.01.2014 rejected the plaint being not maintainable. Feeling aggrieved petitioner preferred appeal and during pendency of the appeal, petitioner filed an application for direction to be issued to the respondents to issue her Examination form and roll number in order to enable her to appear in upcoming Examinations. Vide impugned order dated 04.07.2014, the same was dismissed and the matter was fixed for arguments on main appeal as well as application for impleadment of Pakistan Medical and Dental Council (PMDC) for 08.09.2014.

3. Learned counsel for the petitioner contended that petitioner is a student of 1st year M.B.B.S and as per petitioner, 1st year and 2nd year M.B.B.S constitutes 1st professional of M.B.B.S and failing in subject in 1st year does not debar a student from

appearing in the fails papers with 2nd year examination. Reliance is placed on case of **Alaptagin Vs Principal, Saidu Sharif Medical College, Swat & 03 others (PLD 2004 Peshawar 307).**

Arguments heard and record perused.

4. At the very outset the attention of learned counsel was drawn to relevant provision of regulation framed by PM&DC which applies to all the student of MBBS through out the country, whereby no student can be permitted to higher class unless he passes all the subject of previous class. Perusal of record reveals that the petitioner failed part 1st MBBS in physiology. In the second attempt the petitioner once again could not get passing marks, so she was denied to take classes of 1st Professional MBBS part-II.

5. Provision of Section-iv, Examination, rule (3) of PM&DC Regulation provides that “no student can be promoted to the higher classes unless he passes all the subjects of the previous class and there should be no more than two professional University

Examination in a year”. Petitioner failed to pass all the subject can not be permitted to sit in the higher classes or to appear in the next term Examination simultaneously without first clearing her failed subject. This issue was elaborately examined in the case of **Muhammad Umar Wahid & others Vs Univesity of Health Sciences Lahore & others (PLD 2006 SC 300)**, wherein the Judgment referred by the learned counsel for the petitioner in Alaptagin case (supra) has also been examined. It has been held by the Supreme Court that in case of non clearance of all subjects in first professional part-I MBBS Examination there is a bar on the promotion of student to 2nd year and also Examination of the 2nd year alongwith 1st year remaining papers. For the convenience Clause (3) of Section-iv of the PM&DC regulation is reproduced as under:-

“No student can be promoted to the higher class unless he passes all the subject of the previous classes”.

It is very much clear from the regulation ibid that under no circumstances a candidate shall

be promoted to the 2nd year MBBS till he has previously passed all the subjects in the 1st professional of part-I Examination and the same has been affirmed in **Muhammad Umer Wahid** case referred above. Courts of law are bound to enforce the law and protect its violation. It has become a practice that in most cases the student, otherwise not qualified; get admission through Court orders in Professional Institutions and in majority cases, by mis-using the same, complete studies. This practice is not only heart burning for the regular student but also mis-use of process of Courts.

In view of what has been observed above, this petition being devoid of any force, is dismissed in limine.

Announced.
17.07.2014

J U D G E