

**(1992) 02 P&H CK 0080**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 5829 of 1991**

|                                             |    |            |
|---------------------------------------------|----|------------|
| Dr. Harinder Kumar                          | Vs | APPELLANT  |
| Principal, Govt. Medical College and others |    | RESPONDENT |

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**Date of Decision :** 17-02-1992

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1993 P&H 102

**Hon'ble Judges :** Ashok Bhan, J

**Bench :** Single Bench

**Advocate :** Mr. Inderpal Malhotra, for the Appellant; Mr. Arihant Mohunta, AAG, for the Respondent

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## Judgement

1. Petitioner joined the M. B. B. S. Course in Medical College, Patiala, in the year 1983. He appeared in the First Professional examination of M.B.B.S. in January, 1985 and passed the same with 63% marks i.e. in first division. The Second Professional examination of M.B.B.S. was due-in July, 1986, but the petitioner fell ill and remained in bed! during that period, and therefore, did not attend the college"and even could not obtain his roll number. He appeared for the first time in the Second Professional examination held in October, 1986 and secured 67.47% marks i.e. again in first division. Petitioner passed the Final Professional examination held in May, 1988 and again secured first division.
2. On 22-2-1991, applications were invited from medical Graduates for admission to two years" Post Graduate Medical Degree/ one year Post Graduate Medical Diploma Course in the State Medical Colleges, Amritsar and Patiala. Petitioner in pursuance to the advertisement applied for admission to M.D. (Radiology) and appeared in the interview held on 4-4-1991.
3. Petitioner has filed this petition on the apprehension that he is likely to be deprived of the admission to M.D. (Radiology) Course on account of the criteria deducting 20 marks for extra attempts in passing M.B.B.S. Course by which the merit of the petitioner may be lowered. Petitioner has alleged that this is being

done on the basis of some instructions which have not been appended with the writ petition. Petitioner has claimed that there are three seats in the subject of Radiology in Govt. Medical College Patiala and Medical College, Amritsar, and the petitioner is likely to get one of the seats out of quota meant for fresh graduates on the basis of his merit if the same is prepared without deducting 20 marks for the second attempt for passing the Second Professional examination which in fact the petitioner did not avail of.

4. In the written statement filed on behalf of respondent No. 2, the facts stated in the petition are not controverted. The only stand taken is that 20 marks have to be deducted because the petitioner did not appear in the Second Professional examination which was held in July, 1986 and was to be treated as the first attempt and that the petitioner had appeared in October, 1986, which was the supplementary examination and, therefore, the authorities are constrained to treat the petitioner as having passed his second professional examination in the second attempt.

5. I have heard the learned Counsel for the parties at length and find force in the submission of the learned counsel appearing for the petitioner.

6. Petitioner fell sick and even did not submit examination form for appearing in the Second Professional examination, which was due to be held in July, 1986. Under the circumstances, it cannot be said that the petitioner made an attempt to clear the Second Professional in July, 1986. Petitioner would be deemed to have made his first attempt for clearing the second Professional examination in October, 1986, that is when he submitted his examination form for that examination and after obtaining the roll number sat in the examination. Under somewhat similar circumstances, Supreme Court of India, in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, made the following observations (para 2) :--

"The candidate fell seriously ill and was hospitalised during the final term of IIIrd M.B.B.S. he was unable to attend classes and clinics. He therefore applied to the Dean to "cancel third M.B.B.S. final term" and to permit him to attend classes and clinics regularly with the next batch. He even did not submit examination form for the year. His application to permit him to attend classes and clinics regularly with the next batch was allowed and he passed the IIIrd M.B.B.S. exam with the next batch. He was denied admission to M.S. Course on ground that he passed the IIIrd M.B.B.S. examination in the second attempt and therefore a deduction of five per cent was liable to be made from the marks obtained by him.

Held, there was no justification for holding that the candidate had passed the IIIrd M.B.B.S. examination in the "second attempt."

In the aforementioned judgment, the Supreme Court also struck down the rule instructions to be arbitrary. Since in this case, there is no challenge to instructions issued for the rule framed, I refrain myself from making any observations regarding the validity of these instructions.

7. For the foregoing reasons, this writ, petition is allowed, and the respondents are directed not to deduct 20 marks while determining the merit of the petitioner on account of his having passed the second Professional examination of M.B.B.S. in October, 1986, by treating it to be a second attempt. No costs.

8. Petition allowed.