
(2009) 09 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6694 of 2009

Gaurav Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Regulations on Graduate Medical Education, 1997 — Chapter 2, 7(7)

Citation : (2009) 09 AHC CK 0105

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner, who passed the Second Professional MBBS in the Supplementary Examination in August 2008 from the G.S.V.M. Medical College, Kanpur (hereinafter referred to as the "College"), has filed this petition for a direction upon the respondents to permit him to appear at the Third Professional (PartI) Examination alongwith the students of his Batch who cleared the Second Professional (Main) Examination five months earlier in February, 2008.

2. The College is affiliated to the Chhatrapati Shahu Ji Maharaj University, Kanpur (hereinafter referred to as the "University"). The petitioner was admitted to the MBBS Course in the said College in July 2005 and he appeared at the First Professional (Main) Examination held in July 2006. He was declared failed in the result published on 11th September, 2006 as he could not pass the First Paper of Anatomy. He, therefore, appeared at the Supplementary Examination in March, 2007 and was declared passed on 29th March, 2007. He was then permitted to attend the Second Professional Classes alongwith the students who had cleared the First Professional (Main) Examination in September, 2006. The 2005 Batch students who had passed the First Professional Examination in September, 2006 completed the studies of the Second Professional Examination and were eligible to appear at the Second Professional (Main) Examination. The petitioner, on the other hand, pursued the studies of the Second Professional Examination with the 2005 Main Batch students only from April 2007 after he was declared passed in

the First Professional Supplementary Examination. He appeared at the Second Professional Supplementary Examination held in July, 2008 after completing the Second Professional Course and was declared passed on 26th August, 2008. He, however, filed this petition with a prayer that he may be permitted to appear at the Third Professional (PartI) Examination alongwith the Main Batch Students irrespective of the fact that he had passed the Second Professional in the Supplementary Examination five months later than the Main Batch students.

3. On 6th February, 2009, the Court, by way of an interim measure, permitted the petitioner to appear at the Third Professional (PartI) Examination commencing from 10th February, 2009 alongwith the students who had cleared the Second Professional in the Main Examination in view of the interim order dated 23rd January, 2009 passed in Writ Petition No.62477 of 2008 (Surednra Kumar Kanwat & Ors. Vs. State of U.P. & Ors.).

4. I have heard Sri M.D. Singh Shekhar, learned Senior Counsel appearing for the petitioner and Sri P.K. Tripathi, learned counsel appearing for the respondents.

5. Sri M.D. Singh Shekar, learned Senior Counsel appearing for the petitioner submitted that in view of the provisions of Regulation 7(7) contained in Chapter II of the "Regulations on Graduate Medical Education 1997" (hereinafter referred to as the ""Regulations""), the students who pass the Second Professional in the Supplementary Examination join the Main Batch and are, therefore, entitled to appear at the Third Professional (PartI) Examination alongwith them. It is, therefore, his submission that the petitioner who had passed the Second Professional in the Supplementary Examination on 26th August, 2008 was entitled to appear at the Third Professional (PartI) Examination held in February, 2009 with his Batch students and the attendance requirement for him should be calculated from the date he was actually permitted to attend the Third Professional Examination Course since the University itself had not permitted him to attend the Third Professional classes after the declaration of the Main Examination result. He further submits that the petitioner has actually appeared at the Third Professional (PartI) Examination under the interim order of this Court and, therefore, a direction needs to be given to the respondents to declare his result in view of the decision of the Supreme Court in Maharishi Dayanand University Vs. M.L.R. Saraswati College of Education JT 2000 (10) SC 542. It is also his submission that the University itself was at fault in holding the Supplementary Examination after five months and so the petitioner should not be made to suffer. In support of this contention he has placed reliance upon the decision of the Supreme Court in Shalini Vs. Kurukshetra University & Anr., AIR 2002 SC 659.

6. Learned counsel appearing for the respondents, however, submitted that it is imperative for a student to pass the First Professional Examination before he can be permitted to attend the Second Professional classes and since the petitioner had failed in the First Professional (Main) Examination in September, 2006, he could not have been permitted to attend the Second Professional classes

alongwith the Main Batch till he cleared the First Professional Examination which he did in the Supplementary Examination in March, 2007 and, accordingly, he was permitted to attend the Second Professional classes w.e.f. April 2007 with the main batch. He further submitted that the petitioner could not have been permitted to appear at the Second Professional (Main) Examination unless he completed the said Course and he rightly appeared in the Second Professional Supplementary Examination in July, 2008 after completing the Course and his result was declared on 26th August, 2008. Likewise, he can appear at the Third Professional (PartI) Examination not in the Main but in the Supplementary Examination after he completes the studies of the sixth and seventh semesters. It is his submission that Regulation 7(7) only permits the students to pursue the Third Professional Course alongwith the Main Batch students after they clear the Supplementary Examination but it does not permit them to appear at the Third Professional (PartI) Examination alongwith the Main Batch and they can appear at the Third Professional (PartI) Examination only after fulfilling the other requirements of the Regulations.

7. In order to appreciate the contentions advanced by learned counsel for the parties, it is necessary to examine the salient features of the Regulations. Regulation 2 contained in Chapter I deals with general considerations and teaching approach. It mentions that Graduate Medical curriculum is oriented towards training students to undertake the responsibilities of a physician of first contact who is capable of looking after the preventive, promotive, curative & rehabilitative aspect of medicine. It also mentions that importance of the community aspects of health care and of rural health care services has to be recognized and this aspect of education & training of graduates should be adequately recognized in the prescribed curriculum. Its importance has been systematically upgraded and adequate exposure to such experiences should be available throughout all the three phases of education & training. It further provides that Lectures alone are generally not adequate as a method of training and are a poor means of transferring/acquiring information and even less effective at skill development and in generating the appropriate attitudes. Every effort should, therefore, be made to encourage the use of active methods related to demonstration and first hand experience. Students should be encouraged to learn in small groups, through peer interactions so as to gain maximal experience through contacts with patients and the communities in which they live. While the curriculum objectives often refer to areas of knowledge or science, they are best taught in a setting of clinical relevance and hands on experience for students who assimilate and make this knowledge a part of their own working skills.

8. Chapter II of the Regulations deals with Admission, Selection, Migration and Training. In so far as training period and time distribution is concerned, the relevant Regulation 7 is as follows:

"7. Training Period and Time Distribution.

1. Every student shall undergo a period of certified study extending over 4 ? academic years divided into 9 semesters, (i.e. of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of a hours each college working time, including one hour of lunch.

2. The period of 4 1//2 years is divided into three phases as follows:

(a) Phase1 (two semesters)

(b) PhaseII (3 semester) consisting of para clinical/clinical subjects.

During this phase teaching of paraclinical and clinical subjects shall be done concurrently.

The paraclinical subjects shall consist of Pathology, Pharmacology, Microbiology, Forensic Medicine including Toxicology and part of Community Medicine.

The clinical subjects shall consist of all these detailed below in Phase III.

Out of the time for Paraclinical teaching approximately equal time be allotted to Pathology, Pharmacology, Microbiology and Forensic Medicine and Community Medicine combined (1/3 Forensic Medicine and 2/3 Community Medicine).

(c) PhaseIII (continuation of study of clinical subjects for seven semesters after passing Phase1)

The clinical subjects to be taught during Phase II and III are Medicine and its allied specialties, Surgery and its allied specialties, Obstetrics and Gynaecology and Community Medicine.

Besides clinical posting as per schedule mentioned herewith, rest of the teaching hours be divided for didactic lectures, demonstrations, seminars, group discussions, etc. in various subjects.

The Medicine and its allied specialties training will include General Medicine, Pediatrics, Tuberculosis and Chest, Skin and Sexually Transmitted Diseases, Psychiatry, Radiodiagnosis, Infectious diseases etc. The Surgery and its allied specialties training will include General Surgery, Orthopedics Surgery including Physiotherapy and Rehabilitation, Ophthalmology, Otorhinolaryngology, Anesthesia, Dentistry, Radiotherapy etc. The Obstetrics & Gynecology training will include family medicine, family welfare planning etc.

3. The first 2 semester (approximately 240 teaching days) shall be occupied in the Phase 1 (preclinical) subjects and introduction to a broader understanding of the perspectives of medical education leading to delivery of health care. No student shall be permitted to join the Phase II (Pareclinical/clinical) group of subjects until he has passed in all the Phase 1 (Preclinical) subjects for which he will be permitted not more than four chances (actual examination), provided four chances are completed in three years from the date of enrollment.

4. After passing preclinical subjects, 1st year (3 semesters) shall be devoted to paraclinical subjects.

Phase II will be devoted to paraclinical and clinical subjects, along with clinical posting. During clinical phase (Phase III) preclinical and para clinical teaching will be integrated into the teaching of clinical subjects where relevant.

5. Didactic lectures should not exceed one third of the time schedule; two third schedule should include practical, clinical or/and group discussions. Learning process should include living experiences, problem oriented approach, case studies and community health care activities.

6. Universities shall organize admission timings and admission process in such a way that teaching in first semester starts by 1st of August each year.

7. Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year.

8. Phase Distribution and Timing of Examinations:

6 MONTHS

6 MONTHS

6 MONTHS

Ist professional Examination (during Second Semester

IIInd Professional Examination (during fifth semester)

IIIrd Professional Part I (during 7th semester)

IIIrd Professional Part II (Final professional during 9th semester)

Note :

a. Passing in 1st Professional is compulsory before proceeding to Phase II training.

b. A student who fails in the IIInd professional examination, shall not be allowed to appear in IIIrd Professional Part I examination unless he passes all subjects of IIInd Professional examination.

c. Passing in IIIrd Professional (Part I) examination is not compulsory before entering for 8th and 9th semester training, however passing of IIIrd Professional (Part I) is compulsory for being eligible for IIIrd Professional (Part II) examination."

9. Regulation 8 further provides that during Third to Ninth Semester clinical postings of three hours duration daily is suggested for various departments. For the Sixth Semester, clinical posting is for two weeks in Paediatrics, two weeks in Skin & STD, four weeks in Orthopaedics, four weeks in Ophthalmology, four weeks in Ear Nose and Throat, four weeks in Community Medicine and two weeks in

Casualty. Thus, in all, 22 weeks of clinical postings of three hours duration daily is provided for the students pursuing the studies of the sixth semester.

Regulation 12(1) provides for attendance and is as follows:

"(1) ATTENDANCE

75% of attendance in a subject for appearing in the examination is compulsory provided he/she has 80% attendance in non lecture teaching. i.e. seminars, group discussions, tutorials, demonstrations, practicals, Hospital (Tertiary, Secondary, Primary) postings and bed side clinics, etc.

....."

10. A perusal of the aforesaid Regulations leaves no manner of doubt that great emphasis has been laid on clinical postings as lectures alone have been found to be inadequate for acquiring information and infact apart from 75% attendance in a subject for appearing at the Examination, students must also have 80% attendance in nonlecture teaching, i.e., seminars and groups discussions, tutorial demonstrations, practical, hospital posting and bed sides clinic. The Regulations further provide that MBBS course is of 4 ? years divided into nine semesters of six months each. The First Professional Examination (Phase I) consists of 1st and 2nd Semester while the Second Professional Examination (Phase II) consists of 3rd, 4th and 5th Semester of six months each. The Second Professional Examination is held at the end of the 5th Semester. The Third Professional (PartI) consists of sixth and seventh semesters and the Examination is held at the end of the seventh semester. These factors, therefore, have to be kept in mind while granting any relief to the petitioner.

11. Reverting back to the factual aspect, it is seen that the petitioner was admitted to the First Professional MBBS Course in July 2005. This Course consists of two semesters of six months each and each semester consists of approximately 120 teaching days. The First Professional Examination, as is seen from Regulation 8, is held during the second semester. The petitioner appeared at the First Professional Examination held in July, 2006 but he was declared failed in the result which was published on 11th September, 2006 as he could not clear the Anatomy paper. Passing the First Professional Examination is compulsory before a student can be permitted to attend the classes of the Second Professional Course (Phase II). Supplementary Examinations are conducted within six months of the Main Examination for the students who fail at the Main Examination and upon passing the Supplementary Examination, the students can join the Main Batch but the students who fail, have to appear at the Examination of the subsequent year. The Supplementary Examination for the petitioner was conducted in March, 2007 which is within six months from the date of declaration of the First Professional Examination result. The result of the Supplementary Examination was declared on 29th March, 2007 in which the petitioner was declared passed. The petitioner then started his study in the Second Professional Course alongwith the Main Batch from April, 2007. He appeared at the Second

Professional (Supplementary) Examination in July, 2008 after completing his Second Professional Course and was thereafter permitted to attend the Third Professional (PartI) classes. The students who had passed the Second Professional in the Main Examination had started attending the Third Professional (PartI) classes five months earlier and had completed their sixth semester by the time the petitioner joined them.

12. Under Regulation 7(7) referred to above, the petitioner was permitted to attend the Third Professional (PartI) classes with the Main Batch student after he passed the Supplementary Examination but he could not have appeared at the Third Professional (PartI) Examination held in February, 2009 after the end of the seventh semester since he had not studied in the sixth semester. The petitioner, however, filed the present petition for appearing at the Third Professional (PartI) Examination alongwith the Main Batch students on the basis of Regulation 7(7). It needs to be mentioned that students who had cleared the Second Professional in the Main Examination held five months earlier than the the Supplementary Examination had pursued the PhaseIII Training of the sixth semester and it is after the completion of the sixth and seventh semesters that the Third Professional (PartI) Examination was held for them in February, 2009. It is for this reason that the petitioner could not have appeared at the Third Professional (PartI) Examination held in February, 2009 since he had not studied in the sixth semester at all.

13. Regulation 7(7) cannot be read in isolation dehors the other provisions of the Regulations which provide for attendance requirements and completion of the entire PartI training of the Third Professional consisting of sixth and seventh semesters. It only permits such students who clear the Second Professional in the Supplementary Examination which is held within six months of the Main Examination to attend the remaining studies of the Third Professional (PartI) Examination alongwith the Batch students but it does not and cannot permit them to appear at the Third Professional (PartI) Examination alongwith them. It is for this reason that they can be permitted to appear at the Supplementary Examination to be held within six months so that in the meantime they can complete the earlier training missed by them. It further needs to be noticed that it is not the Lectures alone which are taken into consideration but non Lecture teaching, i.e., seminars, group discussions, tutorials, demonstrations, practicals, Hospital (Tertiary, Secondary, Primary) postings and bed side clinics, etc. and in the present case the petitioner has not studied at all in the sixth semester. The petitioner who belongs to the Supplementary Batch cannot, therefore, place himself at parity with the Regular Batch students as he had not attended theory and practical (including tutorial) classes in the sixth semester. He was, therefore, in such circumstances, not entitled to appear at the Second Professional (PartI) Main Examination and could have appeared at the Third Professional (PartI) Supplementary Examination after completing the sixth semester training which he had missed. The petitioner has, however, appeared at the said Examination only under the interim order of this Court which was granted to the petitioner

since the Court had granted an interim order earlier in Writ Petition No.62477 of 2008 (Surendra Kumar Kanwat & Ors. Vs. State of U.P. & Ors.) but this petition has been dismissed by order of date. The submission advanced by learned Senior Counsel for the petitioner that attendance requirement for the petitioner should be counted from the date he was permitted to attend the Third Professional (PartI) Course has only to be stated to be rejected. The petitioner was not permitted to attend the Third Professional classes not because of the fault of the College but because he was still doing his Second Professional when the other students had started their studies for the Third Professional (PartI).

14. The Regulations framed by the Medical Council of India have statutory force and are mandatory as was emphasised by the Supreme Court in Maharashtra University of Health Sciences Represented by Deputy Registrar Vs. Paryani Mukesh Jawaharlal & Ors., 2007 AIR SCW 3946 and the relevant observations are as follows:

"MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. The regulations framed by the MCI with the previous sanction of the Central Government, in regard to any of the matters referred to in section 33 of the Indian Medical Council Act, 1956, will have statutory force and are mandatory. Universities must necessarily be guided by the MCI Regulations....." (emphasis supplied)

15. A Division Bench of this Court in Vinod Kumar & Ors. Vs. Principal, G.S.V.M. Medical College, Kanpur, 1986 UPLBEC 540 had an occasion to examine an almost similar controversy. The petitioners therein, who had failed in the First Professional Examination conducted in October 1984 but had cleared it in the Supplementary Examination in April, 1985, had sought a direction that they should be permitted to appear at the Second Professional (Main) Examination held in July, 1986 alongwith the Main Batch students. The Court refused to grant any relief to the petitioners since they had not completed the Second Professional Examination Training and the relevant observations are as follows:

"We find it difficult to accept the argument advanced on behalf of the petitioners. The statutory provisions have to be interpreted according to the normal and well known rules of interpretation of statutes. To accept the argument of the petitioners" learned counsel is to altogether overlook and eliminate from consideration, the provisions relating to the duration of studies intervening the first professional examination and the second professional examination. This is obviously neither possible nor proper for this Court to do. The subject matter of controversy relates to the field of Medical Education and the two conditions, though inter related in a way, are surely distinct and separate. Both the conditions have been laid down as statutory conditions in the form of statutes of the University on the basis of the recommendations of the Medical Council of India which is the statutory body entrusted with the task of regulation and maintenance of requisite standards of Medical Education. Courses of studies in a Medical College are conducted in a regulated systematic manner laying down the

number of the classes to be taken daily weekly subjectwise involving various teachers, teaching hours, holidays including periodical vacations etc. This has relevances to the relationship with the requirements and regulation of work load connected also with the maintenance of the efficiency and convenience of the teachers and other connected staff. To compel the Medical College Authorities to arrange the special classes would entail obvious practical difficulties besides involving noncompliance of the statutory provisions.

Learned counsel for the petitioners has failed to satisfy us as to the existence of any legal rights involved in favour of the petitioners; in fact this is not a case where invasion of any legal rights of the petitioners or breach of any statutory requirements is involved; what is sought in the other hand is that Principal of the Medical College may be directed to act against the statutory requirements which he as important academic and administrative functionary is expected and required to enforce and carry out. No mandamus can be issued to direct the Principal to act against the law which he is bound to obey and carry out. If the petitioners cannot appear at the second professional examination alongwith their original batchmates it is because of something accountable to them because they failed in some of the subjects at the first professional examination and as a result could not attend the classes alongwith the batchmates from the very beginning of the course of studies for the second professional examination." (emphasis supplied)

16. In view of the aforesaid Division Bench judgment of this Court in Vinod Kumar & Ors. (supra), no relief can be granted to the petitioner.

17. It also needs to be noticed that what the petitioner wants is a direction to the respondents to act contrary to the provisions of the Regulations, which direction cannot be issued as was observed by the Supreme Court in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh & Anr., (1986) 2 SCC 667 in a matter relating to MBBS Course and the relevant observations are as follows:

".....Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws....."

18. Learned Senior Counsel for the petitioner, however, submitted that the University should not have delayed the holding of the Second Professional Supplementary Examination as it is because of this that the petitioner has to suffer. This contention cannot be accepted as the Regulations permit the holding of the Supplementary Examination within six months of the Main Examination and this provision has not been contravened in the present case. The decision in the case of Maharishi Dayanand University (supra) on which reliance has been

placed by learned Senior Counsel for the petitioner does not help the petitioner as it is in view of the peculiar circumstances mentioned in the judgment that the Court directed to declare the result.

19. The inevitable conclusion that follows is that the petitioner who had passed the Second Professional in the Supplementary Examination could not have appeared in the February, 2009 Third Professional (PartI) Main Examination alongwith those students who had cleared the Second Professional in the Main Examination five months earlier.

20. Learned Senior Counsel for the petitioner, however, urged that under the interim order passed by this Court on 6th February, the petitioner has appeared at the Examination and so this Court should take a sympathetic view and direct the respondents to declare the result.

21. It is not possible to accede to such a prayer. The petitioner has himself to blame as he could only have been permitted to appear at the Third Professional (PartI Supplementary) Examination and not in the Main Examination held in February, 2009 but despite this, the petitioner pressed that he be permitted to appear at the Main Examination and under the interim order passed by this Court he has appeared at the said Examination. As seen from the interim order, reliance was placed by the petitioner on the interim order passed in writ petition filed by Surendra Kumar Kanwat and others, but that petition has been dismissed by order of date.

22. The Supreme Court in Regional Officer, CBSE Vs. Ku. Sheena Peethambaran & Ors., 2003 (7) SCC 719 dealt with a similar issue wherein a student who had failed in the Class IXth Examination appeared at the Class Xth Examination under the interim order of the High Court. It was contended before the High Court by the petitioner that in view of the provisions of ByeLaws 10.2, a candidate can appear at the Class Xth Examination provided he has passed the Class VIIIth Examination and since the petitioner had passed Class VIIIth, she was eligible to appear at the Class Xth Examination. The High Court accepted this plea and the petitioner was permitted to appear at the Class Xth Examination under the interim order and ultimately the petition was allowed by the High Court. The Supreme Court found that the High Court had overlooked the provisions of ByeLaws 7.3 which provides that admission to Class Xth shall be open only to such students who passed Class IXth Examination. It is in this context that the Supreme Court observed :

"It is thus clear that, accordingly to Respondent 1 herself, she was declared failed in her examination for Class IX. The High Court, while finally deciding Writ Petition No.426 of 1996 by order dated 27/1996 conveniently overlooked to take note of the provision contained in Byelaw 7.3, contents of which have been indicated above. There was only a mention of Byelaw 7.3 of the Byelaws of the Board but nothing beyond that was indicated or observed in the judgment, as to why it would not be applicable to the case.....The High Court

failed to consider that Byelaw 10.2 will not be applicable to Respondent 1 but it would be Byelaw 7.3, which would apply in her case. Therefore, it was necessary that she must have passed Class IX as a regular student before she could be allowed to undertake examination for Class X held by the Board.....Despite the position under the Byelaws as indicated above, the High Court finally disposed of Writ Petition No.426 of 1996 cursorily holding that since Respondent 1 had appeared in the examination and her result had been declared provisionally, therefore, the Board was directed to declare her result of Class X and to issue a fresh marksheet without any endorsement thereon.

.....

This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations.....

In the background of the law as laid down by this Court, we find that in the case in hand the fact situation was even worse as compared to the decision cited above. The student, namely, Respondent 1 had failed to clear her Class IX examination which was a necessary requirement as provided under the byelaws of the Board so as to be entitled to appear in Class X examination conducted by the Board. Despite notice, no one has put in appearance on behalf of Respondents 1 and 2 to indicate any fact or circumstance so as to take any different view. Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards." (emphasis supplied)

23. The present petitioner is in an identical position as here also, the petitioner placed reliance upon Regulation 7(7) overlooking the other relevant Regulations and appeared at the Examination under the interim order. Thus, merely because he has appeared at the Examination under an interim order passed by this Court, no relief can be granted to the petitioner in view of the aforesaid decision of the Supreme Court. Reliance upon the decision rendered in *Shalini* (supra) by learned Senior Counsel for the petitioner does not help the petitioner as in that case the University had not complied with the Ordinances. In the present case, the University was justified in not permitting the petitioner to appear at the Examination concerned.

24. Thus for all the reasons stated above, no relief can be granted to the petitioner. The writ petition is, accordingly, dismissed.